

IN THE MATTER OF:)
)
 Jefferson City Residential Yards Site)
 Jefferson City, Jefferson County, Montana)
)
 Montana Tunnels Mining, Inc.)
 SETTLING PARTY)
 _____)

SETTLEMENT AGREEMENT)
 U.S. EPA Region 8)
 CERCLA Docket No. CERCLA-08-2013-0003)
)
 PROCEEDING UNDER SECTION)
 122(h)(1) OF CERCLA,)
 42 U.S.C. § 9622(h)(1))

MONDAY 13 AM 8:49
 FILED
 EPA REGION 8
 HEARING CLERK

**CERCLA SECTION 122(h)(1) CASHOUT SETTLEMENT AGREEMENT FOR
 ABILITY TO PAY PERIPHERAL PARTIES**

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I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and to the Assistant Regional Administrators and then jointly to supervisors in the Legal Enforcement Program and the Technical Enforcement Program, pursuant to internal Regional Delegation No. 14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

2. This Settlement Agreement is made and entered into by EPA and Montana Tunnels Mining, Inc. ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Jefferson City Residential Yards site ("Site") located in Jefferson City, Jefferson County, Montana. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances, including lead and arsenic, at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

5. The Site cleanup included approximately 19 residential yards, a portion of a U.S. Postal Service property and sections of Spring Creek in and near Jefferson City. Specifically, EPA's response actions included excavation of contaminated soils, backfilling with clean materials, re-grading, capping with six inches of top soil, and then re-sodding or seeding. EPA also removed contaminated soils from hiking trails along the Spring Creek within the City and backfilled with clean materials. EPA completed the removal action in December, 2010.

6. An area known as Corbin Flats Tailings lies upstream of the Site and contains approximately 440,000 to 500,000 cubic yards of tailings. Precipitation events, snowmelt runoff, and other overland sheet flow events caused the tailings, contaminated with elevated levels of lead and arsenic, to move downstream along Spring Creek, ending up on and across certain residential yards at the Site.

7. Settling Party is the current owner and former operator of Corbin Flats Tailings. In 1998, pursuant to a Voluntary Cleanup Plan ("VCUP") with Montana Department of Environmental Quality, Settling Party conducted a cleanup at Corbin Flats Tailings. In 2002, pursuant to a second VCUP, Settling Party cleaned up the remaining Corbin Flats Tailings area.

That cleanup included consolidation of tailings into a permanent capped repository on Corbin Flats Tailings.

8. Settling Party maintains that it procured a permit so that EPA could use the repository on Settling Party's property to dispose of contaminated soil from the Site.

9. In performing response action at the Site, EPA has incurred response costs.

10. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

11. EPA has reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

12. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section. Settling Party does not agree with EPA's allegations that Settling Party is a responsible party and jointly and severally liable for response costs.

III. PARTIES BOUND

13. This Settlement Agreement shall be binding upon EPA and upon Settling Party and its successors, and assigns. Any change in ownership or corporate or other legal status of Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

14. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address its alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

15. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement 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 Agreement or its 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 Agreement, 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 Agreement as provided by Section XVII.

“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.

“Financial Information” shall mean those financial documents identified in Appendix B.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded 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.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA and Settling Party.

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Party” shall mean Montana Tunnels Mining, Inc.

“Site” shall mean the Jefferson City Residential Yards Superfund site, encompassing approximately 19 residential yards and proximate areas, located near the intersection of Main and Spring Streets in and near Jefferson City, Jefferson County, Montana, and generally shown on the maps included in Appendix A.

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

VI. PAYMENT OF RESPONSE COSTS

16. Payment of Response Costs. Settling Party shall pay to EPA \$372,217.14, plus interest as set forth in Appendix C, for a total payment of \$380,000.00. Payment shall be made in 35 installments of \$2,500.00 with a final balloon payment of \$292,500.00 (both amounts include interest). The first installment payment of \$2,500.00 is due on the first day of the month beginning 30 days after the Effective Date. Installment payments shall be made on the first day of each month thereafter for the next 34 months. The last and final payment of \$292,500.00 is due and payable on the first day of the thirty-sixth month after the first installment payment.

17. Settling Party’s payments shall be made 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 08QK and the EPA docket number for this action.

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

Mia Bearley
Legal Enforcement Program
U.S. EPA Region 8, 8ENF-L
1595 Wynkoop Street
Denver, CO 80202-1129

Bill Ross
Technical Enforcement Program

U.S. EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, CO 80202-1129

Region 8 Financial Management Program
U.S. EPA Region 8, 8TMS-FMP
1595 Wynkoop Street
Denver, CO 80202-1129

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

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

19. The total amount of each payment to be paid pursuant to Paragraph 16 (Payment of Response Costs) shall be deposited by EPA in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

20. Interest on Payments and Accelerated Payments. If Settling Party fails to make any payment required by Paragraph 16 (Payment of Response Costs) by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

21. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 16 (Payment of Response Costs) are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 20, \$500.00 per violation per day that such payment is late.

b. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Party's receipt from EPA of a demand for payment of the penalties. Settling Party shall make all payments required by this Section to EPA by Fedwire Electronic Funds Transfer 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 stipulated penalties, Site/Spill ID Number 08QK, and the EPA docket number for this action.

c. At the time of each payment, Settling Party shall send notice that payment has been made as provided in Paragraph 18 above.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

22. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. §9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

23. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

24. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, these covenants shall take effect upon receipt by EPA of the full payment amount required by Paragraph 16 (Payment of Response Costs). These covenants are conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party and the financial,

insurance, and indemnity certification made by Settling Party in Paragraph 41. If the Financial Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Paragraph 41 is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Settlement Agreement and these covenants and the contribution protection shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. These covenants extend only to Settling Party and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

25. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenants by EPA in Paragraph 24. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based on the ownership or operation of the Site by Settling Party when such ownership or operation commences after signature of this Settlement Agreement by Settling Party;
- e. liability based on Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

26. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Party, or the financial, insurance, or indemnity certification made by Settling Party in Paragraph 41, is false or, in any material respect, inaccurate.

27. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING PARTY

28. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on 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 claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Montana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

Except as provided in Paragraph 30 (claims against other PRPs) and Paragraph 32 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 25.a (liability for failure to meet a requirement of the Settlement Agreement) or 25.b (criminal liability), but only to the extent that Settling Party's claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

29. Nothing in this Settlement 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).

30. Settling Party agrees 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) or 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

31. Except as provided in Paragraph 30 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Party), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it 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 Agreement 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).

32. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Party 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, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 25.a (liability for failure to meet a requirement of the Settlement Agreement) or 25.b (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 30, the Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Party has, as of the Effective Date, resolved liability to the United States for some or all of a response action or some or all of the costs of such action.

33. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party 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 by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant by EPA set forth in Section VIII.

34. Effective upon signature of this Settlement Agreement by Settling Party, Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) 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 32, and that, in any action brought by the United States related to the "matters addressed," Settling Party 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 EPA gives notice to Settling Party that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

35. Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the

initiation of such suit or claim. Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon Settling Party. In addition, Settling Party 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 Agreement.

XII. ACCESS TO INFORMATION

36. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to the Site.

37. Confidential Business Information and Privileged Documents.

a. Settling Party may assert business confidentiality claims covering part or all of the Records submitted to EPA under this Settlement Agreement 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). Records determined to be confidential by EPA will be accorded 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, or if EPA has notified Settling Party 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 Settling Party.

b. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing Records, it shall provide EPA with the following: 1) the title of the Record; 2) the date of the Record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the Record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

38. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS AND CERTIFICATION

39. Until 10 years after the Effective Date, Settling Party shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any

person for response actions or response costs at or in connection with the Site, regardless of any corporate retention policy to the contrary.

40. After the conclusion of the document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, Settling Party shall deliver any such Records to EPA. Settling Party may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing Records, it shall provide EPA with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged portion only. Settling Party shall retain all Records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

41. Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Party's financial circumstances, including but not limited to insurance and indemnity information, 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;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

42. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Mia Bearley
Legal Enforcement Program
U.S. EPA Region 8, 8ENF-RC
1595 Wynkoop Street
Denver, CO 80202-1129

As to Settling Party:

Alan Joscelyn
Gough, Shanahan, Johnson & Waterman, PLLP
33 S. Last Chance Gulch
P.O. Box 1715
Helena, Montana 59624-1715

XV. INTEGRATION/APPENDICES

43. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: "Appendix A" contains two maps of the Site; "Appendix B" is a list of the financial documents submitted to EPA by Settling Party; and "Appendix C" is a payment schedule.

XVI. PUBLIC COMMENT

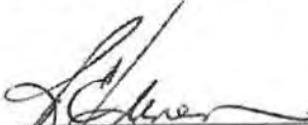
44. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. EFFECTIVE DATE

45. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 44 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

Montana Tunnels Mining, Inc.



Robert Trenaman, President
270 Montana Tunnels Road
Jefferson City, Montana 59638

April 25, 2013
Date

U.S. Environmental Protection Agency

Andrea Madigan

Andrea Madigan, Supervisory Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street,
Denver, CO 80202-1129

5/2/13
Date

Kelcey Land

Kelcey Land, Director
RCRA & CERCLA Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street,
Denver, CO 80202-1129

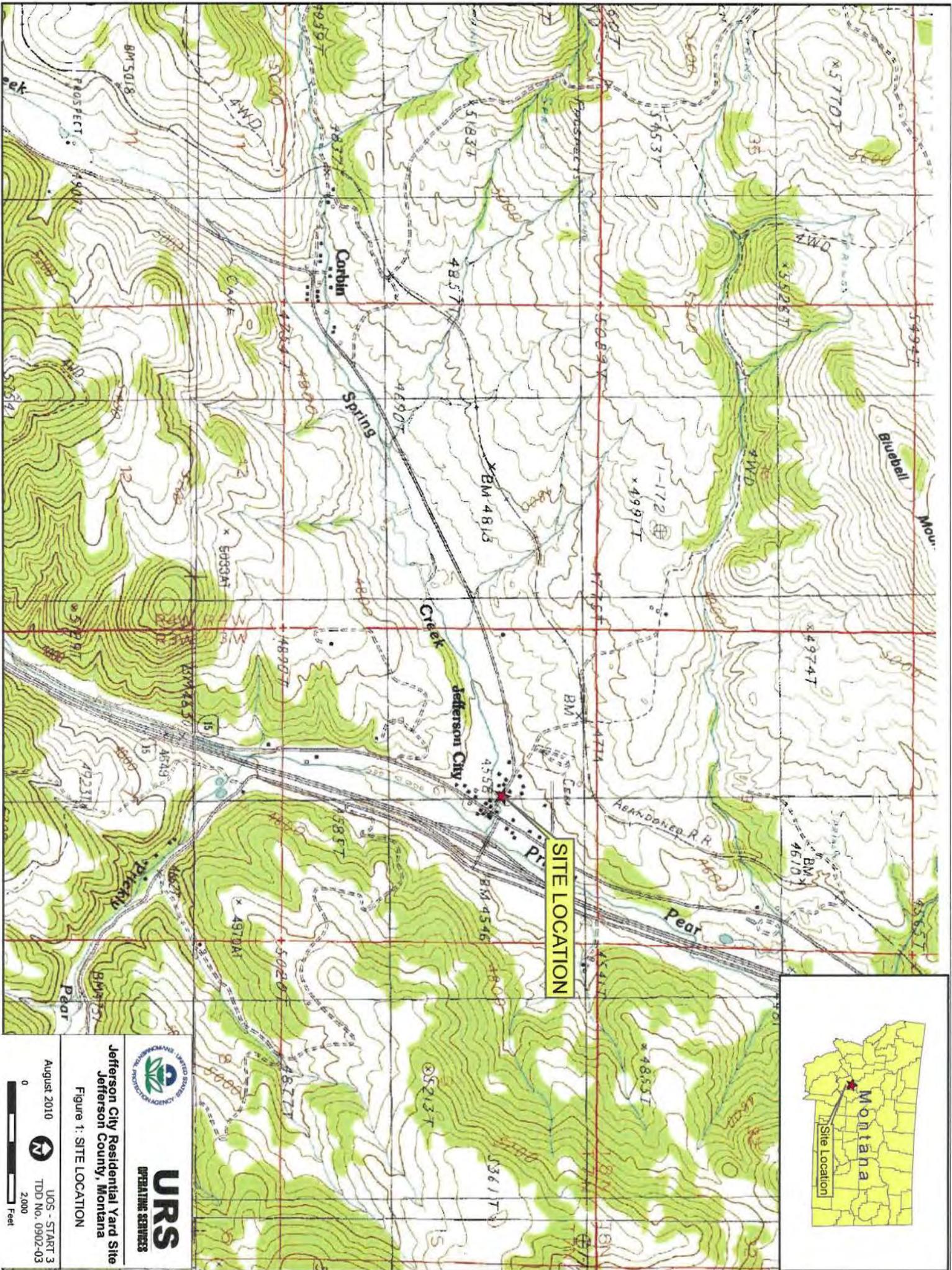
5/6/13
Date

U.S. Department of Justice

Ignacia S. Moreno

Ignacia S. Moreno, Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

4/11/13
Date



URS
OPERATING SERVICES

Jefferson City Residential Yard Site
Jefferson County, Montana
Figure 1: SITE LOCATION

August 2010
UOS - START 3
TDD No. 0902-03
2000
Feet

Legend

- Sample Aliquot Locations
- Approximate Lot Boundaries
- Sample Cell

Composite Soil Sample Locations
0 to 6 inch Lead Results in Parts Per Million (ppm)

- <400
- 400 - 700
- 700 - 1000
- >1000



Created: 12/14/2009 4:54:27 PM Drawn By: Andrew Longworth
 File Location: T:\STARK\Jefferson CRV Residential Yard\GIS Maps\Figure 200 - Bin Sample Composite Results.mxd


URS
 OPERATING SERVICES

Jefferson City Residential Yard Site
 Jefferson County, Montana

Figure 2 - Lead in Soil
 0 to 6 Inches Depth

December 2009  UOS - START 3
 TDD No. 0902-03

0 50 100 150 Feet

APPENDIX B

FINANCIAL DOCUMENTS SUBMITTED BY SETTLING PARTY MONTANA TUNNELS MINING, INC.

1. U.S. Corporation Income Tax Return (Form 1120) for 2010.
2. Unaudited financial statements for 2006-2010.
3. EPA Region 8 "Financial Statement for Businesses" signed and dated September 26, 2011.
4. Letter from Eric Altman, CFO of Elkhorn Goldfields, LLC (parent of Montana Tunnels Mining, Inc.) dated September 26, 2011.

Appendix C

PmtNo.	Total Payment	Principal	Interest
1	\$ 2,500.00	\$ 2,257.94	\$ 242.06
2	\$ 2,500.00	\$ 2,259.40	\$ 240.60
3	\$ 2,500.00	\$ 2,260.87	\$ 239.13
4	\$ 2,500.00	\$ 2,262.34	\$ 237.66
5	\$ 2,500.00	\$ 2,263.81	\$ 236.19
6	\$ 2,500.00	\$ 2,265.28	\$ 234.72
7	\$ 2,500.00	\$ 2,266.76	\$ 233.24
8	\$ 2,500.00	\$ 2,268.23	\$ 231.77
9	\$ 2,500.00	\$ 2,269.70	\$ 230.30
10	\$ 2,500.00	\$ 2,271.18	\$ 228.82
11	\$ 2,500.00	\$ 2,272.65	\$ 227.35
12	\$ 2,500.00	\$ 2,274.13	\$ 225.87
13	\$ 2,500.00	\$ 2,275.61	\$ 224.39
14	\$ 2,500.00	\$ 2,277.09	\$ 222.91
15	\$ 2,500.00	\$ 2,278.57	\$ 221.43
16	\$ 2,500.00	\$ 2,280.05	\$ 219.95
17	\$ 2,500.00	\$ 2,281.53	\$ 218.47
18	\$ 2,500.00	\$ 2,283.02	\$ 216.98
19	\$ 2,500.00	\$ 2,284.50	\$ 215.50
20	\$ 2,500.00	\$ 2,285.98	\$ 214.02
21	\$ 2,500.00	\$ 2,287.47	\$ 212.53
22	\$ 2,500.00	\$ 2,288.96	\$ 211.04
23	\$ 2,500.00	\$ 2,290.45	\$ 209.55
24	\$ 2,500.00	\$ 2,291.93	\$ 208.07
25	\$ 2,500.00	\$ 2,293.42	\$ 206.58
26	\$ 2,500.00	\$ 2,294.91	\$ 205.09
27	\$ 2,500.00	\$ 2,296.41	\$ 203.59
28	\$ 2,500.00	\$ 2,297.90	\$ 202.10
29	\$ 2,500.00	\$ 2,299.39	\$ 200.61
30	\$ 2,500.00	\$ 2,300.89	\$ 199.11
31	\$ 2,500.00	\$ 2,302.38	\$ 197.62
32	\$ 2,500.00	\$ 2,303.88	\$ 196.12
33	\$ 2,500.00	\$ 2,305.38	\$ 194.62
34	\$ 2,500.00	\$ 2,306.88	\$ 193.12
35	\$ 2,500.00	\$ 2,308.37	\$ 191.63
36	\$ 292,500.00	\$ 292,309.87	\$ 190.13
Total	\$ 380,000.00	\$ 372,217.14	\$ 7,782.86