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**U.S. EPA REGION 8
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UNITED STATES DEPARTMENT OF JUSTICE
AND
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8
AND
STATE OF COLORADO

IN THE MATTER OF:

CERCLA Docket No. CERCLA-08-2025-0001

Central City, Clear Creek Superfund Site

Miners Point Ventures, LLC,

Purchaser

ADMINISTRATIVE SETTLEMENT
AGREEMENT FOR RESPONSE
ACTION BY BONA FIDE
PROSPECTIVE PURCHASER

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I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Response Action by Bona Fide Prospective Purchaser is entered into voluntarily by the United States on behalf of the Environmental Protection Agency, the State of Colorado (State), and the purchaser, Miners Point Ventures, LLC (Purchaser). This Settlement provides for the performance of a response action by Purchaser and the payment for certain response costs incurred by the United States and the State of Colorado at or in connection with the property located at 2350 Riverside Drive, Idaho Springs, Colorado, which is within the Central City/Clear Creek Superfund Site.

2. This Settlement is entered into under the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional officials.

3. The Purchaser represents that it is a bona fide prospective purchaser as defined by sections 101(40) and 107(r)(1) of CERCLA, and that it has and will continue to comply with sections 101(40) and 107(r) during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA with respect to the Property. The Purchaser agrees to undertake all actions required by this Settlement. In exchange for Purchaser's performance of the Work and payment of certain response costs, this Settlement resolves Purchaser's potential CERCLA liability in accordance with the covenants not to sue in Section XVI (Covenants by United States), subject to the reservations and limitations contained in Section XVI. This Settlement is fair, reasonable, in the public interest, and consistent with CERCLA.

4. The United States, the State, and Purchaser recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Purchaser in accordance with this Settlement do not constitute an admission of any liability. Purchaser does not admit and it retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations). Purchaser agrees not to contest the basis or validity of this Settlement or its terms, or the United States' right to enforce this Settlement.

II. PARTIES BOUND

5. This Settlement is binding upon the United States, the State, and Purchaser and its successors. Unless the United States otherwise consents, any change in ownership or corporate or other legal status of Purchaser does not alter Purchaser's responsibilities under this Settlement. Except as provided in ¶ 53, Transfer of the Property or any portion thereof does not alter any of Purchaser's obligations under this Settlement. Purchaser's responsibilities under this Settlement cannot be assigned except under a modification executed in accordance with ¶ 103.

6. Purchaser shall provide notice of this Settlement to officers, directors, employees, agents, contractors, subcontractors, or any person representing Purchaser with respect to the

Property or the Work. Purchaser is responsible for ensuring that such parties act in accordance with the terms of this Settlement.

III. DEFINITIONS

7. Subject to the next sentence, terms used in this Settlement that are defined in CERCLA or the regulations promulgated under CERCLA have the meanings assigned to them in CERCLA and the regulations promulgated under CERCLA. Whenever the terms set forth below are used in this Settlement, the following definitions apply:

“Agencies” means the EPA and CDPHE collectively.

“Baseline Human Health Risk Assessment” or “Baseline HHRA” means a baseline human health risk assessment as described in the National Contingency Plan, 40 C.F.R. § 300.430(d)(2).

“BFPP” means a bona fide prospective purchaser as described in section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

“CDPHE” means the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” means a calendar day. In computing any period under this Settlement, the day of the event that triggers the period is not counted and, where the last day is not a working day, the period runs until the close of business of the next working day. “Working day” means any day other than a Saturday, Sunday, or federal or State holiday.

“DOJ” means the United States Department of Justice.

“Effective Date” means the effective date of this Settlement as provided in Section XXIX.

“EPA” means the United States Environmental Protection Agency.

“Existing Contamination” means:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Fund” means the Hazardous Substance Superfund established under section 9507 of the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” means all costs (including direct, indirect, payroll, contractor, travel, and laboratory costs) that the United States incurs or pays in supporting, developing, implementing, overseeing, or enforcing this Settlement, including: (a) in developing, reviewing and approving deliverables generated under this Settlement; (b) in overseeing Purchaser’s performance of the Work; (c) in implementing community involvement activities; (d) in taking action under ¶ 40 (Emergency Response); (e) through any cooperative agreement to fund or reimburse costs incurred by the State that are associated with the Property; (f) in implementing a Work Takeover under ¶ 46 (Work Takeover); (g) in securing, implementing, monitoring, maintaining, or enforcing the requirements of Section VIII (Property Requirements); (h) in taking action under ¶ 60 (Access to Financial Assurance); and (i) in enforcing this Settlement, including all costs paid under Section XIII (Dispute Resolution) and all litigation costs. Future Response Costs also includes all Interest accrued on EPA’s unreimbursed costs.

“Including” or “including” means “including but not limited to.”

“Institutional Controls” means (a) Proprietary Controls (*i.e.*, easements or covenants running with the land that: (i) limit land, water, or other resource use, provide access rights, or both and (ii) are created under common law or statutory law by an instrument that is recorded, or for which notice is recorded, in the appropriate land records office); and (b) state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (i) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (ii) limit land, water, or other resource use to implement, ensure noninterference with, or ensure the protectiveness of the response action; (iii) provide information intended to modify or guide human behavior at or in connection with the Site; or (iv) any combination thereof.

“Interest” means interest at the rate specified for interest on investments of the Fund, as provided under section 107(a) of CERCLA, compounded annually on October 1 of each year. The applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. As of the Effective Date of this Settlement, rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, codified at 40 C.F.R. part 300, and any amendments thereto.

“Operations and Maintenance Plan” means a plan documenting measures required to maintain the effectiveness of the response actions.

“Paragraph” or “¶” means a portion of this Settlement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” means the United States, State, and Purchaser.

“Phase 1 Baseline Human Health Risk Assessment Work Plan” means the EPA-approved work plan for Phase 1 Work to be implemented by Purchaser.

“Phase 1 Work” means the Work that Purchaser will implement under the Phase 1 Baseline Human Health Risk Assessment Work Plan to be submitted and approved by EPA consistent with the Statement of Work (SOW) in Appendix A.

“Phase 2 Work Plan” means the EPA-approved work plan for Phase 2 Work to be implemented by Purchaser.

“Phase 2 Work” means the Work that Purchaser will implement under a Phase 2 Work Plan to be submitted and approved by EPA consistent with the SOW in Appendix A.

“Property” means that portion of the Site, encompassing approximately 5 acres, to be acquired by Purchaser, which is generally depicted in Appendix B.

“Purchaser” means Miners Point Ventures, LLC, a Colorado Limited Liability Company.

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

“Response Action” means the response action required under this Settlement.

“Section” means a portion of this Settlement identified by a Roman numeral.

“Settlement” means this Administrative Settlement Agreement for Response Action by Bona Fide Prospective Purchaser, all appendixes attached hereto (listed in Section XXI (Appendixes)), and all deliverables approved under and incorporated into this Settlement. If there is a conflict between a provision in Sections I through XXIX and a provision in any appendix or deliverable, the provision in Sections I through XXIX controls.

“Site” means the Central City/Clear Creek Superfund Site, located in Gilpin and Clear Creek Counties, Colorado, and depicted generally on the map attached as Appendix C.

“State” means the State of Colorado.

“Transfer” means 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.

“Transferee” means the party to whom a Transfer is made.

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

“Waste Material” means (a) any “hazardous substance” under section 101(14) of CERCLA; (b) any pollutant or contaminant under section 101(33) of CERCLA; (c) any “solid waste” under section 1004(27) of RCRA; and (d) any “hazardous material” under Colorado law.

“Work” means all obligations of Purchaser under Sections VII (Response Action to be Performed) through X (Indemnification and Insurance).

“Work Takeover” means EPA’s assumption of the performance of any of the Work in accordance with ¶ 46.

IV. STATEMENT OF FACTS

8. In accordance with section 105 of CERCLA, EPA added the Site to the National Priorities List in September 1983. The Site covers the approximately 400 square mile drainage basin of Clear Creek and contains numerous inactive precious metal mines.

9. EPA divided the Site into operable units to effectively manage the cleanup.

10. Operable Unit 1 (OU1) was initially designated to address acid mine drainage from five mine tunnels using passive treatment. EPA issued a record of decision (ROD) to address OU1 in 1987.

11. The remedy for OU1 was ultimately incorporated into decision documents for OU3 and OU4.

12. Operable Unit 2 (OU2) includes mill tailings and mine waste rock piles associated with the five tunnels identified in OU1. EPA issued a ROD to address OU2 in 1988, and an explanation of significant differences (ESD) in 1999.

13. The remedy for OU2 includes slope stabilization and runoff controls at certain mine waste piles.

14. Operable Unit 3 (OU3) was designated to address widespread surface water impacts in the Clear Creek watershed. It includes two discharges that, while originally part of OU1, remained in need of additional remedial action. EPA issued a ROD for OU3 1991; amended the ROD in 2003, and issued two ESDs in 2005 and 2014.

15. The ROD for OU3 superseded the ROD for OU1.

16. The remedy for OU3 includes passive treatment of certain discharges, chemical treatment of others, and institutional controls.

17. Operable Unit 4 (OU4) includes sources of metals contamination in the North Fork of Clear Creek, including waste rock and sediment controls on tributaries to the North Fork. The remaining three discharges from OU1 were transferred to OU4 upon its creation. EPA

issued an OU4 ROD in 2004. Thereafter, EPA issued two ROD amendments: one in 2006, one in 2010.

18. The long-term remedy for OU4 includes treatment of various discharges, sediment control, construction of an on-site repository, and stream bank stabilization along the North Fork of Clear Creek.

19. In 2022, EPA designated operable unit 5 (OU5), which will address potential exposures from heavy metals, primarily lead and arsenic, from mine waste in close proximity to residential areas within the drainage basin of Clear Creek.

20. The Property is located in OU2. Uncovered mine waste containing lead and arsenic is located on the Property. Implementation of the OU2 ROD included adding engineering controls to a mine waste pile on the Property to ensure the lead and arsenic-laden materials did not erode into Clear Creek.

21. Uncovered mine waste remains on the Property.

22. Purchaser anticipates developing the Property into a mining-related tourist attraction that will include operation of a gondola that will transport tourists to recreational hiking trails.

V. DETERMINATIONS

23. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

a. The Site is a “facility” and the Property is a “facility” as defined by section 101(9) of CERCLA.

b. The contamination found at the Site and the Property, as identified in the Statement of Facts above, includes “hazardous substance(s)” as defined by section 101(14) of CERCLA.

c. Purchaser is a “person” as defined by section 101(21) of CERCLA.

d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and the Property as defined by section 101(22) of CERCLA.

e. The response action required by this Settlement is necessary to protect the public health, welfare, or the environment.

VI. COORDINATION AND SUPERVISION

24. Purchaser's Project Coordinator

a. Purchaser's Project Coordinator will be responsible for administration of the Work required by this Settlement. Purchaser's Project Coordinator must have sufficient technical expertise to coordinate the Work. To the greatest extent possible, the Project Coordinator shall be present at the Property or readily available during the Work.

b. Notice or communication relating to this Settlement from EPA to Purchaser's Project Coordinator constitutes notice or communication to Purchaser.

25. Procedures for Notice and Disapproval

a. Within 10 days after the Effective Date, Purchaser shall designate a Project Coordinator and shall notify the Agencies of the name, title, contact information, and qualifications of the proposed Project Coordinator, whose qualifications shall be subject to the Agencies' review for verification based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise) and do not have a conflict of interest with respect to the project. Purchaser shall notify Agencies of the names, titles, contact information, and qualifications of any contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work.

b. EPA may issue notices of disapproval regarding any proposed Project Coordinator, contractor, or subcontractor, as applicable. If EPA issues a notice of disapproval, Purchaser shall, within 7 days, submit to EPA a list of supplemental proposed Project Coordinators, contractors, or subcontractors, as applicable, including a description of the qualifications of each.

c. EPA may disapprove the proposed Project Coordinator, contractor, or subcontractor, based on objective assessment criteria (*e.g.*, experience, capacity, technical expertise), if they have a conflict of interest regarding the project, or any combination of these factors.

d. Purchaser may change its Project Coordinator by following the procedures under ¶¶ 25.a and 25.b.

26. EPA designates Angela Zachman of the Region 8 Superfund and Emergency Management Division as its Remedial Project Manager (RPM). The RPM has the authorities described in the NCP, including oversight of Purchaser's implementation of the Work, authority to halt, conduct, or direct any Work, or to direct any other removal action undertaken at the Property. The RPM's absence from the Site is not a cause for stoppage of work unless specifically directed by the RPM. EPA may change its RPM and will notify Purchaser of any such change.

27. The State designates Kyle Sandor as the State Project Manager. The State has the right to change its designated State Project Manager and will provide notice of such change.

VII. RESPONSE ACTION TO BE PERFORMED

28. Purchaser shall perform, at a minimum, all actions necessary to implement the Work as follows: Phase 1 and Phase 2 Work in accordance with the Statement of Work (SOW) in Appendix A. The actions to be implemented generally include, but are not limited to, the following:

a. Phase 1 Baseline Human Health Risk Assessment Work

In accordance with the SOW in Appendix A, Purchaser shall perform a Baseline HHRA in accordance with the NCP, 40 C.F.R. § 300.430(d)(2)(vii) provision on sensitive populations, and applicable EPA guidance. Purchaser shall ensure that the risk assessment incorporates site-specific exposure assumptions based on: (1) awareness of community practices, (2) environmental justice¹ concerns, and (3) anticipated changes to weather and climate. Purchaser shall use current EPA-recommended environmental justice screening tools (e.g., EJScreen as identified by EPA during the scoping of the Baseline HHRA). If requested by EPA, Purchaser shall conduct more detailed evaluations of community practices, environmental justice concerns, and potentially exposed populations as identified by EPA as a result of community outreach. If requested by EPA, Purchaser shall use climate change screening tools (e.g., forward-looking climate data) to evaluate the effect that anticipated changes to weather and climate have on the results of the Baseline HHRA. The evaluation of site-specific exposure assumptions shall be discussed in the risk assessment as appropriate. Potential overestimation and/or underestimation of risk associated with community practices, environmental justice concerns, and impacts of climate change shall be presented in the uncertainty discussion. Risk assessments will be reviewed and approved by EPA with State consultation. Purchaser shall identify and document all sources of information reviewed to address the human health assessment endpoints.

b. Phase 2 Work

In accordance with the SOW in Appendix A, identify and implement actions (1) to ensure Site-related Waste Material is within the acceptable risk range for recreational visitors as defined by the NCP and applicable EPA guidance; and (2) to develop and implement the Operations and Maintenance Plan as described in ¶ 34.

29. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or

¹ Environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

guidance. Such modifications, amendments, or replacements apply to the Work only after Purchaser receives notification from EPA of the modification, amendment, or replacement.

30. **Phase 1 Baseline Human Health Risk Assessment Work Plan.** Within 30 days after the Effective Date, Purchaser shall submit to the Agencies for EPA approval in accordance with ¶ 36 (Deliverables: Specifications and Approval) a work plan for performing the Phase 1 Work (the “Phase 1 Baseline Human Health Risk Assessment Work Plan”) as described in ¶ 28. The Phase 1 Baseline Human Health Risk Assessment Work Plan must provide a description of, and an expeditious schedule for, the actions required by this Settlement.

31. **Phase 2 Work Plan.** Within 30 days after EPA approves the Baseline Human Health Risk Assessment Report, Purchaser shall submit to EPA for approval in accordance with ¶ 36 (Deliverables: Specifications and Approval) a work plan for performing the Phase 2 Work (the “Phase 2 Work Plan”) as described in ¶ 28. If any earthwork is required under the Phase 2 Work Plan, the Phase 2 Work Plan must describe all community impact mitigation activities to be performed to: (a) reduce impacts (e.g., air emissions, dust, odor, traffic, noise, negative economic effects) to residential areas, schools, playgrounds, healthcare facilities, or recreational public areas frequented by community members (“Community Areas”) during implementation of the Response Action; (b) conduct monitoring in Community Areas of impacts from the implementation of the Response Action; (c) communicate validated sampling data; and (d) make adjustments during the implementation of the Response Action in order to further reduce negative impacts to affected Community Areas. The Phase 2 Work Plan shall contain information about impacts to Community Areas that is sufficient to assist EPA’s Community Involvement Coordinator in performing the evaluations described in the *Superfund Community Involvement Handbook*, OLEM 9230.0-51 (Mar. 2020). The Handbook is located at <https://www.epa.gov/superfund/superfund-community-involvement-tools-and-resources#handbook>. The Phase 2 Work Plan must provide a description of, and an expeditious schedule for, the actions required by this Settlement.

32. **Health and Safety Plan.** Within 30 days after the Effective Date, Purchaser shall submit to the Agencies for review and comment a plan that describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards related to the performance of work at the Property under this Settlement. Purchaser shall develop the plan in accordance with “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, Purchaser shall ensure that the plan complies with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. part 1910. If EPA, after consultation with the State, determines that it is appropriate, the plan must also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the Work. Purchaser shall update the plan as necessary or appropriate during the course of the Work, and/or as requested by EPA.

33. **Quality Assurance, Sampling, and Data Analysis**

a. Purchaser shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with EPA Directive CIO

2105.1 (Environmental Information Quality Policy, 2021), the most recent version of Quality Management Systems for Environmental Information and Technology Programs – Requirements with Guidance for Use, ASQ/ANSI E-4 (Feb. 2014), and Guidance for Quality Assurance Project Plans, EPA QA/G-5, EPA Office of Environmental Information (Dec. 2002) (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>).

b. Purchaser shall ensure that EPA and State personnel and their authorized representatives are allowed reasonable access to laboratories used by Purchaser in implementing this Settlement. In addition, Purchaser shall ensure that such laboratories analyze all samples submitted by EPA or the State under the QAPP for quality assurance monitoring, 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 <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Purchaser shall ensure that the laboratories it uses for the analysis of samples taken under 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 <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to EPA-accepted methods. Accepted EPA methods are documented in the EPA’s Contract Laboratory Program (<https://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<https://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<https://www3.epa.gov/ttnamti1/airtox.html>).

c. Upon request, Purchaser shall provide split or duplicate samples to the Agencies or their authorized representatives. Purchaser shall notify the Agencies not less than 7 days prior to any sample collection activity unless shorter notice is agreed to by EPA. In addition, the Agencies have the right to take any additional samples that the Agencies deem necessary. Upon request, the Agencies may provide to Purchaser split and/or duplicate samples of any samples in connection with the Agencies’ oversight sampling.

d. Purchaser shall submit to the Agencies all sampling and tests results and other data obtained or generated by or on behalf of Purchaser or in connection with the implementation of this Settlement. Purchaser shall expedite all data generation and validation for residential sampling activities.

34. **Operations and Maintenance Plan.** In accordance with the Phase 2 Work Plan schedule, or as otherwise directed by EPA, Purchaser shall submit to the Agencies for the Agencies’ review and EPA approval, in accordance with ¶ 37, an Operations and Maintenance Plan, which must include but not be limited to: a list of intrusive and non-intrusive site inspections, maintenance, and institutional controls for Waste Material on the Property, including filing a Restrictive Notice on the Property in accordance with § 25-15-317-327, Colorado Revised Statutes. Upon EPA approval, Purchaser shall either conduct Operations and Maintenance activities, or obtain a written commitment from another party for conduct of such activities until such time as EPA, after consultation with the State, determines that no further Operations and Maintenance at the Property are necessary. Purchaser shall provide the Agencies with documentation of all Operations and Maintenance commitments.

35. **Community Involvement Plan.** EPA has prepared a community involvement plan, in accordance with EPA guidance and the NCP. As requested by EPA, Purchaser shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public (including compliance schedules and progress reports), with consideration given to the specific needs of the community, including translated materials and mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site.

36. **Deliverables: Specifications and Approval**

a. **General Requirements for Deliverables.** Purchaser shall submit all deliverables to EPA, with a copy to CDPHE project manager Kyle Sandor, kyle.sandor@state.co.us, in electronic form, unless otherwise specified by the RPM.

b. **Technical Specifications for Deliverables.** 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.

37. **Approval of Deliverables.** After review of the Phase 1 Baseline Human Health Risk Assessment Work Plan, the Phase 1 Baseline Human Health Risk Assessment Report, Phase 2 Work Plan, respectively, and any other deliverable required to be submitted for EPA approval under this Settlement, EPA, after consultation with the State, shall: (i) approve, in whole or in part, the deliverable; (ii) approve the submission upon specified conditions and/or require revisions to the deliverable; (iii) disapprove, in whole or in part, the deliverable and require revisions to the deliverable; or (iv) any combination of the foregoing. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with conditions, Purchaser shall implement the deliverable in accordance with the EPA-approved schedule. Upon approval, or subsequent modification, by EPA of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, and any subsequent modifications, will be incorporated into and enforceable under this Settlement; and (2) Purchaser shall take any action required by such deliverable, or portion thereof. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement.

38. **Off-Site Shipments**

a. Purchaser may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Purchaser will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Purchaser obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Purchaser may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice

requirement will not apply to any off-Site shipments when the total quantity of all such shipments does 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. Purchaser also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Purchaser shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Purchaser may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (January 1992) (<https://semspub.epa.gov/work/03/136166.pdf>), 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.

39. **Permits**

a. As provided in CERCLA § 121(e), and section 300.400(e) of the NCP, no permit is 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). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

b. Purchaser may seek relief under the provisions of Section XII (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 referenced in ¶ 39.a required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. Nothing in this Settlement constitutes a permit issued any federal or state statute or regulation.

40. **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 Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Purchaser shall: (a) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (b) immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at 303-293-1788 of the incident or Property conditions; (c) immediately notify the State Project Manager, or in the event of his unavailability, the Colorado Incident Reporting Line at (877) 518-5608; and (d) take such actions in consultation with the RPM or authorized EPA officer and in accordance with all applicable provisions of this Settlement, including the Health and Safety Plan, and any other applicable deliverable approved by EPA. In the event that Purchaser fails to take appropriate response

action as required by this Paragraph, and EPA takes such action instead, Purchaser shall reimburse EPA under Section XI (Payment for Response Costs) for all costs of such response action not inconsistent with the NCP.

41. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser is required to report under section 103 of CERCLA or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Purchaser shall immediately orally notify the RPM or, in the event of her unavailability, the Regional Duty Officer at 303-293-1788, and the National Response Center at (800) 424-8802. Purchaser shall also submit a written report to EPA within seven days after the onset of such event, (a) describing the event, and (b) all measures taken and to be taken: (i) to mitigate any release or threat of release, (ii) to mitigate any endangerment caused or threatened by the release; (iii) to prevent the reoccurrence of any such a release or threat of release. This Paragraph does not affect Purchaser's obligation to otherwise comply with section 103 of CERCLA and section 304 of EPCRA.

42. **Progress Reports.** Commencing upon EPA's approval of the Phase 1 Baseline Human Health Risk Assessment Work Plan and until issuance of a notice of completion of work under ¶ 44, Purchaser shall submit written progress reports to the Agencies on a weekly basis, or as otherwise directed in writing by the RPM. These reports must describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

43. **Final Report.** Within 30 days after completion of all Work required by this Settlement, other than continuing obligations listed in ¶ 44, Purchaser shall submit for the Agencies' review and EPA approval a final report regarding the Work.

- a. The final report must:
 - (1) summarize the actions taken to comply with this Settlement;
 - (2) conform to the requirements of section 300.165 of the NCP ("OSC Reports");
 - (3) list the quantities and types of materials removed off-Site or handled on-Site;
 - (4) describe the removal and disposal options considered for those materials;
 - (5) identify the ultimate destination(s) of those materials;
 - (6) include the analytical results of all sampling and analyses performed;

(7) include all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits) and an estimate of the total costs incurred to complete the Work.

b. The final report must also include the following certification signed by a responsible corporate official of Purchaser or Purchaser's Project Coordinator: "I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

44. **Notice of Completion of Work**

a. If after reviewing the Final Report under ¶ 43, EPA, after consultation with the State, determines that all Work, other than the continuing obligations, has been fully performed in accordance with this Settlement, EPA will provide written notice to Purchaser. A notice of completion of work does not affect the following continuing obligations:

- (1) activities under the Operations and Maintenance Plan;
- (2) obligations under Section VIII (Property Requirements); and
- (3) obligations under Section XIX (Records).

b. If EPA, after consultation with the State, determines that any Work other than the continuing obligations has not been completed in accordance with this Settlement, EPA will notify Purchaser and provide a list of the deficiencies. Purchaser shall promptly correct all such deficiencies. Purchaser shall submit a modified Final Report upon completion of the deficiencies.

45. **Compliance with Applicable Law.** Nothing in this Settlement affects Purchaser's obligations to comply with all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required under this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Purchaser shall include ARARs selected by EPA in the Phase 1 Baseline Human Health Risk Assessment Work Plan and the Phase 2 Work Plan. EPA deems the activities conducted in accordance with this Settlement, if approved by EPA, to be consistent with the NCP as provided under section 300.700(c)(3).

46. **Work Takeover**

a. If EPA determines that Purchaser: (i) has ceased to implement any of the Work required under Section VII (Response Action to be Performed), (ii) is seriously or repeatedly deficient or late in its performance of the Work required under Section VII (Response Action to be Performed), or (iii) is performing the Work required under Section VII (Response Action to be Performed) in a manner that may cause an endangerment to human health or the environment, EPA may issue a notice of Work Takeover to Purchaser, including a description of the grounds for the notice and a period of time (“Remedy Period”) within which Purchaser must remedy the circumstances giving rise to the notice. The Remedy Period will be 20 days, unless EPA determines in its unreviewable discretion that there may be an endangerment, in which case the Remedy Period will be 10 days.

b. If, by the end of the Remedy Period, Purchaser does not remedy to EPA’s satisfaction the circumstances giving rise to Work Takeover Notice, EPA may notify Purchaser and, as it deems necessary, commence a Work Takeover.

c. EPA may conduct the Work Takeover during the pendency of any dispute under Section XIII but shall terminate the Work Takeover if and when: (i) Purchaser remedies, to EPA’s satisfaction, the circumstances giving rise to the notice of Work Takeover; or (ii) upon the issuance of a final determination under Section XIII (Dispute Resolution) that EPA is required to terminate the Work Takeover.

VIII. PROPERTY REQUIREMENTS

47. **Notices.** Purchaser shall provide all legally required notices with respect to the discovery or release of any hazardous substance at the Property that occurs after the Effective Date.

48. **Non-Interference and Access.** Purchaser shall refrain from using the 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, integrity, or protectiveness of the response action. Purchaser shall provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the Property (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response actions or natural resource restoration at the Property). Commencing on the Effective Date, Purchaser shall provide the Agencies and their representatives, including contractors, and subcontractors, access to the Property, and to any other property owned or controlled by Purchaser that is part of the Site, at all reasonable times to conduct any activity regarding the Settlement at the Property, including the following:

- a. implementing the Work and overseeing compliance with the Settlement;
- b. conducting investigations of contamination at or near the Property;
- c. assessing the need for, planning, implementing, or monitoring additional response actions at or near the Property;

d. implementing a response action by persons performing under EPA oversight;

e. determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under this Settlement or an EPA decision document for the Site;

f. implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and any institutional controls.

49. **Appropriate Care.** Commencing on the Effective Date, Purchaser shall exercise appropriate care with respect to hazardous substances found at the Property by taking reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

50. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall: (1) remain in compliance with any land use restrictions established in connection with any response action at the Property; (2) implement, maintain, monitor, and report on institutional controls; and (3) not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action.

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

a. Purchaser shall, prior to entering into a contract to Transfer any of the Property, or 60 days prior to transferring any of the Property, whichever is earlier:

(1) notify the proposed Transferee that EPA has selected a remedial action regarding the Property, that Purchaser has entered into an Administrative Settlement Agreement requiring implementation of certain actions related to the remedial action and compliance with the requirements at the Property in this Section VIII (identifying the name, CERCLA docket number, and the Effective Date of this Settlement); and

(2) notify the Agencies of the name and address of the proposed Transferee and provide the Agencies with a copy of the above notice that it provided to the proposed Transferee, and notify the Agencies if Purchaser seeks termination of its obligations in accordance with ¶ 53.

52. For so long as Purchaser is an owner or operator of any of the Property, Purchaser shall require that Transferees and other parties with rights to use any of the Property provide access and cooperation to the Agencies, their authorized officers, employees, representatives, and all other persons performing response actions under the Agencies' oversight. Purchaser shall require that Transferees and other parties with rights to use any of the Property implement and comply with any land use restrictions and institutional controls on the Property in connection with any response action, and not contest EPA's or the State's authority to enforce any land use restrictions and institutional controls on any of the Property.

53. Upon sale or other conveyance of any of the Property, Purchaser shall require that each Transferee or other holder of an interest in any of the Property shall agree to comply with Section XIX (Records) and this Section VIII (Property Requirements) and not contest EPA's or the State's authority to enforce any land use restrictions and institutional controls on any of the Property. After EPA's issuance of a notice of completion of work under ¶ 44 and Purchaser's written demonstration to the Agencies that a Transferee or other holder of an interest in any of the Property agrees to comply with the requirements of this ¶ 53, EPA will notify Purchaser that its obligations under this Settlement, except obligations under Section XIX (Records), are terminated with respect to any of the Property.

54. Purchaser shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use any of the Property as of the Effective Date.

55. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water or other resource use restrictions and institutional controls, including related enforcement authorities, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

56. To ensure completion of the Work required under Section VII (Response Action to be Performed), Purchaser shall secure financial assurance, initially in the amount of \$100,000 ("Estimated Cost of the Work"). The financial assurance must: (i) be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA; and (ii) be satisfactory to EPA. As of the date of signing this Settlement, the sample documents can be found under the "Financial Assurance - Orders" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>. Purchaser may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, or some combination thereof. The following are acceptable mechanisms:

a. a surety bond guaranteeing payment, performance of the Work, or both, in accordance with ¶ 60 (Access to Financial Assurance), 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 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, guaranteeing payment in accordance with ¶ 60 (Access to Financial Assurance); or

c. a trust fund (1) established to ensure that funds will be available as and when needed for performance of the Work; (2) 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; and (3) governed by an agreement that requires the trustee to make payments from the fund only when the Superfund Division Director advises the trustee in writing that: (i) payments are necessary to fulfill the affected Owner's obligations under the Settlement; or (ii) funds held

in trust are in excess of the funds that are necessary to complete the performance of Work in accordance with this Settlement.

57. **Standby Trust.** If Purchaser seeks to establish financial assurance by using a surety bond or a letter of credit, Purchaser shall at the same time establish and thereafter maintain a standby trust fund, which must meet the requirements specified in ¶ 56.c, and into which payments from the other financial assurance mechanism can be deposited if the financial assurance provider is directed to do so by EPA pursuant to ¶ 60 (Access to Financial Assurance). An originally signed duplicate of the standby trust agreement must be submitted, with the other financial mechanism, to EPA in accordance with Paragraph 58. Until the standby trust fund is funded pursuant to ¶ 60 (Access to Financial Assurance), neither payments into the standby trust fund nor annual valuations are required.

58. Purchaser shall, within 10 days after the Effective Date, seek EPA's approval of the form of Purchaser's financial assurance. Within 30 days after such approval, Purchaser shall secure all executed or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to EPA, the Regional Financial Management Officer, and DOJ.

59. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser 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, Purchaser shall notify EPA of such information within seven 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 Purchaser of such determination. Purchaser 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 Purchaser, 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. Purchaser shall follow the procedures of ¶ 61 in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other requirement of this Settlement.

60. Access to Financial Assurance

a. If EPA issues a notice of a Work Takeover under ¶ 46, then, in accordance with any applicable financial assurance mechanism, EPA may require: (i) the performance of the Work; and/or (ii) that any funds guaranteed be deposited into the standby trust fund.

b. If EPA is notified that the issuer of a financial assurance mechanism intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, EPA may, prior to cancellation, direct the financial assurance provider to deposit any funds guaranteed under such mechanism into the standby trust fund for use consistent with this Section IX.

61. **Modification of Amount, Form, or Terms of Financial Assurance.** Beginning after the first anniversary of the Effective Date, and no more than once per calendar year, Purchaser may submit a request to change the form, terms, or amount of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 58, 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 Purchaser of its decision regarding the request. Purchaser may initiate dispute resolution under Section XIII regarding EPA's decision within 30 days after receipt of the decision. Purchaser may modify the form, terms, or amount of the financial assurance mechanism only: (a) in accordance with EPA's approval; or (b) in accordance with any resolution of a dispute under Section XIII. Purchaser shall submit to EPA, within 30 days after receipt of EPA's approval or consistent with the terms of the resolution of the dispute, documentation of the change to the form, terms, or amount of the financial assurance instrument.

62. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under ¶ 44; (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 administrative decision resolving such dispute under Section XIII.

X. INDEMNIFICATION AND INSURANCE

63. Indemnification

a. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Purchaser shall indemnify and save and hold harmless the United States, the State, and their 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 Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities under this Settlement, including any claims arising from any designation of Purchaser as EPA's authorized representatives under section 104(e)(1) of CERCLA. Further, Purchaser agrees to pay the United States and the State all costs they incur, including attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities under this Settlement. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities under this Settlement. Purchaser and any such contractor may not be considered an agent of the United States or the State.

b. The United States or the State shall give Purchaser notice of any claim for which the United States or the State plans to seek indemnification under this ¶ 63, and shall consult with Purchaser prior to settling such claim.

64. Purchaser covenants not to sue and shall not assert any claim or cause of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work or other activities on or relating to the Site, including claims on account of construction delays. In addition, Purchaser shall indemnify and save and hold the United States and the State harmless with respect to any claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of work on or relating to the Site, including claims on account of construction delays.

65. **Insurance.** Purchaser shall secure, by no later than 15 days before commencing any on-site Work, the following insurance: (a) commercial general liability insurance with limits of liability of \$1 million per occurrence; (b) automobile liability insurance with limits of liability of \$1 million per accident; and (c) umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The insurance policy must name EPA and CDPHE as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Purchaser under this Settlement. Purchaser shall maintain this insurance until the first anniversary after issuance of EPA's notice of completion of work under ¶ 44. In addition, for the duration of this Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. Prior to commencement of the Work, Purchaser shall provide to the Agencies certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Purchaser demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering all of the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA under this Paragraph identify the Central City/Clear Creek Superfund Site, Idaho Springs, Colorado, and the CERCLA docket number for this action.

XI. PAYMENT FOR RESPONSE COSTS

66. Payments for Future Response Costs

a. **Periodic Bills.** Purchaser shall pay to EPA all Future Response Costs not inconsistent with the NCP in accordance with ¶ 67. On a periodic basis, EPA will send Purchaser a bill for Future Response Costs, including a standard cost summary listing direct and indirect costs paid by EPA, its contractors, subcontractors, the State, and DOJ. Purchaser may initiate a dispute under Section XIII regarding a Future Response Cost billing, but only if the dispute relates to one or more of the following issues: (i) whether EPA has made an arithmetical error; (ii) whether EPA has included a cost item that is not within the definition of Future Response Costs; or (iii) whether EPA has paid excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Purchaser must specify in the Notice of Dispute the contested costs and the basis for the objection.

b. **Payment of Bill.** Purchaser shall pay the bill, or if it initiates dispute resolution under Section XIII, the uncontested portion of the bill, if any, within 30 days after receipt of the bill. Purchaser shall pay the contested portion of the bill determined to be owed, if any, within 30 days after the determination regarding the dispute. Each payment for: (i) the uncontested bill or portion of bill, if late, and; (ii) the contested portion of the bill determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the bill through the date of payment.

67. **Payment Instructions.** Purchaser shall make all payments at <https://www.pay.gov> using the “EPA Miscellaneous Payments Cincinnati Finance Center” link and include references to the CERCLA docket number and Site/Spill ID number listed in ¶ 101. Purchaser shall send notices of this payment to EPA and include these references.

68. **Deposit of Payments.** EPA will deposit the amounts paid under ¶ 66 in the Fund.

XII. FORCE MAJEURE

69. “Force Majeure,” for purposes of this Settlement, means any event arising from causes beyond the control of Purchaser, of any entity controlled by Purchaser, or of Purchaser’s contractors that delays or prevents the performance of any obligation under this Settlement despite Purchaser’s best efforts to fulfill the obligation. Given the need to protect public health and welfare and the environment, the requirement that Purchaser exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

70. If any event occurs for which Purchaser will or may claim a force majeure, Purchaser shall notify EPA’s RPM and the State Project Manager by email. The deadline for the initial notice is 2 days after the date Purchaser first knew or should have known that the event would likely delay performance. Purchaser shall be deemed to know of any circumstance of which any contractor of, subcontractor of, or entity controlled by Purchaser knew or should have known. Within 7 days thereafter, Purchaser shall send a further notice to the Agencies that includes: (i) a description of the event and its effect on Purchasers’ completion of the requirements of the Settlement; (ii) a description of all actions taken or to be taken to prevent or minimize the delay; (iii) the proposed extension of time for Purchaser to complete the requirements of the Settlement; (iv) a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment; and (v) all available proof supporting its claim of force majeure. Failure to comply with the notice requirements herein regarding an event precludes Purchaser 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 ¶ 69 and whether Purchaser has exercised best efforts under ¶ 69, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.

71. EPA will notify Purchaser of its determination whether Purchaser is entitled to relief under ¶ 69, and, if so, the duration of the extension of time for performance of the obligations affected by the force majeure. 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. Purchaser may initiate dispute resolution under Section XIII regarding EPA's determination within 15 days after receipt of the determination. In any such proceeding, Purchaser has the burden of proving that it is entitled to relief under ¶ 69 and that its proposed extension was or will be warranted under the circumstances.

72. The failure by EPA to timely complete any activity under this Settlement or the SOW is not a violation of the Settlement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under this Settlement, Purchaser may seek relief under this Section.

XIII. DISPUTE RESOLUTION

73. Unless otherwise provided in this Settlement, Purchaser must use the dispute resolution procedures of this Section to resolve any dispute arising under this Settlement. Purchaser shall not initiate a dispute challenging the OU2 Record of Decision.

74. A dispute will be considered to have arisen when Purchaser sends EPA a written notice of dispute (Notice of Dispute) in accordance with ¶ 101. Disputes arising under this Settlement must in the first instance be the subject of informal negotiations between EPA, the State, and Purchaser. The period for informal negotiations may not exceed 60 days after the dispute arises, unless EPA otherwise agrees. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Purchaser initiates formal dispute resolution under ¶ 75.

75. Formal Dispute Resolution

a. **Statements of Position.** Purchaser may initiate formal dispute resolution by submitting to EPA and the State, within seven days after the conclusion of informal dispute resolution under ¶ 74, an initial Statement of Position regarding the matter in dispute. EPA's responsive Statement of Position is due within 20 days after receipt of the initial Statement of Position. All Statements of Position must include supporting factual data, analysis, opinion, and other documentation. A reply, if any, is due within 10 days after receipt of the response. If appropriate, EPA may extend the deadlines for filing statements of position for up to 15 days and may allow the submission of supplemental statements of position.

b. **Formal Decision.** After consultation with the State, the Director of the Superfund & Emergency Management Division, EPA Region 8, will issue a formal decision resolving the dispute (Formal Decision) based on the statements of position and any replies and supplemental statements of position. The Formal Decision is binding on Purchaser and shall be incorporated into and become an enforceable part of this Settlement.

76. **Escrow Account.** For disputes regarding a Future Response Costs billing, Purchaser shall: (a) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"); (b) remit

to that escrow account funds equal to the amount of the contested Future Response Costs; and (c) send to EPA copies of the correspondence and of the payment documentation (e.g., the check) that established and funded the escrow account, including the name of the bank, the bank account number, and a bank statement showing the initial balance in the account. EPA may, in its unreviewable discretion, waive the requirement to establish the escrow account. Purchaser shall cause the escrow agent to pay the amounts due to EPA under ¶ 66, if any, by the deadline for such payment in ¶ 66. Purchaser is responsible for any balance due under ¶ 66 after the payment by the escrow agent.

77. The initiation of dispute resolution procedures under this Section does not extend, postpone, or affect in any way any requirement of this Settlement, except as EPA agrees. Stipulated penalties with respect to the disputed matter will continue to accrue, but payment is stayed pending resolution of the dispute, as provided in ¶ 79.

XIV. STIPULATED PENALTIES

78. Unless noncompliance is excused under Section XII (Force Majeure), Purchaser is liable to the United States for the following stipulated penalties:

a. for any failure: (i) to pay any amount due under Section XI (Payment for Response Costs); (ii) to establish and maintain financial assurance in accordance with Section IX (Financial Assurance); (iii) to submit timely or adequate deliverables under this Settlement; (iv) to comply with any applicable land use restrictions.

Period of Noncompliance	Penalty Per Noncompliance Per Day
1st through 14th day	\$750
15th through 30th day	\$1,500
31st day and beyond	\$3,000

b. **Work Takeover Penalty.** If EPA commences a Work Takeover, Purchaser is liable for a stipulated penalty in the amount of \$50,000. This stipulated penalty is in addition to the remedy available to EPA under ¶ 60 (Access to Financial Assurance) to fund the performance of Work by EPA.

79. Accrual of Penalties

a. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Settlement prevents the simultaneous accrual of separate penalties for separate noncompliances with this Settlement. Stipulated penalties accrue regardless of whether Purchaser has been notified of its noncompliance, and regardless of whether Purchaser has initiated dispute resolution under Section XIII, provided, however, that no penalties will accrue as follows:

(1) with respect to a submission that EPA determines requires revision under ¶ 37, during the period, if any, beginning on the 31st day after EPA's

receipt of such submission until the date that EPA notifies Purchaser of any need for revision; or

(2) with respect to a matter that is the subject of dispute resolution under Section XIII, during the period, if any, beginning on the 21st day after the later of the date that EPA's Statement of Position is received or the date that Purchaser's reply thereto (if any) is received until the date of the Formal Decision under ¶ 75.

b. If EPA requires revision under ¶ 37, stipulated penalties for revisions to an original deliverable submission accrue during the specified period allowed for resubmission, but are not payable unless the resubmission is disapproved in whole or in part; provided that, if the original deliverable submission was so deficient as to constitute a bad faith lack of effort by the Purchaser, the stipulated penalties applicable to the original deliverable submission are due and payable notwithstanding any subsequent resubmission.

80. **Demand and Payment of Stipulated Penalties.** EPA may send Purchaser a demand for stipulated penalties. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. Purchaser may initiate dispute resolution under Section XIII within 30 days after receipt of the demand. Purchaser shall pay the amount demanded or, if Purchaser initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. Purchaser shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for: (a) the uncontested penalty demand or uncontested portion, if late, and; (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment. Purchaser shall make payment at <https://www.pay.gov> using the link for "EPA Miscellaneous Payments Cincinnati Finance Center," including a reference to the CERCLA docket number and Site/Spill ID number listed in ¶ 101, and the purpose of the payment. Purchaser shall send a notice of this payment to DOJ and EPA, in accordance with ¶ 101. The payment of stipulated penalties and Interest, if any, does not alter any obligation by Purchaser under this Settlement.

81. Nothing in this Settlement limits the authority of the United States: (a) to seek any remedy otherwise provided by law for Purchaser's failure to pay stipulated penalties or interest; or (b) to seek any other remedies or sanctions available by virtue of Purchaser's noncompliance with this Settlement or of the statutes and regulations upon which it is based including penalties under section 106(b) of CERCLA provided, however, that the United States may not seek civil penalties under section 106(b) for any noncompliance for which a stipulated penalty is provided herein, except in the case of a willful noncompliance with this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 46 (Work Takeover).

82. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Settlement.

XV. CERTIFICATION

83. Purchaser certifies to the best of its knowledge and belief that after thorough inquiry and as of the date of signature (a) it is a BFPP as defined by section 101(40) of CERCLA; (b) it has fully and accurately disclosed to EPA all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site; and (c) it has not altered, mutilated, discarded, destroyed or otherwise disposed of any documents and electronically stored information relating to the Site.

XVI. COVENANTS BY UNITED STATES AND THE STATE

84. **Covenants for Purchaser.** Subject to ¶ 87, the United States covenants not to sue or to take administrative action against Purchaser under sections 106 and 107(a) of CERCLA for Existing Contamination, the Work, and payments under Section XI (Payment for Response Costs), and the State covenants not to sue or take administrative action against Purchaser under section 107(a) of CERCLA for Existing Contamination, the Work, and payments under Section XI (Payment for Response Costs).

85. The covenants under ¶ 84: (a) take effect upon the Effective Date; (b) are conditioned on (i) the satisfactory performance by Purchaser of the requirements of this Settlement; and (ii) the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in ¶ 83; (c) extend to the successors of Purchaser but only to the extent that the successor of the Purchaser is assuming all obligations under this Settlement and the alleged liability of the successor of the Purchaser is based solely on its status as a successor of the Purchaser; and (d) do not extend to any other person.

86. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States, EPA, or the State, to seek or obtain further relief from Purchaser if the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in ¶ 83 is false or in any material respect inaccurate.

87. **General Reservations.** Notwithstanding any other provision of this Settlement, the United States and the State reserve, and this Settlement is without prejudice to, all rights against Purchaser regarding the following:

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees;
- c. liability resulting from the disposal, release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;

d. liability arising from the past, present, or future disposal, release or threat of release of Waste Material outside of the Site, except as provided in clause c of the definition of Existing Contamination;

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

f. criminal liability.

88. With respect to any claim or cause of action asserted by the United States or the State, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of CERCLA section 101(40) and 107(r).

89. Subject to ¶ 84, nothing in this Settlement limits any authority of the United States, EPA, the State, or CDPHE to take, direct, or order all appropriate action to protect public health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or to request a Court to order such action. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States or State from seeking legal or equitable relief to enforce the terms of this Settlement or from taking other legal or equitable action as they deem appropriate and necessary.

XVII. COVENANTS BY PURCHASER

90. Covenants by Purchaser

a. Subject to ¶ 91, Purchaser covenants not to sue and shall not assert any claim or cause of action against the United States or the State under CERCLA, section 7002(a) of RCRA, the Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, the State Constitution, State law, or at common law regarding Existing Contamination, the Work, payments under Section XI (Payment for Response Costs), and this Settlement.

b. Subject to ¶ 91, Purchaser covenants not to seek reimbursement from the Fund through CERCLA or any other law for the costs regarding the Existing Contamination, the costs of the Work, payments under Section XI (Payment for Response Costs), or any claim arising out of response actions at or in connection with the Site.

91. **Purchaser's Reservation.** The covenants in ¶ 90 do not apply to any claim or cause of action brought, or order issued, after the Effective Date by the United States or the State to the extent such claim, cause of action, or order is within the scope of a reservation under ¶¶ 87.a through 87.e.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

92. Except as provided in Section XVII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including under section 113 of CERCLA), defenses,

claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

93. The Parties agree that (a) this Settlement constitutes an administrative settlement under which Purchaser has, as of the Effective Date, resolved liability to the United States and State within the meaning of sections 113(f)(2) and 113(f)(3)(B) of CERCLA; and (b) Purchaser is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XI (Payment for Response Costs), and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person. However, if the United States or State exercises rights under the reservations in ¶¶ 87.a through 87.e, the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

94. Purchaser shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify DOJ, EPA, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Purchaser shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify DOJ, EPA, and the State in writing within 10 days after service of the complaint or claim upon Purchaser. In addition, Purchaser shall notify DOJ, EPA, and the State 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.

95. Nothing in this Settlement diminishes the right of the United States or the State under sections 113(f)(2) and (3) of CERCLA to pursue any person not a Party to this Settlement to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

XIX. RECORDS

96. Retention of Records and Information

a. Purchaser shall retain, and instruct its contractors and agents to retain, the following documents and electronically stored data (“Records”) until 10 years after a notice of completion of the work under ¶ 44 (“Record Retention Period”):

(1) All records regarding Existing Contamination or any release or threat of release of hazardous substances, pollutants or contaminants at or from the Site.

(2) All records regarding Purchaser’s liability and the liability of any other person under CERCLA regarding the Site;

(3) All reports, plans, permits, and documents submitted to EPA in accordance with this Settlement, including all underlying research and data; and

(4) All data developed by, or on behalf of, Purchaser in the course of performing the Work.

b. At the end of the Record Retention Period, Purchaser shall notify the Agencies that they have 90 days to request the Purchaser's Records subject to this Section. Purchaser shall retain and preserve its Records subject to this Section until 90 days after the Agencies' receipt of the notice. These record retention requirements apply regardless of any corporate record retention policy.

97. Purchaser shall provide to the Agencies, upon request, copies of all Records and information required to be retained under this Section. Purchaser shall also comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

98. Privileged and Protected Claims

a. Purchaser may assert that all or part of a record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the record, provided that Purchaser complies with ¶ 98.b, and except as provided in ¶ 98.c.

b. If Purchaser asserts a claim of privilege or protection, it shall provide EPA and the State 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, Purchaser shall provide the record to EPA and the State in redacted form to mask the privileged or protected portion only. Purchaser shall retain all records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.

c. Purchaser shall not make any claim of privilege or protection regarding: (1) any data regarding the Site, including 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 Purchaser is required to create or generate in accordance with this Settlement.

99. **Confidential Business Information (CBI) Claims.** Purchaser is entitled to claim that all or part of a record submitted to EPA under this Section is CBI that is covered by section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b). Purchaser shall segregate all records or parts thereof submitted under this Settlement for which it claims are CBI and label them as "claimed as confidential business information" or "claimed as CBI." Records that Purchaser properly labels in accordance with the preceding sentence will be afforded the protection specified in 40 C.F.R. part 2, subpart B. If the records are not properly labeled when they are submitted to EPA and the State, or if EPA notifies Purchaser that the records are not entitled to confidential treatment 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 Purchaser.

100. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XX. NOTICES AND SUBMISSIONS

101. Any approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Settlement must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Settlement, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: *via email to:*
eescdcopy@usdoj.gov
Re: DJ#90-11-3-12771/1

As to EPA: *via email to:*
zachman.angela@epa.gov
Re: Site/Spill ID # 0813

As to the State: *via email to:*
kyle.sandor@state.co.us

and

Lukas.Staks@coag.gov

As to the Regional Financial Management Officer: *via email to:*
johnson.karren@epa.gov
Re: Site/Spill ID # 0813

As to Purchaser: *via email to:*
maryjaneloevlie@mightyargo.com

and

ralmon@irelandstapeleton.com

XXI. APPENDIXES

102. The following appendixes are attached to and incorporated into this Settlement.

“Appendix A” is the SOW.

“Appendix B” is the description and map of the Property.

“Appendix C” is the map of the Site.

XXII. MODIFICATION

103. If the RPM determines, in consultation with the State Project Manager, a modification to any approved deliverable submitted to EPA after the Effective Date is appropriate, the RPM may make such modification in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the RPM’s oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified by mutual agreement of the Parties, and any such modification has as its effective date the date of signature by all Parties.

104. If Purchaser seeks permission to deviate from any approved deliverable or the SOW, Purchaser’s Project Coordinator shall submit a written request to the RPM outlining the proposed modification and its basis. Purchaser may not proceed with a requested modification under this Paragraph until receiving approval under ¶ 103.

105. No informal advice, guidance, suggestion, or comment by the RPM, the State Project Manager, or other EPA or State representatives regarding any deliverable submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXIII. SIGNATORIES

106. Each undersigned representative of the United States and the State and the undersigned representative of Purchaser certifies that the signatory is authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Purchaser to this Settlement.

XXIV. DISCLAIMER

107. This Settlement is in no way a finding by EPA or the State as to the risks to human health and the environment that may be posed by contamination at the Property or the Site or a representation by EPA or the State that the Property or the Site is fit for any particular purpose.

XXV. STATE PARTICIPATION

108. **Copies.** Purchaser shall, at any time it sends a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Purchaser, send a copy of such document to the State.

109. **Review and Comment.** The State will have opportunity for review and comment prior to:

a. Any EPA approval or disapproval of any deliverables that are required to be submitted for EPA approval; and

- b. Any approval or disapproval of Notice of Completion of Work under ¶ 44.

XXVI. ENFORCEMENT

110. The Parties agree that the United States District Court for the District of Colorado (Court) will have jurisdiction, including under section 113(b) of CERCLA for any judicial enforcement action brought with respect to this Settlement.

111. Notwithstanding ¶ 84 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

112. If the United States files a civil action as contemplated by ¶ 111, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

XXVII. INTEGRATION

113. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements, and understandings, whether oral or written, regarding the subject matter of the Settlement.

XXVIII. PUBLIC COMMENT

114. This Settlement is subject to a 30-day public comment period, after which the United States may withdraw its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper, or inadequate.

XXIX. EFFECTIVE DATE

115. The effective date of this Settlement is the date upon which EPA issues written notice to Purchaser that the United States, after review of and response to any public comments received, will not withdraw consent or seek to modify this Settlement.

Signature Page for Administrative Settlement Agreement regarding the Central City/Clear Creek Site (CERCLA Docket No. _____)

IT IS SO AGREED:

BY:



Mary Jane Loevlie, Purchaser
Miners Point Ventures LLC

8-5-2024

Date

Signature Page for Administrative Settlement Agreement regarding the Central City/Clear Creek Site (CERCLA Docket No. _____)

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

JEFFREY SANDS Digitally signed by JEFFREY SANDS
Date: 2024.09.30 15:50:44 -04'00'

Jeffrey Sands
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources
Division Washington, D.C. 20530

Date

Signature Page for Administrative Settlement Agreement regarding the Central City/Clear Creek Site (CERCLA Docket No. _____)

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

Thompson, Christopher
Digitally signed by Thompson, Christopher
Date: 2024.09.09 11:34:13 -06'00'

Christopher Thompson
Associate Regional Counsel for Enforcement
U.S. Environmental Protection Agency
Region 8

Dated

Aaron Urdiales
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 8

Signature Page for Administrative Settlement Agreement regarding the Central City/Clear Creek Site (CERCLA Docket No. _____)

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:


Dated

Christopher Thompson
Associate Regional Counsel for Enforcement
U.S. Environmental Protection Agency
Region 8

Dated

AARON
URDIALES

Aaron Urdiales
Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 8

 Digitally signed by AARON
URDIALES
Date: 2024.09.06 14:19:13
-06'00'

Signature Page for Administrative Settlement Agreement regarding the Central City/Clear Creek Site (CERCLA Docket No. _____)

IT IS SO AGREED:

STATE OF COLORADO:

Tracie White

Digitally signed by Tracie
White
Date: 2024.09.11 10:02:26
-06'00'

Dated

Tracie M. White, P.E.

Division Director

Hazardous Materials & Waste Management Division

Colorado Department of Public Health & Environment

8/13/24

Dated



Lukas Staks

Senior Assistant Attorney General

Colorado Attorney General's Office

Appendix A

APPENDIX A
ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
Central City, Clear Creek Superfund Site
Gilpin and Clear Creek Counties
Colorado
Statement of Work for Development

General Expectations

1. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work contained herein. Terms shall have the same definition as that included in the Administrative Settlement Agreement for Removal Action by Bona Fide Prospective Purchaser (AOC), Miners Point Ventures, LLC, Purchaser (Purchaser).
2. All Work shall be completed in a manner consistent with federal, state, and local regulations and in accordance with the AOC.

Phase 1 Baseline Human Health Risk Assessment Work

1. In accordance with the AOC, Purchaser shall submit for EPA approval a Baseline Human Health Risk Assessment (HHRA) Work Plan. The work plan will cover the following:
 - a. Site Conditions and Background
 - b. HHRA Framework & Selection of Contaminants of Potential Concern
 - c. Conceptual Site Model
 - d. Data Quality Objectives
 - e. Sampling Needs & Analytical Considerations
 - f. Development of the draft and final HHRA Report
 - g. Development of Preliminary Remediation Goals
 - h. Development of Quality Management Plan (QMP) and submission of an EPA R8 QMP crosswalk
 - i. Development of the Sampling and Analysis Plan/ Quality Assurance Project Plan (SAP/QAPP) and submission of an EPA R8 SAP/QAPP crosswalk
2. After EPA approval of the Phase 1 HHRA, Purchaser shall provide written notice to the Agencies regarding sampling activities at least 10 days prior to field work. This notice should include a description of anticipated work days and times.

HHRA Report

1. In accordance with the AOC, Purchaser shall submit for EPA approval a final HHRA report. In order to summarize the actions taken to comply with the AOC, the final HHRA report should include information regarding:
 - a. Site Characterization
 - b. Data Evaluation
 - c. Identification and Selection of Contaminants of Potential Concern
 - d. Exposure Assessment
 - e. Toxicity Assessment
 - f. Risk Characterization
 - g. Uncertainty Assessment
 - h. Development of Site Specific Remediation Goals (RGs) for contaminants of concern

Phase 2 Work

1. In accordance with the AOC, Purchaser shall submit for EPA approval the Phase 2 Work Plan, including, if necessary, updates to the SAP/QAPP and/or QMP.
2. The Phase 2 Work Plan will delineate the response actions that will be taken to manage soils exceeding RGs established in the HHRA.
3. The Phase 2 Work Plan shall include a description of activities taken to maintain the CERCLA remedies implemented by the Agencies and any future actions taken by Purchaser. Consistent with Paragraphs 34 and 49 of the AOC, the Purchaser shall draft and submit to EPA an Operations and Maintenance (O&M) plan in order to ensure the engineered cap/ soil cover and remedy is maintained and to ensure adequate controls exist to address management of soils due to future erosion or excavation that occurs in the covered or capped areas. O&M elements should include but are not limited to the following:
 - a. Inspection of:
 - i. Waste consolidation areas
 - ii. Roadway improvements
 - iii. Engineered caps and soil cover
 - iv. Run-on/run-off controls
 - v. Sediment retention areas
 - vi. Waste pile slope
 - vii. Retaining wall at the toe of Argo Waste Pile
 - viii. Rosa Gulch Culvert
 - b. Maintenance Items
 - i. Slope stabilization
 - ii. Road regrade
 - iii. Cap or soil cover repair
 - iv. Sediment retention basin clean out
 - v. Run-on/run-off control clean out
4. During implementation of the Phase 2 Work Plan, the RGs will be used. In addition, the following specifications apply:
 - a. Materials will be handled in a way that is protective of human health and the environment.
 - b. Soils with concentrations that exceed the RGs can be managed one of two ways:
 - i. encapsulate the soils on site under an engineered cap or soil cover, incorporating a delineation barrier along with at least 18 inches of soil that is compliant with the applicable land use action level; or
 - ii. properly segregate and dispose of soils at appropriate on-site disposal locations or off-site disposal at a permitted landfill. Disposal of material must comply with all applicable local, state, and federal regulations.
 - c. Engineered Caps and Soil Covers include but are not limited to: (a) asphalt, cement or other impervious material; or (b) at least 18 inches of soil compliant with RGs.
 - d. Imported materials used for soil cover shall be characterized and not to exceed the RGs.
 - e. If mine waste disturbances expand outside of areas identified in the HHRA work plan SAP/QAPP, additional sampling will be required to determine if response actions are warranted in those locations.
 - f. Where soils exceeding RGs are (1) consolidated, and covered or capped in place under the Phase 2 Work Plan, operations and maintenance activities shall be

included in an update to the O&M Plan described in Paragraph 3 above. The Purchaser shall provide written notice to the Agencies regarding Phase 2 Work response activities at least 10 days prior to taking a response action. This notice should include a description of anticipated work, the anticipated start date and anticipated duration.

- g. Final confirmation sampling will be conducted in areas where soil cover is used. Sampling results will be compared to the RGs. Soils exceeding the RGs will be addressed following section 4b above.
- 2. The Purchaser shall implement institutional controls that comply with the AOC.
- 3. In order to summarize the actions taken to comply with the AOC, the final Phase 2 report will comply with Paragraph 43 of the AOC.

Appendix B



M:\clients\Landmark\20046 Argo Mill\20046-Argo-Mill-Base.dwg 7/22/2019



Landmark Environmental, Inc.
7881 Shaffer Parkway, Littleton, CO 80127

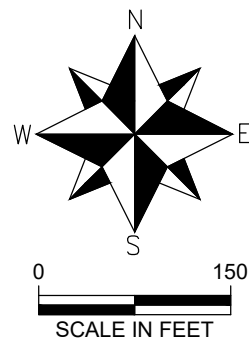


Figure 1
Site Features Map
THE MIGHTY ARGO

Argo Mill Redevelopment
2350 Riverside Dr.
Idaho Springs, CO 80452

Project #:	20046.001.001	Date:	06/26/2020
Drafted By:	J.G.M.		

Appendix B

Property Description

Miner Point Ventures, LLC is the owner following described property: A part of the Argo Lode U.S. Mineral Survey No. 8580A, a part of the Argo Millsite U.S. Mineral Survey No. 8580B, the Santoy Millsite U.S. Mineral Survey No. 18377, a part of the Silver Age Millsite U.S. Mineral Survey No. 5757B, a part of the Welcher Placer U.S. Mineral Survey No. 236, and parts of Colorado and Southern Right-of-Way, otherwise known as Riverside Drive recorded in Book 224 at Page 460 and Book 183 at Page 219 in the Clerk and Recorder's Office of Clear Creek County, more particularly described as follows:

Beginning at a corner No. 3 of the said Argo Lode from whence corner No. 4 thereof bears North $78^{\circ}11'50''$ West a distance of 1,447.90 feet with all bearings contained herein relative thereto; thence doing the 3-2 line of said Argo Lode South $11^{\circ}17'59''$ West, a distance of 150.05 feet to corner No. 2 thereof; thence along the 2-1 line of said Argo Lode North $78^{\circ}11'44''$ West, a distance of 313.17 feet to corner No. 2 of said Argo Millsite; thence along the 2-3 line of said Millsite South $21^{\circ}01'59''$ East, a distance of 158.52 feet to corner No. 5 said Santoy Millsite; thence along the 5-6 line of said Millsite South $89^{\circ}59'58''$ East, a distance of 1,373.05 feet to corner No. 6 thereof; thence along the 6-1 line of said Millsite and along the 6-1 line of said Silver Age Millsite South $00^{\circ}03'53''$ West, a distance of 334.30 feet to corner No. 1 said Silver Age Millsite; thence along the 1-2 line of said Millsite North $86^{\circ}11'16''$ West, a distance of 935.75 feet to corner No. 2 thereof; thence South $86^{\circ}25'12''$ West, a distance of 417.02 feet; thence North $07^{\circ}33'57''$ East, a distance of 1.25 feet to the 4-3 line of said Welch Placer; thence along the Welch Placer boundary the following three (3) courses;

1. South $81^{\circ}30'57''$ West, a distance of 137.03 feet to corner No. 3;
2. South $79^{\circ}55'57''$ West, a distance of 351.00 feet to corner No. 2;
3. North $68^{\circ}25'03''$ West, a distance of 179.35 feet;

thence North $05^{\circ}35'40''$ East, a distance of 4.93 feet to the southerly line of Colorado and Southern Right-of-Way and a point of curvature; thence said southerly line along the arc of a non-tangent curve to the right 98.34 feet, having a radius of 980.40 feet, a central angle of $05^{\circ}44'49''$ and a chord which bears North $72^{\circ}54'23''$ West a distance of 98.30 feet; thence North $19^{\circ}58'02''$ East, a distance of 50.00 feet to the northerly line of said Right-of-Way; thence along the boundary of the parcel of land described in Book 553, at page 441 the following three (3) courses:

1. North $13^{\circ}20'16''$ East, a distance of 121.74 feet;
2. North $28^{\circ}58'23''$ West, a distance of 180.95 feet;
3. North $64^{\circ}50'03''$ West, a distance of 152.85 feet;

thence North 13°20'48" East, a distance of 20.43 feet to corner No. 5 of said Argo Millsite; thence along the 3–4 line of said Argo Millsite North 12°58'52" West, a distance of 208.08 feet to the 2–1 line of said Argo Lode; thence along said line North 78°11'51" West, a distance of 68.62 feet; thence North 65°04'03" West, a distance of 168.12 feet to the 1–4 line of said Argo Lode; thence along said line North 11°39'00" East, a distance of 111.85 feet to the corner No.4; thence along the 4–3 line thereof South 78°11'50" East, a distance of 1,447.90 feet to the Point of Beginning, containing a calculated area of 1,052,410 square feet or 24.160 acres, has laid out, subdivided and platted the same into lots as herein shown under the name and style of Mighty Argo Millsite Minor Subdivision, and does hereby grant and convey to the City of Idaho Springs a twenty (20) foot wide public access easement and utility easement and all drainage easements over and across said lots at locations shown on the accompanying plat for construction, operation and maintenance of utilities and drainage facilities.

The aforementioned property includes the following parcel numbers: 1835-364-09-200, 1835-364-09-201, 1835-364-09-202, 1835-253-01-001, 1835-253-00-781, and portions of 1835-36-901 (co-owned by the City of Idaho Springs).

Appendix C

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