UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8

IN THE MATTER OF: Mayflower Tailings Bonita Peak Mining District Site San Juan County, Colorado Sunnyside Gold Corporation, Respondent Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607 and 9622.	EPA CERCLA Docket No. **CERCLA-08-2017-0004** **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") (hereinafter referred to as "the Agency") and Sunnyside Gold Corporation, ("Respondent"). The Settlement Agreement concerns the preparation and performance of a remedial investigation ("RI") at or in connection with the Mayflower Tailings (defined for purposes of this Settlement Agreement as "the Site") of the Bonita Peak Mining District site in San Juan County, Colorado and payment of Future Response Costs incurred by the Agency in connection with this Settlement Agreement.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), as amended by Executive Order No. 13016, 61 Fed. Reg. 45871 (August 28, 1996). The Administrators authority has been delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). The authority in Delegation No. 14-14-C was redelegated by the Regional Administrator of EPA Region 8 to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation on December 20, 1996 and then was further redelegated by the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation to the Director, Superfund Remedial Response Program and Director, Emergency Response and Preparedness Program on August 30, 2002. The authority in Delegation No. 14-14-D was further delegated by the Regional Administrator of EPA Region 8 to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice on December 20, 1996 and then was further redelegated by the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice jointly to the supervisors in the Legal Enforcement Program and supervisors in the Technical Enforcement Program on October 17, 1997.

3. In accordance with Sections 104(b)(2) of CERCLA, 42 U.S.C. §§ 9604(b)(2), EPA notified the relevant Federal, State, and Tribal natural resource trustees on August 8, 2016 that EPA was scoping and conducting remedial studies of the proposed Bonita Peak Mining District site, and that it wished to coordinate assessments, evaluations, investigations and planning in accordance with the National Contingency Plan.

4. The Agency and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings

to implement or enforce this Settlement Agreement, the validity of the findings of fact in Section V and the conclusions of law and determinations in Section VI. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon the Agency and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that their contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement.

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

III. STATEMENT OF PURPOSE

8. In entering into this Settlement Agreement, the objectives of the Agency and Respondent are: (a) to determine the nature and extent of any contamination and any threat to the public health, welfare, or the environment caused by any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Mayflower Tailings, by conducting a RI, as more specifically set forth in the Mayflower Tailings Statement of Work ("Mayflower SOW"), attached as Appendix A to this Settlement Agreement; and (b) to recover Future Response Costs incurred by the Agency with respect to this Settlement Agreement.

9. The Work conducted under this Settlement Agreement is subject to approval by the Agency. Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and all applicable guidance, policies, and procedures of the Agency.

IV. DEFINITIONS

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

"Agency" shall mean the EPA.

"Bonita Peak Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Bonita Peak Mining District site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and consistent with the 2009 Consent Decree settlement with Standard Metals Corporation.

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

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

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

"Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXVIII.

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

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

"CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Site Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 42 (emergency response), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Section XV (Dispute Resolution), and all litigation costs.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.[1]

"Mayflower SOW" shall mean the 2017 Multi-Media Investigation Work Plan Mayflower Tailings Impoundments Area (May 2017), included as Appendix A to this

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[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

Settlement Agreement, and which describes Work to be conducted during the 2017 field season and reporting thereon.

"Mayflower Tailings" shall mean the Mayflower Tailing Ponds No. 1, No. 2, No. 3, and No.4, as shown in Figure 1-2 of the Mayflower SOW in Appendix A.

"NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

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

"Parties" shall mean EPA and Respondent.

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

"Respondent" shall mean the Sunnyside Gold Corporation.

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

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the Mayflower SOW, all appendices attached hereto (listed in Section XXVI) and all documents incorporated by reference into this document including without limitation the Agency-approved submissions. Agency-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by the Agency. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"Site" shall mean the Mayflower Tailings.

"State" shall mean the State of Colorado.

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

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

V. FINDINGS OF FACT

11. The Bonita Peak Mining District site is located within the headwaters of the Animas River watershed in the San Juan and Silverton calderas, which were subject to intensive hardrock mining beginning in the 1870s. The Bonita Peak Mining District site is the result of the release of hazardous substances, mainly metals, due to the operation and abandonment or discontinued operation of mines in the Upper Animas, Cement Creek and Mineral Creek drainages of the Animas River. This Settlement Agreement concerns the conduct of a remedial investigation at the Mayflower Tailings, referred to and defined for purposes of this Settlement Agreement as the Site;

12. The Mayflower Tailings include four tailings impoundments constructed between 1936 and 1977; hereinafter referenced as Tailings Pond No. 1, No. 2, No. 3, and No. 4. Tailings Pond No. 1 and No. 2 were constructed in the 1930s. Tailings Pond No. 3 and No. 4 were constructed in the 1970s, while use of Tailings Ponds No. 1 and No. 2 were discontinued. Tailings Pond No. 4 became the only waste impoundment after 1977, and continued to store tailings until operations stopped in 1991 and reclamation waste or water treatment precipitate until reclamation closure. Water treatment precipitate was placed in Tailings Pond 3 for a period prior to reclamation closure. From time to time during that period, Tailings Pond Nos. 3 and 4 were used for disposal of municipal landfill waste pursuant to authorization from the Bureau of Land Management. Tailings Pond No. 1 and Tailings Pond No. 2 were reclaimed between 1991 and 1992. Tailings Pond No. 3 was reclaimed in 1992, and Tailings Pond No. 4 was reclaimed between 2004 and 2006. Reclamation work was conducted pursuant to a Colorado Mined Land Reclamation Permit and a Consent Decree settlement agreement with the Colorado Water Quality Control Division (WQCD) effective May 8, 1996. Respondent acquired an interest in the Mayflower Tailings in 1985;

13. Elevated levels of metals, including aluminum, arsenic, cadmium, chromium, cobalt, copper, iron, lead, manganese, silver, and zinc are found in soil, groundwater, and surface water in and around the Mayflower Tailings;

14. Sampling in the Upper Animas River in the vicinity of the Mayflower Tailings shows an increase in some metal concentrations in the River indicating that there may be releases of hazardous substances in the vicinity of the Mayflower Tailings;

15. Elevated levels of metals found at the Mayflower Tailings can be toxic to benthic invertebrates and fish. In addition, exposure to elevated levels of metals, such as lead and arsenic in soil and drinking water, can have adverse effects on human health;

16. The Bonita Peak Mining District site, which includes the Mayflower Tailings, was listed on the National Priorities List on September 8, 2016;

17. The Respondent is a corporation, is a present and past owner of portions of the Site, and is a present and past operator at the Site; and

18. EPA has not conducted any prior enforcement actions concerning the Site. EPA and Respondent have conducted sampling activities adjacent or near the Mayflower Tailings in

2015 and 2016. Respondent has performed, and continues to perform, mine remediation/reclamation projects at the Site, including pursuant to the Consent Decree settlement agreement with the Colorado WQCD, its Colorado Mined Land Reclamation Permit, and its Colorado Stormwater permit. In addition, Respondent conducted investigations at the Mayflower Tailings in 2015, 2016 and 2017.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth in Section V, the Agency has determined that:

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

20. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. The conditions described in Paragraphs 13 and 14 of the Findings of Fact in Section V constitute an actual and/or threatened "release" of a hazardous substance from a facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

23. Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

a. Respondent is the "owner" and/or "operator" of a facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

b. Respondent was the "owner" and/or "operator" of a facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

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

25. The Agency has determined that Respondent is qualified to conduct the RI within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

26. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

27. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. The Agency acknowledges that activities undertaken by Respondent prior to the execution of this Agreement have raised no issues about the qualifications of Respondent's personnel, including contractors, subcontractors, consultants, and laboratories, to be used to carry out the Work under this Settlement Agreement. Should the Agency develop a reasonable concern about the qualifications of Respondent's personnel, and such concerns are not alleviated in discussions among the Parties, Respondent shall be required to submit additional information about the personnel to the Agency within 15 days of an Agency written request for additional information. With respect to any contractor, such information shall include a demonstration of the contractor's quality control system and compliance with Agency specifications and guidelines applicable to the Work[2]. If the additional information provided by Respondent does not satisfy the Agency's concerns, the Agency may provide written notice of its disapproval, and within 45 days after receipt thereof, Respondent shall notify the Agency of the identity and qualifications of the replacements. The qualifications of the persons undertaking the Work for Respondent shall be subject to the Agency's review, for verification that such persons meet minimum technical background and experience requirements. If the Agency subsequently disapproves of the replacement, the Agency reserves the right to terminate this Settlement Agreement and to conduct a complete RI, and to seek reimbursement for costs and penalties from Respondent. This Settlement Agreement is contingent on Respondent's demonstration to Agency's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If the Agency disapproves in writing of any person's technical qualifications, Respondent shall notify the Agency of the identity and qualifications of the replacements within 30 days after the written notice. During the course of the RI, Respondent shall notify the Agency in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. The Agency shall have the same right to disapprove

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[2]Contractors must be able to demonstrate that they have a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the contractor's Quality Management Plan ("QMP") and EPA's required "Crosswalk" check list for the QMP. The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by the Agency.

changes and additions to personnel as it has hereunder regarding the initial notification. The Agency, however, shall not unreasonably withhold approval.

28. Prior to the execution of this Agreement, Respondent had designated Pat Maley as Project Coordinator, who shall continue to direct and be responsible for all actions by Respondent required by this Settlement Agreement. The Agency acknowledges that Respondent has previously provided Mr. Maley's contact information and qualifications to the Agency and the Agency has not disapproved this designation. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. If the Agency disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the Agency of that person's name, address, telephone number, and qualifications within 5 days following the Agency's disapproval. Respondent shall have the right to change its Project Coordinator, subject to the Agency's right to disapprove. Respondent shall notify the Agency 15 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from the Agency relating to this Settlement Agreement shall constitute receipt by Respondent.

29. EPA has designated Rebecca Thomas of the Superfund Remedial Program, Office of Ecosystems, Protection and Remediation, EPA Region 8 as its Remedial Project Manager. The Agency will notify Respondent of a change of its designated Remedial Project Manager. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the EPA Remedial Project Manager at U.S. EPA Region 8, Mailcode: EPR-SR, 1595 Wynkoop, Denver, CO 80202-1129.

30. The Agency's Remedial Project Manager shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, the Agency's RPM shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines in good faith that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the Agency's RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

31. The Agency shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of the Agency, but not to modify the Mayflower SOW.

IX. WORK TO BE PERFORMED

32. Respondent shall conduct the RI in accordance with the provisions of this Settlement Agreement, the Mayflower SOW, CERCLA, the NCP, and applicable Agency guidance, including, but not limited to the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" ("RI/FS Guidance") (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-09A, April 1992 or subsequently issued

guidance), and guidance referenced therein, and guidance referenced in the Mayflower SOW, as may be amended or modified by EPA and BLM.

33. Respondent shall submit all deliverables to the Agency in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Respondent shall also provide the Agency with paper copies of such exhibits upon request by the Agency.

34. 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.

35. Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at https://edg.epa.gov/EME/.

36. Each file must include an attribute name for each Site unit or sub-unit submitted. Consult http://www.epa.gov/geospatial/policies.html for any further available guidance on attribute identification and naming.

37. Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of the Site.

38. Modification of the Mayflower SOW.

a. If either Party believes that in addition to the tasks defined in the Mayflower SOW, additional work is necessary to determine the nature and extent of any contamination and any threat to the public health, welfare, or the environment caused by any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Mayflower Tailings, it shall describe the additional work and the basis for potentially amending the Mayflower SOW in a writing to the other Party. The Parties shall confer within 21 days thereafter in an effort to mutually agree that this additional work is necessary and desirable at that time to further the objective of determining the nature and extent of any contamination and any threat to the public health, welfare, or the environment caused by any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Mayflower Tailings.

b. The Mayflower SOW shall not be modified, including without limitation under any provision of Paragraph 38, absent mutual written agreement of the Parties.

c. Respondent shall complete any agreed upon additional Work according to the standards, specifications, and schedule agreed upon in a written modification to the Mayflower SOW or written supplement to the Mayflower SOW. The Agency reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

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

39. Off-Site Shipment.

a. Respondent 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, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from the Agency that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondent complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondent 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 Agency's RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the Agency's 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. Respondent shall provide the written notice after the award of the contract for remedial investigation and feasibility study and before the Waste Material is shipped.

40. Meetings. Respondent shall make presentations at, and participate in, meetings upon reasonable and timely request of the Agency during the initiation, conduct, and completion of the RI. In addition to discussion of the technical aspects of the RI, topics may include anticipated problems or new issues related to the Site and the RI. Meetings will be scheduled at the Agency's discretion, but at times and places reasonable to Respondent.

41. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, Respondent shall provide to the Agency written monthly progress reports by the 15th day of the following month for any month in which Respondent is conducting field activities. At a minimum, with respect to the preceding month, these progress reports shall (a) describe the actions that have been taken to comply with this Settlement Agreement during that month, (b) include all results of sampling and tests and all other data received by Respondent, (c) describe Work planned for the next two months with schedules relating such

Work to the overall project schedule for RI completion, and (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

42. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence arising from or relating to performance of the Work by Respondent that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the Agency's RPM or, in the event of the RPM's unavailability, the OSC or the Regional Duty Officer Emergency Response and Preparedness Program, EPA Region 8, at 303-312-6510 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the Agency takes such action instead, Respondent shall reimburse the Agency all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a reportable quantity of a hazardous substance from the Site that exceeds any ongoing releases that are the subject of the Work under this Agreement, Respondent shall immediately notify the Agency's RPM, the OSC, or Regional Duty Officer at 1-800-227-8917 or 303-312-6861 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to the Agency within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. APPROVAL OF PLANS AND OTHER SUBMISSIONS

43. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondent the Agency shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, the Agency shall not modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within 10 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

44. In the event of approval, approval upon conditions, or modification by the Agency, pursuant to Paragraph 43.a, 43.b, 43.c, or 43.e, Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by the Agency

subject to its right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution), or, where the modification constitutes a modification to the Mayflower SOW, the mutual agreement provisions of Paragraph 38 with respect to the modifications or conditions made by the Agency. Following approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by the Agency. In the event that the Agency modifies the submission to cure the deficiencies pursuant to Paragraph 43.c and the submission had a material defect, the Agency retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

45. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within 5 days or such longer time as specified by the Agency in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 5-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 46 and 47, respectively.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the Agency. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed with any activities or tasks dependent on the following deliverables until receiving the Agency's approval, approval on condition, or modification of such deliverables: QMP, Sampling and Analysis Plan, Health and Safety Plan, Draft RI Report. While awaiting the Agency's approval, approval on condition, or modification of these deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

d. For all remaining deliverables not listed above in Paragraph 45.c, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting the Agency's approval on the submitted deliverable. The Agency reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI.

46. If the Agency disapproves of a resubmitted plan, report, or other deliverable, or portion thereof, the Agency may again direct Respondent to correct the deficiencies. The Agency shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by the Agency, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

47. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by the Agency due to a material defect, Respondent shall be deemed to have failed to

submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and the Agency's action is revoked or substantially modified pursuant to a Dispute Resolution decision or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If the Agency's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

48. In the event that the Agency takes over some of the tasks, but not the preparation of the RI Report, Respondent shall incorporate and integrate information supplied by the Agency into the final reports.

49. All plans, reports, and other deliverables submitted to the Agency under this Settlement Agreement shall, upon approval or modification by the Agency, be incorporated into and enforceable under this Settlement Agreement. In the event the Agency approves or modifies a portion of a plan, report, or other deliverable submitted to the Agency under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

50. Neither failure of the Agency to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by the Agency. Whether or not the Agency gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to the Agency.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

51. Quality Assurance. Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the Mayflower SOW, the current revision of the Bonita Peak Mining District Quality Assurance Project Plan (QAPP), and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001; Reissued May 2006) or equivalent documentation as determined by the Agency.

52. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, pertaining to the Work contemplated in this Settlement Agreement and during the period that this Settlement Agreement is effective, shall be submitted to the Agency in the next monthly progress report as described in Paragraph 41. The Agency will make available to Respondent validated data generated by the Agency unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall orally notify the Agency at least 15 days prior to conducting significant field events as described in the Mayflower SOW or Sampling and Analysis Plan. At the Agency's oral or written request, or the request of the Agency's oversight assistant, Respondent shall allow split or duplicate samples to be taken by the Agency and its authorized representatives of any samples collected in implementing this Settlement Agreement. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

53. Access to Information.

a. Respondent shall provide to the Agency and the State copies of all data, final, non-draft, reports and Deliverables, and other information within its possession or control or that of its contractors or agents created or generated pursuant to the requirements of this Settlement Agreement, including but not limited to all sampling data identified in paragraph 52, all scientific sampling, analytical, monitoring, hydrogeologic, chemical, or engineering data (including raw data) required by this Settlement Agreement, and all Deliverables identified in Appendix B (hereinafter referred to as "Records").

b. Respondent may assert business confidentiality claims covering part or all of the Records submitted to the Agency under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by the Agency will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the Agency, or if the Agency has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent. Respondent shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

54. In entering into this Settlement Agreement, the Parties waive any objections to any data gathered, generated, or evaluated by the Agency, the State, or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement or the Mayflower SOW or a Sampling and Analysis Plans approved by the Agency.

XII. ACCESS AND INSTITUTIONAL CONTROLS

55. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by Respondent, Respondent shall, commencing on the Effective Date, provide the Agency, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity directly related to this Settlement Agreement.

56. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within forty-five (45) days after the Effective Date, or as otherwise specified in writing by the Agency's RPM. Respondent shall immediately notify the Agency if after using its best efforts it is unable to obtain such agreements. For

purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements, the Agency may either (a) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as the Agency deems appropriate; (b) perform those tasks or activities with the Agency's contractors; or (c) terminate the Settlement Agreement. Respondent shall reimburse the Agency for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If the Agency performs those tasks or activities with the Agency's contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse the Agency for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by the Agency into its plans, reports, and other deliverables.

57. Notwithstanding any provision of this Settlement Agreement, the Agency and the State retain all of their access authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

58. Respondent shall comply with all applicable state and federal laws and regulations when performing the Work. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

59. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action related to the Site, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondent shall also instruct its contractors and agents to preserve all Records of whatever kind, nature, or description relating to performance of the Work.

60. At the conclusion of this document retention period, Respondent shall notify the Agency at least 90 days prior to the destruction of any such Records, and, upon request by the Agency, Respondent shall deliver any such Records to the Agency.

61. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since May 23, 2016, and that it has fully complied with any and all EPA, BLM, and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XV. DISPUTE RESOLUTION

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

63. If Respondent objects to any of the Agency's actions taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify the Agency in writing of its objection(s) within thirty (30) days after such action, unless the objection(s) has/have been resolved informally. The Agency and Respondent shall have thirty (30) days from the Agency's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the Agency. Such extension may be granted orally but must be confirmed in writing.

64. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official, at the Assistant Regional Administrator level or higher, will issue a written decision. The Agency's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Agency's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

65. Respondent shall be liable to the Agency for stipulated penalties in the amounts set forth in Paragraph 66 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, and the Mayflower SOW, and within the specified time schedules established by and approved under this Settlement Agreement.

66. Stipulated Penalty Amounts - Work (Including Payments).

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 66.b:

Penalty Per Violation Per Day	Period of Noncompliance
$ 250.00	1st through 14th day
$ 750.00	15th through 30th day
$ 1500.00	31st day and beyond

b. Compliance Milestones.

(1) Failure to submit payments for Future Response Costs in compliance with the schedules in Section XVIII (Payment of Response Costs.

(2) Failure to comply with Work schedules in the Mayflower SOW.

(3) Failure to submit timely or adequate reports or other plans or deliverables pursuant to this Settlement Agreement.

67. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after the Agency's receipt of such submission until the date that the Agency notifies Respondent of any deficiency; and (b) with respect to a decision by the Agency's management official designated in Paragraph 64 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the Agency's management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

68. Following the Agency's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, the Agency shall give Respondent written notification of the same and describe the noncompliance. The Agency shall send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Agency has notified Respondent of a violation.

69. All penalties accruing under this Section shall be due and payable to the Agency within 30 days after Respondent's receipt from the Agency of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV

(Dispute Resolution). Respondent shall pay any payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number A8-M5, and the EPA docket number for this action.

At the time of payment, Respondent shall send notice to EPA that payment has been made as provided in Paragraph 77.b below.

70. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

71. Penalties shall continue to accrue as provided in Paragraph 66 during any dispute resolution period, but any penalties upheld need not be paid until 15 days after the dispute is resolved by agreement or by receipt of the Agency's decision.

72. If Respondent fails to pay stipulated penalties when due, the Agency may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 69.

73. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Agency to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that the Agency shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA, or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, the Agency may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

74. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is

delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify the Agency orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to the Agency in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

76. If the Agency agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by the Agency for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If the Agency does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, the Agency will notify Respondent in writing of its decision. If the Agency agrees that the delay is attributable to a *force majeure* event, the Agency will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

77. EPA Bill for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment. An EPA bill includes a SCORPIOS Report, which includes direct and indirect costs incurred by EPA, its contractors, ATSDR, and DOJ. Respondent shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 79 of this Settlement Agreement. Payments shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

b. At the time of payment, Respondent shall send notice that payment has been made to EPA's Remedial Project Manager; Mike Rudy, Enforcement Specialist, U.S. EPA Region 8, Mailcode ENF-RC, 1595 Wynkoop, Denver, CO 80202-1129; and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to

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

Such notice shall reference Site/Spill ID Number A8-M5 and the EPA docket number for this action.

c. The total amount to be paid by Respondent pursuant to Paragraph 77.a for EPA Future Response Costs shall be deposited by EPA in the Bonita Peak Mining District site Special Account to be retained and used to conduct or finance response actions at or in connection with the Bonita Peak Mining District site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Bonita Peak Mining District site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Bonita Peak Mining District site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

78. Interest. If Respondent does not pay Future Response Costs within 30 days after Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If the Agency receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 77.

79. Respondent may contest payment of any Future Response Costs billed under Paragraph 77 if it determines that the Agency has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes the Agency incurred excess costs as a direct result of the Agency's action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30

days after receipt of the bill and must be sent to the Agency's RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall, within the 30-day period, pay all uncontested Future Response Costs to the Agency in the manner described in Paragraph 77. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the Agency's RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If the Agency prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to the Agency in the manner described in Paragraph 77. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs for which it did not prevail to the Agency in the manner described in Paragraph 77. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse the Agency for their Future Response Costs.

XIX. COVENANT NOT TO SUE BY THE AGENCY

80. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the Agency covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 77 (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY THE AGENCY

81. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of the Agency or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as provided in this Settlement Agreement, nothing in this Settlement Agreement shall prevent the Agency from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring

Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

82. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. Except as provided in this Settlement Agreement, the Agency reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

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

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

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

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

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site area not paid as Future Response Costs under this Settlement Agreement.

XXI. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY RESPONDENT

83. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the Agency, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have or will be incurred, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

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

84. These covenants not to sue shall not apply in the event the Agency brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by the Agency), other than in Paragraph 82.a (liability for failure to meet a requirement of the Settlement Agreement) or 82.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the Agency is seeking pursuant to the applicable reservation.

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

86. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

87. Except as provided in this Settlement Agreement, Respondent reserves and does not waive any and all rights, remedies, and defenses against any party, including EPA, afforded by law or equity. Additionally, Respondent does not waive any defenses, claims, demands, or causes of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

88. The covenant not to sue set forth in Section XXI above does not pertain to any matters other than those expressly identified therein.

XXII. OTHER CLAIMS

89. By entering this Settlement Agreement, the United States and the Agency assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

90. Except as expressly provided in Section XIX (Covenant Not To Sue By Agency) and Section XXI (Covenant Not to Sue and Reservation of Rights by the Respondent), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not

limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

92. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XIX (Covenant Not To Sue by Agency), and Section XXI (Covenant Not to Sue by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

93. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs.

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

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

96. In any subsequent administrative or judicial proceeding initiated by the Agency, or by the United States on behalf of the Agency, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion,

claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by the Agency set forth in Section XIX (Reservation of Rights by the Agency).

97. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the Agency receives from Respondent the payment(s) required by Section XVIII (Payment of Response Costs) and Section XVI (Stipulated Penalties), if any, shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 93 and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the Agency gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the Agency.

XXIV. INDEMNIFICATION

98. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and representatives in performing the Work pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in performing the Work pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in performing the Work pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

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

100. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

101. At least 10 days prior to commencing any on-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of 2 million dollars, for any one occurrence, and automobile insurance with limits of 2 million dollars, combined single limit, with the commercial general liability insurance naming the Agency as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement Agreement. Within the same period, Respondent shall provide the Agency with certificates of such insurance. In addition, for the duration of the Settlement Agreement, Respondent 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 Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to the Agency that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. INTEGRATION/APPENDICES

102. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the Mayflower Tailings SOW.

"Appendix B" List of Deliverables.

XXVII. ADMINISTRATIVE RECORD

103. The Agency will determine the contents of the administrative record file for selection of the remedial action. However, Respondent does not waive any rights to submit additional documentation for inclusion in the administrative record, or to dispute the sufficiency or completeness of the administrative record. Respondent shall submit to the Agency documents developed under this Settlement Agreement during the course of the Work upon which selection of the response action may be based. Upon request of the Agency, Respondent shall provide copies of plans, task memoranda for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports prepared under this Settlement Agreement. Upon request of the Agency, Respondent shall additionally submit any previous studies conducted under state, local, or other federal authorities relating to selection of the

response action, and all communications between Respondent and state, local, or other federal authorities concerning selection of the response action. At the Agency's discretion, Respondent shall establish a community information repository at or near the Site to house a copy of the administrative record.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

104. This Settlement Agreement shall be effective when the Settlement Agreement is signed by the Agency.

105. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by the Parties. The Agency's RPM does not have the authority to sign amendments to the Settlement Agreement.

106. No informal advice, guidance, suggestion, or comment by the Agency's RPM or other representatives of the Agency regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

107. When the Agency determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and Record retention, the Agency will provide written notice to Respondent. This written notice shall not be unreasonably withheld. If the Agency determines that any Work has not been completed in accordance with this Settlement Agreement, the Agency will notify Respondent and provide a list of the deficiencies, and require that Respondent modify the Mayflower SOW if appropriate in order to correct such deficiencies, in accordance with Paragraph 38 (Modification of the Mayflower SOW). Failure by Respondent to implement the approved modified Mayflower SOW shall be a violation of this Settlement Agreement.

Agreed this 10th day of May, 2017.

FOR RESPONDENT SUNNYSIDE GOLD CORPORATION

BY: _____ DATE: 5-10-17

Pat Maley
Director, Environment
Sunnyside Gold Corporation

It is so ORDERED AND AGREED:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____ DATE: 5/10/17

Aaron Urdiales, Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

BY: _____ DATE: 5/10/17

Andrea Madigan, CERCLA Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
U.S. Environmental Protection Agency, Region 8

BY: _____ DATE: 5/10/17

Bill Murray, Director
Superfund Remedial Program
Office of Ecosystems, Protection and Remediation
U.S. Environmental Protection Agency, Region 8