

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 8

2018 JUL 27 AM 10:46

AND

COLORADO DEPARTMENT
OF PUBLIC HEALTH AND ENVIRONMENT

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Eagle Mine Superfund Site)
Eagle County, Colorado)

Battle North, LLC, and)
Battle South, LLC)

Owners.)

Proceeding Under the Comprehensive)
Environmental Response, Compensation)
and Liability Act, 42 U.S.C. §§ 9601-9675)

Docket No. CERCLA-08-2018-0009

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR RESPONSE ACTION
AND RELEASE AND WAIVER OF
CERCLA § 107(r) LIEN**

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	PARTIES BOUND.....	2
III.	DEFINITIONS	3
IV.	STATEMENT OF FACTS.....	6
V.	DETERMINATIONS	9
VI.	SETTLEMENT AGREEMENT AND ORDER.....	9
VII.	PAYMENT AND RELEASE AND WAIVER OF LIEN	10
VIII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, REMEDIAL PROJECT MANAGER, AND STATE PROJECT MANAGER ...	10
IX.	WORK TO BE PERFORMED.....	12
X.	PROPERTY REQUIREMENTS.....	17
XI.	ACCESS TO INFORMATION	21
XII.	RECORD RETENTION	22
XIII.	COMPLIANCE WITH OTHER LAWS	22
XIV.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES.....	23
XV.	PAYMENT OF FUTURE RESPONSE COSTS	23
XVI.	DISPUTE RESOLUTION.....	25
XVII.	FORCE MAJEURE.....	26
XVIII.	STIPULATED PENALTIES	27
XIX.	CERTIFICATION	29
XX.	COVENANTS BY UNITED STATES AND STATE	29
XXI.	RESERVATIONS OF RIGHTS BY UNITED STATES AND STATE.....	30
XXII.	COVENANTS BY OWNERS	32
XXIII.	OTHER CLAIMS	33
XXIV.	EFFECT OF SETTLEMENT/CONTRIBUTION.....	33
XXV.	INDEMNIFICATION	34
XXVI.	INSURANCE.....	35
XXVII.	MODIFICATION	36
XXVIII.	ADDITIONAL WORK.....	36
XXIX.	NOTICE OF COMPLETION OF WORK.....	37
XXX.	PUBLIC COMMENT.....	37
XXXI.	EFFECTIVE DATE.....	37
XXXII.	INTEGRATION/APPENDICES	37
XXXIII.	NOTICES AND SUBMISSIONS.....	38
XXXIV.	DISCLAIMER.....	39

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien (Settlement) is entered into voluntarily by the United States on behalf of the United States Environmental Protection Agency (EPA); the Colorado Department of Public Health and Environment (CDPHE); and Battle North, LLC (Battle North) and Battle South, LLC (Battle South) (collectively, Owners). This Settlement provides for the performance of a response action by Owners, the payment of certain response costs incurred, or to be incurred, by the United States, and the release and waiver of a lien at or in connection with the Property, as hereinafter defined, within the Eagle Mine Superfund Site located in Eagle County, Colorado (Site) and generally depicted on the map attached hereto as Appendix 1.

2. This Settlement is entered into under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). This authority was further re-delegated by the Regional Administrator of EPA Region 8 to the undersigned EPA officials. This Settlement is also entered into pursuant to the inherent authority of the Attorney General to compromise and settle claims of the United States.

3. EPA has notified the State of Colorado (State) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and the State has elected to participate as a party to this Settlement.

4. Owners represent that they are bona fide prospective purchasers (BFPPs) as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that they have and will continue to comply with section 101(40) during their ownership of the Property and thus qualify for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. Further, Owners represent that they did not arrange for disposal of any mine waste or other hazardous substances present at the Site or accept or arrange for transport of any such materials or substances for disposal at the Site. In view of the nature and extent of Work to be performed in connection with the response action at the Site and the risk of claims under CERCLA being asserted against Owners notwithstanding section 107(r)(1) as a consequence of Owners' activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XXI (Reservations of Rights), any potential liability of Owners under CERCLA for the Existing Contamination. A second purpose of this Settlement is to settle and resolve, subject to Section XXI (Reservation of Rights), any lien EPA may have on the Property under section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for the Existing Contamination. A third purpose is to ensure Institutional Controls are placed on the Property in the form of Notices of Environmental Use Restrictions (Restrictive Notices) pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317 *et seq.*, as set forth in the OU1 ROD Amendment and OU3 ROD.

5. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Owners in accordance with this Settlement do not constitute an admission of any liability. Owners do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Owners agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

6. This Settlement is binding upon the Parties. Any change in ownership or corporate status of Owners including, but not limited to, any transfer of assets or real or personal property shall not alter Owners' responsibilities under this Settlement. Any change in ownership or corporate status involving the Property shall in no way alter the release and waiver of the lien under this Settlement.

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

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

9. In the event of any Transfer of the Property, or any part thereof, Owners shall continue to comply with the obligations under this Settlement, except as EPA, the State, and Owners agree otherwise and modify this Settlement, subject to the following:

a. Prior to or simultaneous with any Transfer of the Property by Owners, or any part thereof, the rights, benefits and obligations conferred upon Owners under this Settlement, with respect to the Property that is Transferred, or any part thereof, may be assigned or transferred to any person subject to EPA's discretion to approve or disapprove, and not subject to judicial review. EPA will consult with CDPHE.

b. Prior to or simultaneous with any Transfer of the Property by Owners, or any part thereof, the transferee must consent in a written addendum to this Settlement to be bound by the terms of this Settlement, with respect to the Property that is Transferred, or any part thereof, including but not limited to the certifications contained in Section XX (Certification) of this Settlement in order for the rights, obligations, and benefits, including the Covenant Not to Sue contained in Section XXI, to be available to and effective for the transferee.

III. DEFINITIONS

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

“Agencies” shall mean EPA and CDPHE collectively.

“Battle North” shall mean Battle North, LLC, a Georgia limited liability company and its successors and assigns.

“Battle South” shall mean Battle South, LLC, a Georgia limited liability company and its successors and assigns.

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

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

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

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

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

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXXI.

“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.

“Existing Contamination” shall mean:

a. Any hazardous substances, pollutants or contaminants present or existing on or under the Property 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 presently at the Site that migrate onto or under or from the Property after the Effective Date.

“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 deliverables submitted pursuant to this Settlement, in overseeing implementation of any Work, or otherwise implementing, overseeing or enforcing this Settlement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement, the costs incurred pursuant to Section X (Property Requirements) including, but not limited to, cost of attorney time and any monies paid to secure or enforce access and/or to secure, implement, monitor, maintain or enforce Institutional Controls, including, but not limited to, the amount of just compensation, Section XIV (Emergency Response and Notification of Releases), Paragraph 97 (Work Takeover), Section XVI (Dispute Resolution) and all litigation costs.

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

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, also called the National 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.

“OU1” shall mean operable unit 1 of the Site. As defined in the OU1 ROD Amendment, OU1 is primarily media-based, focusing on protecting surface water at the Site by reducing metals loading to the Eagle River. On-going remediation within OU1 includes active engineered remedial features designed to capture and treat mine waste in surface and groundwater.

“OU2” shall mean operable unit 2 of the Site, which includes the former town of Gilman (Gilman). The OU2 remedy addressed potential human health risks by imposing local Institutional Controls to restrict access and require federal, state and local approval for future development.

“OU3” shall mean operable unit 3 of the Site. As defined in the OU1 ROD Amendment, OU3 is media-based and focuses on protection of human health for residential use through reduction of exposures to surface soil, other than OU2. Geographically, OU1 and OU3 overlap except for the area of Belden and the Consolidated Tailings Pile, which are in OU1 only.

“OU1 ROD” shall mean the Record of Decision for OU1 issued by EPA on March 29, 1993.

“OU1 ROD Amendment” shall mean the amendment to the OU1 ROD issued by EPA on September 28, 2017.

“OU2 ROD” shall mean the Record of Decision for OU2 issued by EPA on September 3, 1998.

“OU3 Property” shall mean the Property within OU3 as addressed by the OU3 ROD.

“OU3 ROD” shall mean the Record of Decision for OU3 issued by EPA on September 28, 2017.

“Owners” shall mean Battle North and Battle South.

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

“Parties” shall mean the United States, CDPHE and Owners.

“Property” shall mean all property currently owned by Owners within OU1, OU2 and OU3 of the Site.

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

“Restrictive Notices” shall mean Notices of Environmental Use Restrictions, which are a form of Institutional Control and are established pursuant to Colorado’s Environmental Covenants Statute, C.R.S. § 25-15-317 *et seq.*

“RPM” shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

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

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien, and all appendices attached hereto (listed in Section XXXII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Eagle Mine Superfund Site, encompassing approximately 235 acres, located approximately 1 mile southeast of the town of Minturn and 8 miles south of Vail in Eagle County, Colorado and depicted generally on the map attached as Appendix 1.

“State” shall mean the State of Colorado.

“SOW” shall mean the Statement of Work attached hereto as Appendix 2. The SOW describes the activities that Battle North must perform to implement the response action pursuant to this Settlement and any modifications made thereto in accordance with this Settlement.

“State Project Manager” shall mean the CDPHE personnel designated as the Site project manager.

“Subarea Response Action Work Plan” shall mean a work plan that Battle North will submit for the implementation of Work at any subarea or subareas in accordance with Paragraph 41.a.

“Transfer” shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance or other disposition of any interest by operation of law or otherwise.

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

“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 and obligations that Battle North is required to perform under this Settlement except those required by Section XII (Record Retention).

IV. STATEMENT OF FACTS

11. The Site encompasses a large abandoned mining and milling facility along the banks of the Eagle River near Minturn, Colorado, in a rural area of Eagle County, and includes areas impacted by past mining activity between the towns of Red Cliff and Minturn. The 235-acre Site includes the Eagle Mine workings, the former town of Gilman, the mine tailings pond areas, Rex Flats, Rock Creek Canyon, and waste rock and roaster pile areas. The Site is bordered on the south and west by the White River National Forest which includes the Holy Cross

Wilderness Area. The Eagle River and two of its principle tributaries, Cross Creek and Rock Creek, flow through the Site.

12. Mining activities began in the area in the late 1870s when gold, silver, lead and zinc deposits were discovered. The ore was processed first by roasting and later by milling. Large quantities of tailings and waste rock were piled along the banks of the Eagle River, on the steep side slopes of the canyon and at higher elevations. Later, mine waste was piped down canyon into the Old Tailings Pile and into what is now called the Consolidated Tailings Pile.

13. In 1983, the State filed a complaint against a potentially responsible party, Gulf & Western Industries, Inc., a Delaware corporation, the successor to a former operator of the Eagle Mine, in the U.S. District Court for the District of Colorado, captioned *State of Colorado v. Gulf & Western Industries, Inc.*, Civ. Action No. 83-C-2387, for natural resource damages pursuant to CERCLA, and amended its complaint in 1985 to include a claim for CERCLA response costs and state pendent claims.

14. In the 1980s, the Agencies' sampling showed that historic mining operations at the Site resulted in contamination of surface water, groundwater and soils with heavy metals including arsenic, cadmium, copper, iron, lead, manganese and zinc in levels that posed a threat to human health and the environment. These heavy metals are listed as hazardous substances as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. In 1986, the Site was included on the National Priorities List pursuant to CERCLA section 105, 42 U.S.C. § 9605, by publication in the Federal Register, 51 Fed. Reg. 111 (June 10, 1986).

16. In 1988, the State and Gulf+Western, Inc., a Delaware corporation and Gulf & Western Industries, Inc.'s successor, entered into a consent decree that settled the 1983 complaint and set forth a remedial action plan (1988 CD/RAP) to remediate contamination at the Site. Pursuant to this agreement, Gulf+Western performed certain work, including implementation of a mine closure program to seal pathways from the mine workings and to grout fracture zones, construction of a groundwater extraction system to collect and pump contaminated groundwater from beneath the Consolidated Tailings Pile, construction of a groundwater diversion trench to direct the flow of clean groundwater away from the Consolidated Tailings Pile, construction of a system to collect seeps along Rock Creek, installation and implementation of water quality monitoring.

17. In 1990, the State and Gulf & Western Industries, Inc.'s corporate successor, Paramount Communications, Inc., amended the 1988 CD/RAP to include a chemical water treatment plant, mine seepage collection system and pipeline to transport and treat water from the Eagle Mine.

18. In 1993, EPA issued the OU1 ROD to institute additional remedial actions to address metals loading to the Eagle River. The major components of the selected remedy included the installation of a conveyance and collection system to collect additional mine seepage along Rock Creek, the diversion of Rock Creek up-gradient of contaminated mine

seepage, revegetation of mine waste source areas, surface water run-off and groundwater monitoring, land use restrictions, capping of the Consolidated Tailings Pile, construction of a new up-gradient groundwater diversion structure and relocation of the Town of Minturn drinking water wells, continued treatment of contaminated mine seepage, removal of contaminated soils and sediments from the Maloit Park Wetlands, and regular monitoring of surface water, groundwater and the mine pool water within the mine workings.

19. In 1996, EPA, with the State as a signatory, entered into a consent decree (1996 Consent Decree) whereby Viacom International, Inc., a successor to Gulf+Western and Paramount Communications, agreed to perform additional remedial actions set forth in the OU1 ROD, captioned *United States v. Viacom International, Inc.*, Civ. Action. No 95-N-2360 (June 12, 1996), filed in the U.S. District Court for the District of Colorado. The 1996 Consent Decree described the additional remedial actions in a statement of work (1996 CD/SOW).

20. Remediation at the Site has been ongoing since 1988; however, Institutional Controls have not yet been implemented. Additionally, current water quality standards for the Eagle River have not yet been met. On September 28, 2017, EPA issued the OU1 ROD Amendment that expands the existing OU1 remedy to include the collection and treatment of groundwater adjacent to the Eagle River in Belden and at the mouth of Rock Creek, along with continued collection of contaminated water and operation of the water treatment plant and Institutional Controls in the form of Restrictive Notices to provide long-term protection of the remedy.

21. In 1998, EPA issued the OU2 ROD to provide for Institutional Controls at the former town of Gilman to restrict access and require additional risk assessment and, if needed, cleanup prior to Federal, State and local approval for future development. Institutional Controls have not yet been implemented.

22. In 2004, the Property was acquired by the previous owners, two entities, Ginn Battle South, LLC and Ginn Battle North, LLC. Ginn Battle South acquired Property within OU2. Ginn Battle North acquired Property within parts of OU1 and OU3. Ginn Battle North intended to develop parts of the Site for future residential use and requested that the Agencies review its development proposal pursuant to the CERCLA regulatory process for remedial actions.

23. With oversight by the Agencies, Ginn Battle North completed a Remedial Investigation Report that documented the current condition at OU3 and assessed the potential nature and extent of impacts to residents from the remaining mine-related wastes. Unlike the original cleanup, which was focused on lead criterion, the Remedial Investigation Report also considered arsenic. The Remedial Investigation Report affirmed that arsenic, cadmium, chromium, copper, lead, manganese and zinc contaminated the soils at OU3 and posed unacceptable risk to human health in the event of future residential use.

24. Ginn Battle North also completed a Human Health Risk Assessment and Feasibility Study that evaluated remedial alternatives to reduce, mitigate and monitor impacts to OU3.

25. In 2009, Owners acquired the Property, also with the intention of developing OU3 for future residential use.

26. On September 28, 2017, EPA issued the OU3 ROD selecting the remedial action for OU3 to provide for cleanup in the event of residential use.

27. In performing response actions in relation to the Property, EPA has incurred response costs.

V. DETERMINATIONS

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

- a. The Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site, as identified in the Statement of Facts above, includes “hazardous substances” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Owners are “person[s]” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. There has been an actual or threatened “release” of “hazardous substances” from the Site as those terms are defined in section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22), (14).
- e. The actual or threatened “release” caused the incurrence of response costs.
- f. Settlement with Owners is practicable and in the public interest within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. The Institutional Controls required by this Settlement are necessary to protect the public health, welfare or the environment.
- h. In the event land use changes to residential at OU3, the Work required by this Settlement is necessary to protect the public health, welfare or the environment.

VI. SETTLEMENT AGREEMENT AND ORDER

29. Based upon the Statement of Facts and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Owners shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PAYMENT AND RELEASE AND WAIVER OF LIEN

30. In consideration of and in exchange for EPA's release and waiver of any lien it has or may have under section 107(r) of CERCLA with respect to Existing Contamination on the Property, Owners shall, not later than 30 days after the Effective Date, pay to EPA the sum of \$200,000. Owners' obligation for payment is joint and several. Owners shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site Identification No. 08-45 and the EPA docket number for this action.

31. The total amount to be paid by Owners pursuant to this Section may be deposited by EPA in an Eagle Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

32. **Interest.** In the event that Owners do not make the entire payment within 30 days after the Effective Date as required, Owners shall pay Interest on the unpaid balance. The Interest shall accrue through the date of Owners' payment of the entire sum in Paragraph 30. Payments of Interest made under this Section shall be in addition to such other remedies or sanctions available to the United States by virtue of Owners' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

33. Subject to Section XXI (Reservation of Rights), upon payment of the amount specified in Paragraph 30, EPA agrees to release and waive any lien it may have costs incurred or to be incurred by EPA for Existing Contamination on the Property under section 107(r) of CERCLA, 42 U.S.C. § 9607(r).

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, REMEDIAL PROJECT MANAGER, AND STATE PROJECT MANAGER

34. Not later than 60 days prior to commencement of any Work, Battle North shall retain one or more contractors or subcontractors to perform Work and shall notify the Agencies of the names, titles, contact information and qualifications of such contractors or subcontractors. Battle North shall also notify the Agencies of the names, titles, contact information and qualifications of any other contractors or subcontractors retained to perform Work at least 30

days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Battle North. If EPA disapproves of a selected contractor or subcontractor, Battle North shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information and qualifications not later than 30 days after EPA's disapproval. With respect to any proposed contractor, Battle North shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking Work for Battle North shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to Work or the Site.

35. Battle North has designated Tim McGuire as the Project Coordinator who shall be responsible for administration of all actions by Battle North required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during Site work. Notice or communication relating to this Settlement from EPA to Battle North's Project Coordinator shall constitute notice or communication to Battle North. Battle North shall have the right to change its designated Project Coordinator. Battle North shall notify EPA 7 days before such a change is made. The initial notification by Battle North may be made orally, but shall be promptly followed by a written notice. If Battle North changes its Project Coordinator, EPA retains the right to disapprove of the new Project Coordinator. If EPA disapproves of the new Project Coordinator, Battle North shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 30 days following EPA's disapproval. Battle North's Project Coordinator must have sufficient technical expertise to coordinate the Work. EPA will review Battle North's Project Coordinator based on objective criteria (e.g., experience, capacity, technical expertise) and that Battle North's Project Coordinator does not have a conflict of interest with respect to the Site. If Battle North transfers all or any portion of the Property, the Successor Party may select its own Project Coordinator subject to the communication and notification requirements applicable to Battle North above.

36. EPA has designated Jamie Miller of the Superfund Remedial Program in the Office of Ecosystems, Protection and Remediation, Region 8, as its Remedial Project Manager (RPM). EPA shall have the right to change its RPM.

37. CDPHE has designated Wendy Naugle of the Superfund and Brownfields Unit in the Hazardous Materials and Waste Management Division of CDPHE as its State Project Manager. CDPHE shall have the right to change its State Project Manager.

38. The RPM shall be responsible for overseeing Battle North's implementation of this Settlement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct or direct any Work required by this Settlement or to direct any other

response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

IX. WORK TO BE PERFORMED

39. If Battle North intends to change land use at a subarea or subareas within the OU3 Property to residential use, it shall provide written notice to the Agencies. Prior to implementing any change to residential use within the OU3 Property, Battle North shall perform, at a minimum, all actions necessary to implement the OU3 ROD and SOW within such subarea or subareas. The actions to be implemented under the SOW generally include, but are not limited to, excavation of contaminated soils and disposal in an approved solid waste disposal facility, installation of a soil exposure barrier, reconstruction of diversion ditches and demolition of a portion of the former tailings slurry pipeline identified in the OU3 ROD.

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

41. Subarea Response Action Work Plans and Implementation

a. After noticing the Agencies of its intention to change land use in accordance with Paragraph 39, Battle North shall submit to the Agencies for approval a draft Subarea Response Action Work Plan for the subarea or subareas as listed in this Paragraph to implement Work in accordance with the SOW. The draft Subarea Response Action Work Plan shall identify the subarea or subareas to be remediated and provide a description of, and an expeditious schedule for, the actions required by this Settlement that apply to the selected subarea or subareas. As described in the SOW, subareas include:

- (1) Maloit Park;
- (2) Old Tailings Pile;
- (3) Rex Flats;
- (4) Roaster Pile #5; and
- (5) The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area.

b. After consultation with CDPHE and an opportunity for CDPHE to comment, EPA may approve, disapprove, require revisions to or modify the draft Subarea Response Action Work Plan in whole or in part. EPA shall approve, disapprove, require revisions to or modify the draft Subarea Response Action Work Plan in whole or in part to Battle North. If EPA requires revisions, Battle North shall submit a revised draft Subarea Response Action Work Plan not later than 30 days of receipt of EPA's notification of the required

revisions. Battle North shall implement the Subarea Response Action Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Subarea Response Action Work Plan, the schedule and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Subarea Response Action Work Plan, Battle North shall commence implementation of Work at the identified subarea or subareas in accordance with the schedule included therein. Battle North shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW shall be reviewed and approved by EPA in accordance with this Paragraph.

42. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Battle North shall direct all submissions required by this Settlement to the RPM and the State Project Manager. Battle North shall submit all deliverables required by this Settlement, the SOW or any approved work plan to the Agencies in accordance with the schedule set forth in such plan.

(2) Battle North shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 42.b. All other deliverables shall be submitted to the Agencies in the form specified by the RPM. If any deliverable includes maps, drawings or other exhibits that are larger than 8.5 x 11 inches, Battle North shall also provide the Agencies with paper copies of such exhibits.

(3) The RPM shall consult with the State Project Manager and provide the State Project Manager an opportunity for comment on all submissions.

b. **Technical Specifications for Deliverables**

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

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format, in conformance with "U.S. EPA Region 8 GIS Deliverable Guidance" (May 2017), available at https://r8gis.r08.epa.gov/GeoHub/Resources/Documents/Region8_GIS_Deliverable_Guidance.pdf; and (b) 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/>.

(3) Each file must include an attribute name for the Site operable unit and relevant subarea or subsareas. Consult <http://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

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

43. **Health and Safety Plan.** Not later than 30 days before the commencement of any Work, Battle North shall submit a Health and Safety Plan (HASP) that ensures the protection of the public health and safety during performance of on-Site Work to the Agencies. EPA will review and comment on the HASP and will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. CDPHE shall comment to EPA within 20 days of receipt of the HASP. EPA shall review and comment on the HASP to Battle North within 30 days after receipt. The HASP shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <http://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the HASP shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the HASP shall also include contingency planning. Battle North shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of any Work.

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

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

b. **Sampling and Analysis Plan.** Not later than 60 days before the commencement of any Work, Battle North shall submit a Sampling and Analysis Plan to the Agencies for EPA review and approval. EPA will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. EPA shall approve, disapprove, require revisions to or modify the Sampling and Analysis Plan in whole or in part to Battle North. This plan shall consist of a Field Sampling Plan and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not

limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Battle North shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Battle North in implementing this Settlement. In addition, Battle North shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Battle North shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, Battle North may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP; (ii) the analytical method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Battle North shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Battle North shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Battle North shall provide split or duplicate samples to EPA or its authorized representatives. Battle North shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Battle North split or duplicate samples of any samples it takes as part of EPA's oversight of Battle North implementation of any Work.

f. Battle North shall submit to the Agencies the results of all sampling and/or tests or other data obtained or generated by or on behalf of Battle North with respect to the Site and/or the implementation of this Settlement.

g. Battle North waives any objections to any data gathered, generated or evaluated by EPA, CDPHE or Battle North in the performance or oversight of Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved work plans or Sampling and Analysis Plans. If Battle North objects to any other data relating to Work, Battle North shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA not later than 15 days after the monthly progress report containing the data.

45. **Progress Reports.** Battle North shall submit a written monthly progress report to the Agencies concerning actions undertaken during the previous month pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA. This requirement shall continue from the date of receipt of EPA's approval of the first Subarea Response Action Work Plan until issuance of Notice of Completion of any Work pursuant to Section XXIX, unless otherwise directed in writing by the RPM. These reports are due on the 15th of each month for the preceding month's activities. The reports shall 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.

46. **Final Response Action Reports.** Not later than 90 days after completion of any Work required by a Subarea Response Action Work Plan, other than continuing obligations listed in Section XXIX (Notice of Completion of Work), Battle North shall submit for EPA review and approval a Final Subarea Response Action Report summarizing the actions taken to comply with this Settlement. EPA will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. EPA shall approve, disapprove, require revisions to or modify the Final Response Action Report in whole or in part to Battle North. The Final Subarea Response Action Report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant documentation generated during any Work (e.g., manifests, invoices, bills, contracts and permits). The Final Subarea Response Action Report shall also include the

following certification signed by a responsible corporate official of Battle North or Battle North's Project Coordinator: "I certify under penalty of law 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."

47. Off-Site Shipments

a. Battle North 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. Battle North will be deemed to be in compliance with CERCLA section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Battle North obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Battle North 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 shall not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 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. Battle North 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. Battle North shall provide the written notice before the Waste Material is shipped.

c. Battle North 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, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the OU3 ROD. 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.

X. PROPERTY REQUIREMENTS

48. Access and Non-Interference.

a. Owners shall provide to officers, employees and authorized representatives of EPA and the State access to the Property for the activities set forth below.

Owners 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 any Work.

b. Owners shall, with respect to any property owned or controlled by another person where EPA determines, at any time, that access is needed to implement Work, use best efforts to secure from such person an agreement, enforceable by Owners, EPA and the State, providing that such person shall, with respect to any property: (i) provide EPA, CDPHE, Owners, and their representatives, contractors and subcontractors with access at all reasonable times to such property conduct any activity regarding Work, including those activities listed in Paragraph 49 (Access Requirements); and (ii) refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity or protectiveness of any Work.

49. Access Requirements.

a. Access to the Property is required for the following activities:

- (1) Monitoring Work;
- (2) Verifying any data or information submitted to EPA or CDPHE;
- (3) Conducting investigations regarding contamination at or near the Property;
- (4) Obtaining samples;
- (5) Assessing the need for planning, implementing or monitoring response actions;
- (6) Assessing implementation of QA/QC practices as defined in the approved QA/QC plan as defined in an approved QAPP;
- (7) Implementing Work pursuant to the conditions set forth in Paragraph 97 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Owners or their agents consistent with Section XI (Access to Information);
- (9) Assessing Owners' compliance with the Settlement;
- (10) 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 the Settlement;

(11) Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls regarding the Property.

b. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Owners would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If Owners is unable to accomplish what is required through best efforts in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Owners, or take independent action, to obtain such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XV (Payment of Future Response Costs).

c. **Access to Construct, Operate and Maintain the OUI Remedy.** Owners shall provide those entities and their successors, assigns and contractors conducting response actions at the Site pursuant to an agreement with EPA and/or CDPHE, access to and use of the Property pursuant to section 101(40)(E) of CERCLA, 42 U.S.C. § 9601(40)(E), to conduct response actions including, but not limited to, activities related to requirements contained in the 1988 CD/RAP, 1996 CD/SOW, the OUI ROD Amendment and any future agreement between the Agencies and any other party or its successors and assigns.

50. Prior to notice of completion of Work pursuant to Section XXIX, in the event of any Transfer of the Property, unless EPA otherwise consents in writing, Owners shall continue to comply with their obligations under the Settlement, including their obligation to provide access to the Property to the same extent as is provided under Paragraph 49.a and to implement, maintain, monitor, and report on Institutional Controls to the same extent as required under Paragraph 51.

51. For so long as Owners own the Property, Owners shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to (1) EPA, its authorized officers, employees, representatives and all other persons performing response actions under EPA oversight and (2) the State, its authorized officers, employees, representatives and all other persons performing response actions under State oversight. Owners shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response actions and not contest EPA’s or the State’s authority to enforce any land use restrictions and Institutional Controls on the Property.

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

53. **Restrictive Notices.**

a. Battle North shall, not later than 120 days after the Effective Date, execute, record and comply with the Restrictive Notices in the Clerk and Recorder's Office of Eagle County, Colorado for the following areas as described in the SOW:

- (1) Consolidated Tailings Pile;
- (2) Maloit Park;
- (3) Old Tailings Pile;
- (4) Rex Flats;
- (5) Roaster Pile #5; and
- (6) The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area.

b. Attached hereto as Appendix 3 are the use restrictions that Battle North will include in the Restrictive Notices for the areas described in Paragraph 53.a(1)-a(6).

c. Battle South shall, not later than 120 days after the Effective Date, execute, record and comply with the Restrictive Notice in the Clerk and Recorder's Office of Eagle County, Colorado for the following area as described in the SOW:

- (1) Gilman.

d. Attached hereto as Appendix 4 are the use restrictions that Battle South will include in the Restrictive Notice for the area described in Paragraph 53.c(1).

e. Owners shall execute, record and comply with such Restrictive Notices in accordance with the CDPHE's January 2012 Institutional Controls Implementation Guidance. Owners shall cooperate with EPA and CDPHE and ensure that the Restrictive Notices and the areas subject to the Restrictive Notices are added to the CDPHE's Hazardous Materials and Waste Management Division GIS map and database, which are publicly available through an online, web-based platform. Owners shall execute and return a certification form provided by the CDPHE, on an annual basis, detailing Owners' compliance, and any lack of compliance, with the terms of the Restrictive Notices.

f. Not later than 10 days of recording the Restrictive Notices, Owners shall provide to the Agencies a copy of the recorded Restrictive Notices, in accordance with Section XVI (Notices and Submissions). Owners shall comply with all Restrictive Notices requirements including payment of annual fees.

54. 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 Institutional Controls,

including enforcement authorities related thereto, under CERCLA, RCRA, Colorado's Environmental Covenants Statute and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

55. Owners shall provide to the Agencies, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as Records) within Owners' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information regarding Work. Owners shall also make available to the Agencies, for purposes of investigation, information gathering or testimony, their employees, agents or representatives with knowledge of relevant facts concerning the performance of any Work.

56. Privileged and Protected Claims

a. Owners may assert all or part of a Record requested by EPA or CDPHE is privileged or protected as provided under federal law, in lieu of providing the Record, provided Owners comply with Paragraph 56.b, and except as provided in Paragraph 56.c.

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

c. Owners may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Owners are required to create or generate pursuant to this Settlement.

57. **Business Confidential Claims.** Owners may assert that all or part of a Record provided to EPA under this Section or Section XII (Record Retention) is business confidential to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Owners shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Owners assert business confidentiality claims. Records that Owners claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Owners 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 Owners.

58. Notwithstanding any provision of this Settlement, the Agencies 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.

XII. RECORD RETENTION

59. Until 10 years after EPA provides Owners with notice, pursuant to Section XXIX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Owners shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their BFPP status under CERCLA with regard to the Site, provided that Owners retain all Records that relate to the liability of any other person under CERCLA with respect to the Site. Owners must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of Work, provided, however, that Owners (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

60. At the conclusion of the document retention period, Owners shall notify the Agencies at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 56 (Privileged and Protected Claims), Owners shall deliver any such Records to EPA.

61. Owners certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that they have fully complied with any and all EPA 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.

XIII. COMPLIANCE WITH OTHER LAWS

62. Nothing in this Settlement limits Owners' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e).

63. No local, state or federal permit shall be required for any portion of Work conducted entirely on-Site (i.e., within the areal extent of contamination or in close proximity to the contamination and necessary for implementation of Work), including studies, if the action is selected and carried out in compliance with section 121 of CERCLA, 42 U.S.C. § 9621. Where

any portion of Work that is not on-Site requires a federal or state permit or approval, Owners shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Owners may seek relief under the provisions of Section XVII (Force Majeure) for any delay in the performance of Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. **Emergency Response.** If any event occurs during performance of Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Owners shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Owners shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the HASP. Owners shall also immediately notify the RPM or, in the event of the RPM's unavailability, the Regional Duty Officer at (800) 424-8802 of the incident or Site conditions. Owners shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line at (877) 518-5608. In the event that Owners fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Owners shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XV (Payment of Future Response Costs).

64. **Release Reporting.** Upon the occurrence of any event during performance of Work that Owners are required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Owners 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. Owners shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line at (877) 518-5608. 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 EPCRA, 42 U.S.C. § 11004.

65. For any event covered under this Section, Owners shall submit a written report to EPA and CDPHE not later than 5 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XV. PAYMENT OF FUTURE RESPONSE COSTS

66. Payments for Future Response Costs. Owners shall pay all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Owners an electronic billing notification to the individuals listed for Owners in Section XXXIII (Notices and Submissions). If the billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Owners at the mailing address set forth in Section XXXIII.

b. The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors, subcontractors, the State and the United States Department of Justice. Owners shall make all payments not later than 30 days of receipt of the bill, except as otherwise provided in Paragraph 67 (Contesting Future Response Costs). Owners shall make payments using one of the payment methods set forth in the billing notification.

c. Owners may change their email billing address or mailing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

d. Deposit of Future Response Costs Payments. The total amount to be paid by Owners pursuant to Paragraph 66.a may be deposited by EPA in an Eagle Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund shall not be subject to challenge by Owners pursuant to the dispute resolution provisions of this Settlement or in any other forum.

e. Interest. In the event that any payment for Future Response Costs is not made by the date required, Owners shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the bill's due date and shall continue to accrue through the date of Owners' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Owners' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

67. Contesting Future Response Costs. Owners may initiate the procedures of Section XVI (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 66 (Payments of Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe the United States incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Owners shall submit a Notice of Dispute in writing to the RPM not later than 30 days after receipt of the bill. Any such Notice of Dispute shall identify the contested Future Response Costs and the basis for objection. If Owners submit a Notice of Dispute, Owners shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future

Response Costs to EPA and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Owners shall send to the 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. If EPA prevails in the dispute, not later than 5 days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA. If Owners prevail concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA. Owners 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 XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Owners' obligation to reimburse EPA for Future Response Costs.

XVI. DISPUTE RESOLUTION

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

69. **EPA Informal Dispute Resolution.** If Owners object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) not later than 30 days after such action. EPA and Owners shall have 30 days from EPA's receipt of Owners' Notice of Dispute to resolve the dispute through informal negotiations ("Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA, CDPHE and Owners pursuant to this Section shall be in writing and shall, upon signature by EPA, CDPHE and Owners, be incorporated into and become an enforceable part of this Settlement.

70. **EPA Formal Dispute Resolution.** If EPA, CDPHE and Owners are unable to reach an agreement within the Negotiation Period, Owners shall, not later than 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, not later than 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Assistant Regional Administrative level or higher will issue a written decision on the dispute to Owners. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Owners shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

71. Except as provided in Paragraph 67 (Contesting Future Response Costs) or as agreed by EPA or CDPHE, the invocation of formal dispute resolution procedures under this Section does not extend, postpone or affect in any way any obligation of Owners under this Settlement. Except as provided in Paragraph 81, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute.

Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Owners do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVII. FORCE MAJEURE

72. “Force Majeure” for purposes of this Settlement is defined as any event arising from causes beyond the control of Owners, of any entity controlled by Owners, or of Owners’ contractors that delays or prevents the performance of any obligation under this Settlement despite Owners’ best efforts to fulfill the obligation. Owners must exercise 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 Work or increased cost of performance.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Owners intend or may intend to assert a claim of Force Majeure, Owners shall notify EPA’s RPM orally or, in the RPM’s absence, the Director of Superfund Remedial Program, EPA Region 8, not later than 7 days of when Owners first knew that the event might cause a delay. Not later than 30 days thereafter, Owners shall provide in writing to the Agencies an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Owners’ rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Owners, such event may cause or contribute to an endangerment to public health or welfare or the environment. Owners shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure. Owners shall be deemed to know of any circumstance of which Owners, any entity controlled by Owners, or Owners’ contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Owners from asserting any claim of Force Majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a Force Majeure under Paragraph 72 and whether Owners has exercised their best efforts under Paragraph 72, EPA may, in its unreviewable discretion, excuse in writing Owners’ failure to submit timely or complete notices under this Paragraph.

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

75. If Owners elect to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so not later than 15 days after receipt of EPA's notice. In any such proceeding, Owners shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Owners complied with the requirements of Paragraphs 72 and 73. If Owners carry this burden, the delay at issue shall be deemed not to be a violation by Owners of the affected obligation of this Settlement identified to EPA.

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

XVIII. STIPULATED PENALTIES

77. Owners shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 78 and 79 for failure to comply with the requirements of this Settlement specified below unless excused under Section XVII (Force Majeure).

78. EPA Stipulated Penalty Amounts – Payments, Major Deliverables and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 78.b:

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

b. Obligations

- VII.
- (1) Payment in satisfaction of windfall lien in accordance with Section
 - (2) Payment of Future Response Costs in accordance with Section XV.
 - (3) Recording of Battle North Restrictive Notices.
 - (4) Recording of Battle South Restrictive Notices.
 - (5) Timely submission of any Subarea Response Action Work Plan.

(6) Establishment of an escrow account under Paragraph 67 (Contesting Future Response Costs).

79. **EPA Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 78.b and for any other noncompliance with the terms of this Settlement:

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

80. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 (Work Takeover), Battle North shall be liable for a stipulated penalty in the amount of \$100,000.

81. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid not later than 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 41 (Subarea Remedial Action Work Plans and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Battle North of any deficiency; and (b) with respect to a decision by the EPA management official at the Assistant Regional Administrator level or higher, under Paragraph 70 (EPA Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

83. All penalties accruing under this Section shall be due and payable to EPA, not later than 30 days of Owners' receipt from EPA of a demand for payment of the penalties, unless Owners invoke the Dispute Resolution procedures under Section XVI (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 66 (Payments for Future Response Costs).

84. If Owners fail to pay stipulated penalties when due, Owners shall pay Interest on the unpaid stipulated penalties as follows: (a) if Owners have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 81 until the date of payment; and (b) if Owners fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 83 until the date of payment. If Owners fail to pay stipulated penalties and Interest when due, the United States, and the State if appropriate, may institute proceedings to collect the penalties and Interest.

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

86. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or CDPHE to seek any other remedies or sanctions available by virtue of Owners' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 (Work Takeover).

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

XIX. CERTIFICATION

88. By entering into this Settlement, Owners certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA and the State all information known to Owners and all information in the possession or control of their 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 to their qualification for this Settlement. Owners also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. Owners further certify to the representations made under Paragraph 4.

XX. COVENANTS BY UNITED STATES AND STATE

89. Except as provided in Section XXI (Reservations of Rights by United States and State), the United States covenants not to sue or to take administrative action against Owners pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination, Work and Future Response Costs. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Owners of all obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA and the State by Owners relating to Owners'

involvement with the Site and the certification made by Owners in Paragraph 88. These covenants not to sue extend only to Owners and do not extend to any other person.

90. Except as provided in Section XXI (Reservations of Rights by United States and State), the State covenants not to sue or to take administrative action against Owners pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination, 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 Owners of all obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA and the State by Owners relating to Owners' involvement with the Site and the certification made by Owners in Paragraph 88. These covenants not to sue extend only to Owners and do not extend to any other person.

91. Except as provided in Paragraph 89 and 90, nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State to seek or obtain further relief from Owners, if the information provided to EPA and the State by Owners relating to Owners' involvement with the Site, or the certification made by Owners in Paragraph 88, is false or in any material response, inaccurate.

XXI. RESERVATIONS OF RIGHTS BY UNITED STATES AND STATE

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

93. The covenants set forth in Section XX (Covenant by United States and State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against Owners with respect to all other matters, including, but not limited to:

- a. Liability for failure by Owners to meet a requirement of this Settlement;
- b. Liability under CERCLA, including sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Owners or assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to comply with section 101(40), 42 U.S.C. § 9601(40);
- c. Criminal liability;

d. Liability for violations of federal or state law that occur during or after implementation of any Work;

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

f. Liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site as of the Effective Date, not within the definition of Existing Contamination;

g. Liability resulting from exacerbation of Existing Contamination by Owners, their successors, assigns, lessees or sublessees; and

h. Liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

94. With respect to any claim or cause of action asserted by the United States or the State, Owners 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 Owners have complied with all of the requirements of 42 U.S.C. § 9601(40).

95. Nothing in this Settlement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the section 107(r) lien in Section VII, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Settlement. The United States reserves the right to compel potentially responsible parties that are not a party to this Settlement to perform or pay for response actions at the Site.

96. Nothing in this Settlement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Owners acknowledges that they purchased Property where response actions may be required.

97. Work Takeover

a. In the event EPA determines that Battle North: (1) has ceased implementation of any portion of any Work; (2) is seriously or repeatedly deficient or late in its performance of any Work; or (3) is implementing any Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Battle North after consultation with CDPHE. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Battle North a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 97.a, Battle North has not remedied to EPA's satisfaction the circumstances giving rise to EPA's

issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Battle North in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Battle North may invoke the procedures set forth in Paragraph 70 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 97.b. However, notwithstanding Battle North's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 97.b until the earlier of (1) the date that Battle North remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 70 (Formal Dispute Resolution).

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

XXII. COVENANTS BY OWNERS

98. Owners covenant not to sue and agrees not to assert any claims or causes of action against the United States, the State, or their contractors or employees, with respect to Existing Contamination, Work, Future Response Costs and this Settlement, including, but not limited to:

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

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

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 regarding Existing Contamination, Work, Future Response Costs and this Settlement; or

d. Any direct or indirect claim for return of unused amounts from an Eagle Mine Special Account.

99. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XXI (Reservations of Rights), other than in Paragraph 93.a (Liability for Failure to Meet a Requirement of the Settlement), 93.c (Criminal Liability), or 93.d (Violations of Federal/State law During or After Implementation of Work), but only to the extent that Owners' claims arise from the same response action, response costs or damages that the United States is seeking pursuant to the applicable reservation.

100. Nothing in this Settlement 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).

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

XXIII. OTHER CLAIMS

102. By issuance of this Settlement, the United States, EPA, CDPHE and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Owners. Neither the United States, EPA, CDPHE or the State shall be deemed a party to any contract entered into by Owners or their directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Settlement.

103. Except as expressly provided in Section VII (Payment and Release and Waiver of Lien) and Section XX (Covenants by United States and State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Owners or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

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

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

105. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXII (Covenants by Owners), 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

herein diminishes the right of the United States, pursuant to sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons 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).

106. If a suit or claim for contribution is brought against Owners, notwithstanding the provisions of section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination, including any claim based on the contention that Owners are not BFPPs, or has lost their status as BFPPs as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM, the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Owners have, 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 are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are Work, Future Response Costs and any related windfall lien arising under section 107(r) of CERCLA.

107. If Owners are found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be BFPPs, or to have lost their status as BFPPs as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM, the Parties agree that this Settlement shall then constitute an administrative settlement pursuant to which Owners have, 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).

108. Owners shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing not later than 60 days prior to the initiation of such suit or claim. Owners shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Owners shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

109. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, or by CDPHE, for injunctive relief, recovery of response costs or other relief relating to the Site, Owners 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 covenants by EPA and CDPHE set forth in Section XX (Covenants by United States and State).

XXV. INDEMNIFICATION

110. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Owners as EPA's or CDPHE's authorized representatives under section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Owners shall indemnify, save and hold harmless the United States and the State, 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 Owners, their officers, directors, employees, agents, contractors or subcontractors, and any persons acting on Owners' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Owners agree to pay the United States and the State all costs it incurs, including but not limited to attorney 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 Owners, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States or the State shall not be held out as a party to any contract entered into by or on behalf of Owners in carrying out activities pursuant to this Settlement. Neither Owners nor any such contractor shall be considered an agent of the United States or the State.

111. If Owners fail to comply with the terms of this Settlement, they shall be liable for all litigation and other enforcement costs incurred by the United States and the State to enforce this Settlement or otherwise obtain compliance.

112. The United States or the State shall give Owners notice of any claim for which the United States or the State plan to seek indemnification pursuant to this Section and shall consult with Owners prior to settling such claim.

113. Owners covenant not to sue and agree not to assert any claims or causes 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 any one or more of Owners and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Owners shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between Owners and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

114. Not later than 30 days before commencing any on-Site Work under an approved Subarea Response Action Work Plan, Battle North shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXIX (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured

with respect to all liability arising out of the activities performed by or on behalf of Battle North pursuant to this Settlement. In addition, for the duration of the Settlement, Battle North shall provide EPA with certificates of such insurance and a copy of each insurance policy. Battle North shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Battle North 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 Work on behalf of Battle North in furtherance of this Settlement. If Battle North demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Battle North need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Battle North shall ensure that all submittals to EPA under this Paragraph identify the Eagle Mine Superfund Site in Eagle County, Colorado, and the EPA docket number for this action.

XXVII. MODIFICATION

115. After notification to the State Project Manager and an opportunity to comment, EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 48 hours of the oral modification, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the EPA and Owners, after consultation with CDPHE and an opportunity for CDPHE comment.

116. If Battle North seeks permission to deviate from any approved work plan or schedule or the SOW, Battle North's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Battle North may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 115.

117. No informal advice, guidance, suggestion or comment by the RPM or other EPA representatives or the State Project Manager or other State representatives regarding any deliverable submitted by Battle North shall relieve Battle North 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.

XXVIII. ADDITIONAL WORK

118. If EPA determines that additional work not included in the SOW, any Subarea Response Action Work Plan or other approved plan(s) is necessary to protect public health, welfare or the environment, EPA will notify Battle North of that determination. EPA will consult with CDPHE prior to notifying Battle North. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional work is necessary to protect public health, welfare or the environment, Battle North shall submit for approval by EPA a work plan for the additional work. The plan shall conform to the applicable requirements of Section IX (Work to be Performed) of this Settlement. EPA will provide CDPHE an opportunity to comment on the

work plan prior to approval. Upon EPA's approval of the plan pursuant to Paragraph 41 (Subarea Response Action Work Plans and Implementation), Battle North shall implement the plan for additional work in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modification).

XXIX. NOTICE OF COMPLETION OF WORK

119. When EPA determines, after EPA's review of a Final Subarea Response Action Report, that any Work required under the Final Subarea Response Action Report has been fully performed in accordance with this Settlement for the identified subarea or subareas, with the exception of any continuing obligations required by this Settlement, including, but not limited to continued compliance with CERCLA § 101(40) with respect to the Property in accordance with Paragraph 3, compliance with Institutional Controls, payment of Future Response Costs or record retention, EPA will provide written notice to Battle North. EPA will consult with CDPHE and provide CDPHE an opportunity to comment before approval. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Battle North and provide a list of the deficiencies and require that Battle North modify the Subarea Response Action Work Plan if appropriate in order to correct such deficiencies. Battle North shall implement the modified and approved Subarea Response Action Work Plan and shall submit a modified Final Subarea Response Action Report to EPA. Failure by Battle North to implement the approved modified Subarea Response Action Work Plan shall be a violation of this Settlement.

XXX. PUBLIC COMMENT

120. This Settlement shall be subject to a 30-day public comment period, after which EPA may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXXI. EFFECTIVE DATE

121. The effective date of this Settlement shall be the date upon which EPA issues written notice to Owners that EPA has fully executed the Settlement after review of and response to any public comments received.

XXXII. INTEGRATION/APPENDICES

122. This Settlement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix 1 is a map of the Site.

- b. Appendix 2 is the SOW.
- c. Appendix 3 is the Battle North Restrictive Notices.
- d. Appendix 4 is the Battle South Restrictive Notice.

XXXIII. NOTICES AND SUBMISSIONS

123. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports and requests specified in this Settlement must be in writing unless otherwise specified. Whenever, under this Settlement, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Settlement regarding such Party.

As to EPA:

Jamie Miller
Remedial Project Manager
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street,
Denver, Colorado 80202
Miller.Jamie@epa.gov
(303) 312-6519

and:

Kayleen Castelli
Enforcement Attorney
Mail Code: 8ENF-L
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street,
Denver, Colorado 80202
Castelli.kayleen@epa.gov
(303) 312-6174

As to the State:

Wendy K. Naugle
State Project Manager
Colorado Department of Public Health &
Environment
HMWMD-RP-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246
Wendy.naugle@state.co.us
303-692-3394

and:

Jason King
Assistant Attorney General
Office of Attorney General
1300 Broadway,
Denver, Colorado 80202
Jason.king@coag.gov
720-508-6283

As to Owners:

Lorne Bassel
General Partner
Crave Real Estate
4333 Ste. Catherine St. West – Suite 520
Westmount, QC H3Z 1P9

Stuart A. Margulies
Senior Managing Principal
Lubert-Adler Partners, L.P.
The Cria Centre
2929 Arch Street
Philadelphia, PA 19104-2868

Tim McGuire
Battle Mountain Director of Development
ACP Communities
PO Box 56
Minturn, Colorado 81645
tmcguire@battlemountainresort.com
(970) 827-4609

and:

Rebecca Almon
Director, Outside Counsel
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, Colorado 80202
ralmon@irelandstapleton.com
(303) 628-3606

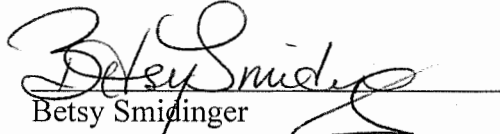
XXXIV. DISCLAIMER

124. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

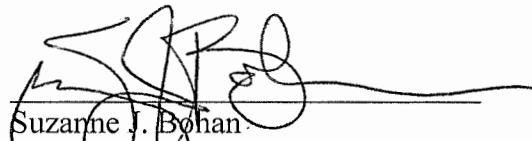
IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6/11/18
Dated


Betsy Smidinger
Assistant Regional Administrator
Office of Ecosystems, Protection and Remediation

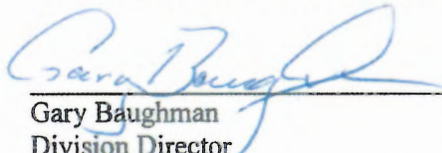
7/3/18
Dated


Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

IT IS SO AGREED AND ORDERED:

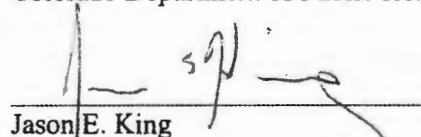
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

6/7/2018
Dated



Gary Baughman
Division Director
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

6/7/18
Dated



Jason E. King
Senior Assistant Attorney General
Colorado Attorney General's Office

IT IS SO AGREED AND ORDERED:

UNITED STATES DEPARTMENT OF JUSTICE

7/24/18
Dated

Jeffrey H. Wood
Jeffrey Wood

Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

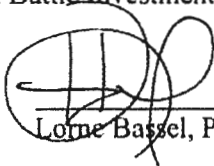
The undersigned representative of Owners certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:

FOR Battle North, LLC:

By: Bassel Battle Investment, Corp., a Colorado corporation, its Manager

6/5/18
Dated

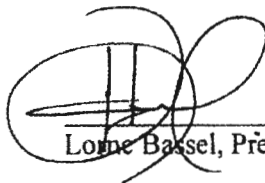


Lorne Bassel, President

FOR Battle South, LLC:

By: Bassel Battle Investment, Corp., a Colorado corporation, its Manager

6/5/18
Dated



Lorne Bassel, President

To be completed by EPA after the public comment period:

The Effective Date of this Settlement is _____.

Appendix 1
Site Map

Appendix 2
Statement of Work
Operable Unit 3
Eagle Mine Superfund Site
EPA Region 8

April 2018

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	2
3.	RESPONSE DESIGN	3
4.	RESPONSE ACTION	6
5.	REPORTING	10
6.	DELIVERABLES	10
7.	SCHEDULES	16
8.	STATE PARTICIPATION	17
9.	REFERENCES	18

1. INTRODUCTION

- 1.1 Purpose of the SOW.** This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work (as defined in the Settlement noted in Section 1.4).
- 1.2 Structure of the SOW**
- (a) Section 2 (Community Involvement) sets forth the U.S. Environmental Protection Agency's (EPA's) and Battle North, LLC's (Battle North's) responsibilities for community involvement.
 - (b) Section 3 (Response Design) sets forth the process for developing the Response Design (RD), which includes the submission of specified primary deliverables.
 - (c) Section 4 (Response Action) sets forth requirements regarding the completion of the Response Action (RA), including primary deliverables related to completion of the RA.
 - (d) Section 5 (Reporting) sets forth Battle North's reporting obligations.
 - (e) Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Battle North's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
 - (f) Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
 - (g) Section 8 (State Participation) addresses participation by the State of Colorado (State).
 - (h) Section 9 (References) provides a list of references, including URLs.
- 1.3 The Scope of the Remedy** includes the actions described in Section 12 of the Record of Decision (ROD) for Operable Unit 3 (OU3) of the Eagle Mine Superfund Site (Site), issued by EPA on September 28, 2017, including:
- (a) Excavation of impacted soil, tailings and boulders;
 - (b) Containment/disposal of the excavated materials at a solid waste disposal facility;
 - (c) Installation of a soil exposure barrier;
 - (d) Grading to manage water drainage around impacted materials and prevent ponding;

- (e) Demolition of the Former Tailings Slurry Pipeline and containment/disposal of the materials at a solid waste disposal facility;
- (f) Implementation of institutional controls (ICs); and
- (g) Long-term management to ensure continued compliance with Applicable or Relevant and Appropriate Requirements (ARARs).

Battle North (or designated representative) will complete design and construction for the response components listed above for individual subareas of OU3 as described in the Settlement. Traditionally, the ROD includes a level of detail sufficient to begin RD. For OU3, Battle North will prepare RD packages specific to a subarea or subareas as identified by Battle North for land use change.

- 1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement and Order on Consent for Response Action and Waiver of CERCLA § 107(r) lien (Settlement), have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. In 2006, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, Battle North shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Battle North’s support of EPA’s community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide a reasonable opportunity for review and comment. EPA may describe in its CIP Battle North’s responsibilities for community involvement activities. All community involvement activities conducted by Battle North at EPA’s request are subject to EPA’s oversight.
- (c) **Battle North’s CI Coordinator.** If requested by EPA, Battle North shall, within 15 days, designate and notify EPA of Battle North’s Community Involvement Coordinator (Battle North’s CI Coordinator). Battle North may hire a contractor

for this purpose. Battle North's notice must include the name, title, and qualifications of Battle North's CI Coordinator. Battle North's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

3. RESPONSE DESIGN

- 3.1 RD Work Plan.** Battle North shall submit an RD Work Plan (RDWP) for EPA approval for each subarea or subareas as identified by Battle North. The RDWP must include:
- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
 - (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
 - (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the RA as necessary to implement the Work;
 - (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
 - (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
 - (f) Description of any proposed pre-design investigation;
 - (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
 - (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements;
 - (i) The following supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Health and Safety Plan (HASP); Emergency Response Plan (EPR); and Quality Assurance Project Plan (QAPP); and
 - (j) Certification in accordance with ¶ 6.5 (Certification).
- 3.2** Battle North shall meet regularly with EPA to discuss design issues as necessary, as directed, or determined by EPA.
- 3.3 Pre-Design Investigation.** The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** Battle North shall submit a PDI Work Plan (PDIWP) for EPA approval for each subarea or subareas as identified by Battle North. The PDIWP must include:
- (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A Field Sampling Plan (FSP) including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples as described in ¶ 6.7(d);
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the QAPP as described in ¶ 6.7(d); and
 - (4) Certification in accordance with ¶ 6.5 (Certification).
- (b) **PDI Evaluation Report.** Following the PDI, Battle North shall submit a PDI Evaluation Report for each subarea or subareas as identified by Battle North. This report must include:
- (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the Work conducted;
 - (8) Conclusions and recommendations for RD, including design parameters and criteria; and
 - (9) Certification in accordance with ¶ 6.5 (Certification).
- (c) EPA may require Battle North to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 Preliminary (30%) RD. Battle North shall submit a Preliminary (30%) RD for EPA's comment for each subarea or subareas as identified by Battle North. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);

- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;
- (g) Any proposed revisions to the RA Schedule that is set forth in ¶ 7.3 (RA Schedule);
- (h) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Field Sampling Plan; Construction Quality Assurance/Quality Control Plan (CQA/QCP); Transportation and Off-Site Disposal Plan; O&M Plan; and Institutional Controls Implementation and Assurance Plan (ICIAP); and
- (i) Certification in accordance with ¶ 6.5 (Certification).

3.5 Pre-Final (95%) RD. Battle North shall submit the Pre-final (95%) RD for EPA's comment for each subarea or subareas as identified by Battle North. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Preliminary RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
- (b) A survey and engineering drawings showing existing OU3 features, such as elements, property borders, easements, and OU3 conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA;
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD; and
- (f) Certification in accordance with ¶ 6.5 (Certification).

- 3.6 **Final (100%) RD.** Battle North shall submit the Final (100%) RD for EPA approval for each subarea or subareas as identified by Battle North. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables and be certified in accordance with ¶ 6.5 (Certification).

4. RESPONSE ACTION

- 4.1 **RA Work Plan.** Battle North shall submit an RA Work Plan (RAWP) for EPA approval for each subarea or subareas as identified by Battle North that includes:

- (a) A proposed RA Construction Schedule provided to EPA in a Gantt chart format;
- (b) An updated HASP that covers activities during the RA;
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-Site activity, and for satisfying substantive requirements of permits for on-Site activity; and
- (d) Certification in accordance with ¶ 6.5 (Certification).

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** Battle North shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Battle North shall prepare minutes of the conference and shall distribute the minutes to all Parties and meeting attendees.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), Battle North shall meet regularly (weekly teleconferences) with EPA, and others as directed or determined by EPA, to discuss construction issues. Battle North shall distribute an agenda and list of invitees to all Parties and meeting invitees prior to each meeting. Battle North shall prepare minutes of the meetings and shall distribute the minutes to all Parties and meeting attendees.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections and may have an on-Site presence during the Work. At EPA's request, Battle North's Project Coordinator or other designee shall accompany EPA or its representative during inspections.
 - (2) Upon notification by EPA of any deficiencies in the RA Construction, Battle North shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, Battle North shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from OU3 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Battle North shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the HASP, ERP, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Battle North is required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, consistent with Section XIV of the Settlement, Battle North shall immediately notify the authorized EPA officer orally. Battle North shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line as described in the Settlement.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Remedial Project Manager (RPM) as designated in the Settlement or the EPA Regional Duty Officer and the EPA National Response Center (if the RPM is available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), Battle North shall, within 5 days after the onset of such event, submit a report to EPA and the Colorado Department of Public Health and Environment (collectively, the Agencies): (1) describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 and must be consistent with the Settlement.

4.4 Off-Site Shipments

- (a) Battle North 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. EPA will deem Battle North to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Battle North 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) Battle North may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the

RPM. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The 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. Battle North 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. Battle North shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

- (c) Battle North 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, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.
- (d) All actions taken under ¶ 4.4 must be consistent with the Settlement.

4.5 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA for each subarea or subareas as identified by Battle North is "Complete" for purposes of this ¶ 4.5 when it has been fully performed and the Cleanup Levels have been achieved. Battle North shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by Battle North (and/or their representatives) and EPA (and/or their representatives).
- (b) **RA Report.** Following the inspection, Battle North shall submit an RA Report to EPA requesting EPA's Certification of RA Completion for each subarea or subareas as identified by Battle North. The report must: (1) include certifications by a registered professional engineer and by Battle North's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Cleanup Levels have been achieved; and (5) be certified in accordance with ¶ 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify Battle North within 60 days of EPA's receipt of Battle North's RA Report. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Battle North to submit a schedule for

EPA approval. Battle North shall perform all activities described in the notice in accordance with the schedule.

- (d) If EPA concludes, based on the initial or any subsequent RA Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to Battle North within 60 days of EPA's receipt of Battle North's RA Report. This certification will constitute the Certification of RA Completion for purposes of the Settlement, including Section XXII of the Settlement (Covenants by Owners). Certification of RA Completion will not affect Battle North's remaining obligations under the Settlement.

4.6 Periodic Review Support Plan. Battle North shall submit the Periodic Review Support Plan (PRSP) for EPA approval. The PRSP addresses the studies and investigations, including, but not limited to, sampling of remediated subarea(s), that Battle North shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). Battle North shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant Five-year Review guidance.

4.7 Certification of Work Completion

- (a) **Work Completion Inspection.** Battle North shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by Battle North (and/or their representatives) and EPA (and/or their representatives).
- (b) **Work Completion Report.** Following the Work Completion Inspection, within 60 days, Battle North shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Battle North's Project Coordinator that the Work for the subarea or subareas, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 6.5 (Certification). If the RA Report(s) submitted under ¶ 4.5(b) includes all elements required under this ¶ 4.7(b), then the RA Report(s) suffices to satisfy all requirements under this ¶ 4.7(b).
- (c) Within 60 days of EPA's receipt of a Work Completion Report, if EPA concludes that the Work is not complete, EPA shall so notify Battle North. EPA's notice must include a description of the activities that Battle North must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require Battle North to submit specifications and a schedule for EPA approval. Battle North shall perform all activities described in the notice or in EPA-approved specifications and schedule.
- (d) Within 60 days of EPA's receipt of a Work Completion Report, if EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Battle

North. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the PRSP ¶ 4.6; (2) obligations under Sections X (Property Requirements), XI (Access to Information), and XII (Record Retention) of the Settlement; (3) IC obligations as provided in the ICIAP; and (4) reimbursement of Future Response Costs under Section XV (Payments of Future Response Costs) of the Settlement.

5. REPORTING

5.1 Progress Reports. Battle North shall submit a written monthly progress report to the Agencies concerning actions undertaken during the previous month consistent with the Settlement on a monthly basis, or as otherwise requested by EPA. This requirement shall continue from the date of receipt of EPA's approval of the first Subarea Response Action Work Plan until issuance of Notice of Completion of any Work, unless otherwise directed in writing by the RPM. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Settlement;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Battle North;
- (c) A description of all deliverables that Battle North submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next six weeks;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Battle North has proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the CIP during the reporting period and those to be undertaken in the next six weeks.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, Battle North shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. Battle North shall submit deliverables for EPA approval or for EPA comment as specified in the SOW and as consistent with the Settlement. If neither is

specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. Consistent with the Settlement, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. Battle North shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Battle North shall also provide EPA with paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format that is compatible with the EPA software tool Scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) 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/>.
- (c) Each file must include an attribute name for the relevant Site operable unit and relevant subarea or subareas. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Battle North does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this Certification must be signed by the Battle North's Project Coordinator, or other responsible corporate official of Battle North, and must contain the following statement:

I certify under penalty of law 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.

6.6 Approval of Deliverables

(a) Initial Submissions.

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify any submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) **Resubmissions.** Upon receipt of a notice of disapproval under ¶ 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.6(a), Battle North shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Battle North to correct the deficiencies; or (5) any combination of the foregoing.

- (c) **Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 6.6(a) (Initial Submissions) or ¶ 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Battle North shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.6(a) or ¶ 6.6(b) does not relieve Battle North of any liability for stipulated penalties under the Settlement.

- 6.7 **Supporting Deliverables.** Battle North shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Battle North shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see ¶ 9 References). Battle North shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.
- (a) **Health and Safety Plan.** The HASP describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Battle North shall develop a HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the HASP provides for the protection of human health and the environment.
 - (b) **Emergency Response Plan.** An ERP must describe procedures to be used in the event of an accident or emergency at OU3 (for example, power outages, water impoundment failure, slope failure, etc.). An ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, state, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of EPCRA, 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Section XIV (Emergency Response and Notification of Releases) of the Settlement in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
 - (c) **Field Sampling Plan(s).** The Field Sampling Plan(s) (FSPs) augment the QAPP and address RA sample collection activities. EPA anticipates individual FSPs for

each subarea of OU3. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Battle North shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988). Each FSP shall be certified in accordance with ¶ 6.5 (Certification).

- (d) **Quality Assurance Project Plan.** The QAPP addresses sample analysis and data handling regarding the Work performed to support the PDI and RA for each subarea. The QAPP must include a detailed explanation of Battle North's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples and be certified in accordance with ¶ 6.5 (Certification. Battle North shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by Battle North in implementing the Settlement (Battle North's Labs);
 - (2) To ensure that Battle North's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that Battle North's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010) or other methods acceptable to EPA;
 - (4) To ensure that Battle North's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For Battle North to provide EPA with notice at least 7 days prior to any sample collection activity;
 - (6) For Battle North to provide split samples and/or duplicate samples to EPA upon request;
 - (7) For EPA to take any additional samples that it deems necessary;

- (8) For EPA to provide to Battle North, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For Battle North to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the Settlement.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the Cleanup Levels required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that Cleanup Levels will be met and (ii) to determine whether Cleanup Levels have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities;
 - (8) Describe procedures for retention of documents and for final storage of documents; and
 - (9) Be certified in accordance with ¶ 6.5 (Certification).
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 4.4 (Off-Site Shipments). If required by EPA, the TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;

- (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Battle North shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Cleanup Levels required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that Cleanup Levels will be met and (ii) to determine whether Cleanup Levels have been met;
 - (3) O&M Reporting. Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Cleanup Levels; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that Cleanup Levels are not achieved and a schedule for implementing these corrective actions.
- (h) **Institutional Controls Implementation and Assurance Plan.** The ICIAP describes plans to implement, maintain, and enforce the ICs at OU3. EPA and the State shall develop the ICIAP, and Battle North shall support EPA's implementation of the ICIAP as requested.

7. SCHEDULES

- 7.1 **Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. Battle North may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	RDWP (includes HASP, ERP, and QAPP)	3.1 6.7(a) 6.7(b) 6.7(d)	60 days after EPA's Authorization to Proceed regarding Battle North's Contractor under Section VIII of the Settlement
2	PDIWP (includes contents of an FSP)	3.3(a) 6.7(c)	No less than 90 days prior to scheduled commencement of field sampling activities
3	PDI Evaluation Report	3.3(b)	45 days after receipt of laboratory results from the associated PDIWP
4	Preliminary (30%) RD (includes CQA/QCP)	3.4 6.7(e)	30 days after EPA approval of PDI Evaluation Report
5	Pre-final (90/95%) RD	3.5	45 days after EPA comments on Preliminary RD
6	Final (100%) RD	3.6	20 days after EPA comments on Pre-Final RD

7.3 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	RAWP (includes RA FSPs)	4.1, 6.7(c)	45 days after EPA approval of Final (100%) RD
2	Preconstruction Conference	4.2(a)	10 days after Approval of RAWP
3	Start of Construction		After Approval of RAWP
4	Completion of Construction		To Be Determined
5	RA Completion Inspection	4.5(a)	10 days after completion of construction
6	RA Report	4.5(b)	45 days after RA Completion Inspection
7	Work Completion Report	4.7(b)	90 days after Work Completion Inspection
8	Periodic Review Support Plan	4.6	Five years after Start of RA Construction

8. STATE PARTICIPATION

8.1 Copies. Battle North 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 Battle North, send a copy of such document to the State.

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

- (a) Any EPA approval or disapproval under ¶ 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any disapproval of, or Certification of RA Completion under ¶ 4.5 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under ¶ 4.7 (Certification of Work Completion).

9. REFERENCES

- 9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:
- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
 - (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
 - (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
 - (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
 - (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
 - (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
 - (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
 - (h) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
 - (i) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
 - (j) Remedial Design/ Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
 - (k) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
 - (l) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
 - (m) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
 - (n) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

- (o) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (p) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (q) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (r) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (s) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (t) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (u) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (v) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (w) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (x) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (y) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (z) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
- (aa) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (bb) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (cc) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).

- (dd) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>.
- (ee) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (ff) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

9.3 For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Battle North receives notification from EPA of the modification, amendment, or replacement.

Appendix 3

Battle North Restrictive Notices

**Use Restrictions
Battle North Restrictive Notices
Eagle Mine Superfund Site**

Below are the use restrictions that Battle North will include in the Restrictive Notices for the areas described in Paragraph 52.a(1)-.a(6) of the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien.

(1) Consolidated Tailings Pile

Use Restrictions

- a) Access to the CTP is prohibited, except for authorized monitoring, maintenance and remedial activities and except for recreational use authorized by OWNER in consultation with the Department. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on the CTP. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the CTP.
- d) Activities that may damage the CTP cover are prohibited. Such activities include, but are not limited to, grazing, digging, drilling, tilling, grading, excavation, use as an athletic field, and vehicular traffic. Solar arrays may be placed on the cover in accordance with the following conditions:
 - i. The Department must review and approve final design plans, including post-construction monitoring and maintenance plan, before any ground disturbance activities commences;
 - ii. All structures must be above grade, unless otherwise approved by the Department;
 - iii. Structures must be designed and constructed to prevent ponding on, or erosion of, the CTP cover. Positive drainage must be maintained for the CTP top deck both during and after construction of the solar arrays.

- iv. OWNER must inspect the solar arrays annually for signs of damage to the CTP cover. OWNER must report inspection results to the Department within 2 weeks of the date of the inspection. OWNER must repair any damage within 30 days of the inspection.
- e) No water from the uppermost aquifer beneath the CTP may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on the CTP, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of the CTP is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the CTP is prohibited. Engineered components of the remedy include: the mine water transport pipeline; water treatment plant; surge ponds; CTP cover; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(2) **Maloit Park**

Use Restrictions

- a) Access to Maloit Park is prohibited, except for authorized monitoring, maintenance and remedial activities and except for recreational use authorized by OWNER in consultation with the Department. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Maloit Park. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Maloit Park.
- d) No excavation, drilling, grading, digging, or tilling, is allowed on Maloit Park, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

- e) No water from the uppermost aquifer beneath Maloit Park may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on Maloit Park, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of Maloit Park is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on Maloit Park is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(3) Old Tailings Pile

Use Restrictions

- a) Access to the OTP is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Owner shall monitor and control trespasser use by performing weekly patrol of the OTP. Upon discovering trespassers, Owner shall contact local law enforcement and request immediate assistance to remove trespassers from the OTP.
- c) Residential use is prohibited on the OTP. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- d) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the OTP.

- e) No excavation, drilling, grading, digging, or tilling, is allowed on the OTP, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) No water from the uppermost aquifer beneath the OTP may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- g) Construction or maintenance of any standing body of water on the OTP, including any pond or storm water retention basin, is prohibited.
- h) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- i) Irrigation of the OTP is prohibited.
- j) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the OTP is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(4) Rex Flats

Use Restrictions

- a) Access to Rex Flats is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Rex Flats. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Rex Flats.

- d) No excavation, drilling, grading, digging, or tilling, is allowed on Rex Flats, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- e) No water from the uppermost aquifer beneath Rex Flats may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on Rex Flats, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of Rex Flats is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on Rex Flats is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(5) Roaster Pile #5

Use Restrictions

- a) Access to Roaster Pile #5 is prohibited, except for authorized monitoring, maintenance and remedial activities. Owner shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." Owner shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Roaster Pile #5. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Roaster Pile #5.

- d) No excavation, drilling, grading, digging, or tilling, is allowed on Roaster Pile #5, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
 - e) No water from the uppermost aquifer beneath Roaster Pile #5 may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
 - f) Construction or maintenance of any standing body of water on Roaster Pile #5, including any pond or storm water retention basin, is prohibited.
 - g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
 - h) Irrigation of Roaster Pile #5 is prohibited.
- (6) **The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area**

Use Restrictions on the Trestle Area

- a) Access to the Trestle Area is prohibited, except for authorized monitoring, maintenance and remedial activities. Owner shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." Owner shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on the Trestle Area. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the Trestle Area.
- d) No excavation, drilling, grading, digging, or tilling, is allowed on the Trestle Area, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- e) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.

- f) Irrigation of the Trestle Area is prohibited.
- g) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the Trestle Area is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

Groundwater Use Restrictions on the Pipeline Parcel

- a) No water from the uppermost aquifer beneath the Pipeline Parcel may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

Appendix 4

Battle South Restrictive Notice

Use Restrictions
Battle South Restrictive Notice
Eagle Mine Superfund Site

Below are the use restrictions that Battle South will include in the Restrictive Notice for the area described in Paragraph 0.c(1) of the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien.

(1) Gilman

Use Restrictions

- a) Access to Gilman is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall maintain a 6-foot chain link fence preventing access from highway 24 at critical entry points. Gates in the fence must be locked at all times except to allow authorized ingress and egress. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) OWNER shall monitor and control trespasser use by performing weekly patrol of Gilman access points. Upon discovering trespassers, OWNER shall contact local law enforcement and request immediate assistance to remove trespassers from Gilman.
- c) Residential use is prohibited in Gilman. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- d) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited in Gilman.
- e) No excavation, drilling, grading, digging, or tilling, is allowed in Gilman, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) No water from the uppermost aquifer beneath Gilman may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

- g) Construction or maintenance of any standing body of water in Gilman, including any pond or storm water retention basin, is prohibited.
- h) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- i) Irrigation of Gilman is prohibited.
- j) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy in Gilman is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.