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Appendix

Appendix 1. SOW

1 Introduction

- 1.1 This Consent Order /Administrative Settlement Agreement and Order on Consent (“CO/ASAOC”) for Remedial Investigation (“RI”) and Feasibility Study (“FS”) and together with the RI, the “RI/FS”) is entered into by the Idaho Department of Environmental Quality (“IDEQ”), the United States Department of Agriculture Forest Service (“USFS” or “Forest Service”) the Shoshone-Bannock Tribes (“Tribes”), Nu-West Mining, Inc. (“Nu-West”), and CF Industries, Inc. (“CFI”) (formerly known as Central Farmers Fertilizer Company). Nu-West and CFI shall collectively be referred to as “Respondents” or individually as a “Respondent.” IDEQ, the Forest Service, the United States Department of the Interior, U.S. Fish and Wildlife Service (“FWS”), and the Tribes shall collectively be referred to as “Agencies” or individually as an “Agency.” The Respondents, IDEQ, the Forest Service and the Tribes shall collectively be referred to as the “Parties.” The mine site addressed in this CO/ASAOC is the Georgetown Canyon Mine Site (the “Site”), located primarily on private lands that are subject to the jurisdiction of IDEQ and partly on National Forest System land subject to the jurisdiction, custody, or control of the Forest Service. A more detailed description of the Site is provided in Section 4 of this CO/ASAOC (“Definitions”).
- 1.2 The IDEQ has been designated as the “Lead Agency” for this Site. The Forest Service will implement the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”) under this CO/ASAOC for the portion of the Site located on National Forest System land. FWS and the Tribes have each elected to participate at the Site as Support Agencies.
- 1.3 This CO/ASAOC provides for the performance by Respondents of an RI and FS for the Site in a manner consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”). In entering into this CO/ASAOC, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, by conducting an RI; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting an FS; and (c) to recover response and oversight costs incurred by IDEQ, the Forest Service, the Tribes, and the FWS with respect to this CO/ASAOC. The Work required for performance of the RI and FS is specified in the Statement of Work (“SOW”) attached, and incorporated by reference, as Appendix 1 to this CO/ASAOC, and is governed by Section 9 of this CO/ASAOC (“Work to be Performed”). The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has approved of and concurred in this CO/ASAOC in accordance with the requirements of Section 4 of Executive Order 12580 (52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R., 1987 Compilation, p. 193).

2 Jurisdiction

- 2.1 The IDEQ has been designated as the "Lead Agency" for the purpose of project management, oversight, implementation, coordinating communication among the Parties, and serving as the point of contact with Respondents. The Parties recognize it is important to communicate a single set of instructions to Respondents following consultation among the Agencies. Accordingly, IDEQ has primary responsibility for the portion of the Site located on private land. Pursuant to Section 8.1, IDEQ has identified a Project Manager who shall act on behalf of the State of Idaho. Where this CO/ASAOC cites IDEQ or its Project Manager as making a determination, approval, or disapproval (collectively "decision"), or taking any action, that decision or action will be made or taken under Idaho law.
- 2.2 The Forest Service will implement CERCLA at this Site and under this CO/ASAOC to the full extent the Forest Service is delegated CERCLA authority under Executive Order 12580 (52 Fed. Reg. 2926 (Jan. 23, 1987), 3 C.F.R., 1987 Compilation, p. 193). The Forest Service generally has CERCLA authority on National Forest System land and on land where the sole source of a release of hazardous substances is from National Forest System land. The Forest Service will serve as the CERCLA Lead Agency for actions within the Forest Service's delegated CERCLA jurisdiction. Pursuant to Section 8.1, the Forest Service's designee for this Site shall have the authority vested in a "Remedial Project Manager" pursuant to CERCLA and the NCP. The Forest Service will make decisions or take actions relating to lands under the jurisdiction, custody or control of the Forest Service under CERCLA and communicate those decisions or actions to IDEQ. IDEQ will communicate in writing to Respondents both IDEQ's and the Forest Service's decisions and shall serve as a single point of contact between Respondents and the Agencies.
- 2.3 This CO/ASAOC is entered into by IDEQ pursuant to Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130, the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401 to 39-4432, Idaho's Water Quality Act, Idaho Code §§ 39-3601, *et seq.*, and the Rules and Standards promulgated pursuant thereto. This CO/ASAOC is entered into by the Forest Service under the authority vested in the President of the United States by Sections 104, 107, 122(a), and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622(a), and 9622(d)(3).
- 2.4 This CO/ASAOC is entered into by the Tribes pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- 2.5 In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 USC §§ 9604(b)(2) and 9622(j)(1), the Forest Service notified the natural resource trustees of negotiations with Respondents regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship.

- 2.6 The Parties recognize that this CO/ASAOC has been negotiated in good faith and that the actions taken by Respondents in accordance with this CO/ASAOC do not constitute an admission of liability. Without admitting any liability, Respondents agree to the terms and conditions of this CO/ASAOC without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.
- 2.7 In any action to enforce the terms of this CO/ASAOC, the Parties agree not to contest its validity or the authority and jurisdiction of IDEQ or the United States, to issue and enforce this CO/ASAOC, consistent with its terms, and the Parties agree to comply with and be bound by the terms and conditions of this CO/ASAOC. In addition, the Parties agree not to contest the authority and jurisdiction of IDEQ to enforce the provisions of Section 23 (Reimbursement of State Response Costs), the authority of the Tribes to enforce the provisions of Section 25 (Reimbursement of Tribal Response Costs), or the authority and jurisdiction of the United States to enforce the provisions of Section 24 (Reimbursement of Federal Response Costs), as applicable to those entities. As a signatory and Support Agency under this CO/ASAOC, the Tribes have authority to enforce the provisions in Section 25 (Reimbursement of Tribal Response Costs) in accordance with the terms of this CO/ASAOC but do not have any authority to enforce any other terms of this CO/ASAOC or related work plans or requirements. By signing this CO/ASAOC, however, Respondents do not concede or waive their right to object to the authority of the United States, the Tribes, or IDEQ to issue, take, or enforce any other order or action relating to this Site.

3 Parties Bound

- 3.1 This CO/ASAOC shall apply to, and be binding upon IDEQ, the Forest Service, the Tribes, Respondents and Respondents' officers, employees, agents, successors and assigns. Although not a signatory to this CO/ASAOC, FWS has reviewed this CO/ASAOC and agrees to comply with Section 24.4. Any change in ownership or corporate status of Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Respondents' obligation to comply with the requirements of this CO/ASAOC or to ensure compliance by any successor or assign of Respondents, regardless of whether Respondents continue to exist following such transaction. The signatories to this CO/ASAOC certify that they are authorized to execute and legally bind the Parties they represent to this CO/ASAOC.
- 3.2 Respondents shall provide a copy of this CO/ASAOC and its Appendix to each contractor, subcontractor, laboratory, and consultant retained to perform Work under this CO/ASAOC within fourteen (14) days after the Effective Date of this CO/ASAOC or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CO/ASAOC and its Appendix. Notwithstanding the provisions of any such contract, however, Respondents are and shall remain jointly and severally responsible for compliance with this CO/ASAOC.

- 3.3 Respondents are jointly and severally liable for carrying out all activities required by this CO/ASAOC. In the event of the insolvency or other failure of a Respondent to implement the requirements of this CO/ASAOC, the remaining Respondent shall complete all such requirements.
- 3.4 The Parties acknowledge and confirm that the Tribes are participating in this CO/ASAOC solely as a Support Agency and shall have no rights hereunder to enforce the terms of, to order, direct or disapprove of any Work, to assess any penalties, or to receive any compensation or reimbursement aside from that provided for in Section 25 of this CO/ASAOC.

4 Definitions

- 4.1 Unless otherwise expressly provided herein, terms used in this CO/ASAOC 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 CO/ASAOC or in the attached Appendix, the following definitions shall apply:

“**Agencies**” shall mean IDEQ, the Forest Service, the FWS, and the Tribes.

“**CO/ASAOC**” shall mean this Consent Order/Administrative Settlement Agreement and Order on Consent, the SOW, and all documents incorporated by reference into this document including without limitation IDEQ and Forest Service approved Deliverables. IDEQ and Forest Service approved Deliverables are incorporated into and become part of this CO/ASAOC upon approval by IDEQ and the Forest Service. In the event of a conflict between this CO/ASAOC and the SOW or other incorporated documents, this CO/ASAOC shall control.

“**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“**Day**” shall mean a calendar day unless expressly stated to be a Working Day.

“**Deliverable**” shall mean the Draft(s) and Final Work Plan, Draft(s) and Final Sampling and Analysis Plan (“SAP”), Draft(s) and Final RI Report, Draft(s) and Final FS Report for the Site and any other document required pursuant to the SOW.

“**Effective Date**” shall mean the later of the dates on which this CO/ASAOC has been signed by all Parties.

“**EPA**” shall mean the United States Environmental Protection Agency.

“**EPHA**” shall mean the Idaho Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130.

“**Federal Agency**” shall mean FWS or USFS.

“Forest Service” or “USFS” shall mean the United States Department of Agriculture, Forest Service.

“Federal Response Costs” shall mean all direct and indirect costs incurred by the Forest Service, other USDA agencies, and FWS after June 30, 2013, performing work related to this CO/ASAOC and the Work, including, but not limited to, costs incurred in preparing this CO/ASAOC, reviewing of Deliverables, overseeing implementation of the Work, preparing the Proposed Plan and Record of Decision or otherwise implementing, overseeing, or enforcing this CO/ASAOC, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred to obtain Site access (including, but not limited to, costs and attorney’s fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), emergency response and the costs incurred pursuant to Section 31.7 (Work Takeover). Federal Response Costs also shall mean \$14,170.76 in Federal Response Costs incurred by the Forest Service before July 1, 2013.

“FWS” shall mean the United States Department of the Interior, U.S. Fish and Wildlife Service.

“Hazardous Substances” shall include those substances defined under Idaho Code § 39-7203(3) and CERCLA Section 101(14), 42 U.S.C. § 9601(14) and shall also include “pollutants” as defined by Idaho Code § 39-3602(19) and IDAPA 58.01.02.003.87, “deleterious materials” as defined by IDAPA 58.01.02.003.22 and “hazardous material” as defined by IDAPA 58.01.02.003.48.

“HWMA” shall mean the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401 to 39-4432.

“Idaho’s Water Quality Act” shall mean Idaho Code §§ 39-3601, *et seq.*

“IDEQ” shall mean the State of Idaho Department of Environmental Quality.

“Lead Agency” shall mean the State of Idaho through IDEQ for the purposes set forth in Section 2.1 and the Forest Service for the purposes set forth in Section 2.2.

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

“Natural Resource Damages” or “NRD” shall mean damages for harm to federal, state, or tribal natural resources which the United States, the State and/or the Tribes have the authority to seek pursuant to common law, state statutory law, or federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

“Project Manager” shall have the meaning set forth in Section 8.1.

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

“Site” shall mean the Georgetown Canyon Phosphate Mine approximately 7 miles east of Georgetown, Idaho, including the areal extent of contamination from the mine and all suitable areas in very close proximity to the contamination necessary for response action implementation. The Site occurs primarily on private lands, although the Site is partially located on National Forest System land on the Caribou-Targhee National Forest, and is more particularly described as being located in Township 10 South, Range 45 East (Sections 5-8, 17-19, 30) and Township 10 South, Range 44 East (Sections 12, 13, 24, 25), approximately 30 miles southeast of Soda Springs. The Site is generally shown on the map attached to this CO/ASAOC as Attachment A to the SOW, which is incorporated by reference into this CO/ASAOC. The Site does not include the associated industrial complex area, which has been addressed pursuant to a separate Judgment between Nu-West and the IDEQ, and which is described and depicted in Attachment A to the SOW.

“State” shall mean the State of Idaho, including its departments, agencies, and instrumentalities.

“State Response Costs” shall mean all direct and indirect costs incurred by the IDEQ, after June 30, 2013, performing work related to this CO/ASAOC and the Work, including, but not limited to, costs incurred in preparing this CO/ASAOC, reviewing of Deliverables, overseeing implementation of the Work, review and selection of the appropriate remedial action to be taken at the Site or otherwise implementing, overseeing, or enforcing this CO/ASAOC, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred to obtain Site access (including, but not limited to, costs and attorney’s fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), emergency response and the costs incurred pursuant to Section 31.7 (“Work Takeover”). State Response Costs also shall mean \$21,801.60 in State Response Costs incurred by IDEQ before July 1, 2013.

“Statement of Work” or “SOW” shall mean the documents that outline the Work to be performed by Respondents to implement the RI and FS to satisfy the requirements of this CO/ASAOC, as set forth in Appendix 1 of this CO/ASAOC. The SOW is incorporated into this CO/ASAOC and is an enforceable part of this CO/ASAOC, as are any modifications made thereto in accordance with this CO/ASAOC.

“Support Agency” means the FWS, the Forest Service (for non-National Forest System land), and the Tribes, as the agencies that will provide support agency coordinators or project managers to furnish necessary data to IDEQ or the Forest Service, review response data and documents, and/or provide other assistance requested by the Project Manager.

“Tribal Response Costs” shall mean all direct or indirect costs not inconsistent with the NCP incurred by the Tribes after the Effective Date in connection with review by the Tribes of Work, including but not limited to: reasonable time and travel costs associated with review of the Work performed under the SOW; contractor costs; compliance monitoring, including the collection and analysis of split samples; Site visits; review of reports; and reasonable overhead charges.

“Tribes” shall mean the Shoshone-Bannock Tribes.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“USDA” shall mean the United States Department of Agriculture.

“Work” shall mean all tasks that Respondents are required to perform pursuant to this CO/ASAOC, the SOW, and all Deliverables produced pursuant to this CO/ASAOC.

“Working Day” shall mean a day other than Saturday, Sunday, or a Federal holiday. In computing any period of time under this CO/ASAOC, where the last day falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

“Work Plan” shall mean the Work Plan described further in the SOW.

5 IDEQ’s and the Forest Service’s Findings of Fact and Conclusions of Law

5.1 Findings of Fact. The IDEQ and USFS make the following findings of fact:

- 5.1.1** The Site is located in Bear Lake and Caribou Counties, Idaho, primarily on private lands and partially on National Forest System land. The IDEQ exercises jurisdictional control over environmental issues in the State of Idaho and on State and privately owned lands; the Forest Service exercises jurisdiction, custody and control over National Forest System lands on behalf of the United States.
- 5.1.2** The Utah Fertilizer and Chemical Manufacturing Company (“UF&CMC”) was incorporated January 29, 1908, to purchase 16 placer mining claims patented between 1912 and 1915 (Patent # 245166, 483955, 483956, 488040, 548595 and 548596) at Georgetown Canyon, which comprise the private portion of the Site. The first known report of mining-related activity in Georgetown Canyon was in 1909. UF&CMC put down several tunnels in the area covered by the claims.
- 5.1.3** In 1928, UF&CMC sold all of its interests in the mining claims of Georgetown Canyon to the Stockholders Syndicate of Los Angeles, California (“Stockholders”). In 1953, Stockholders conducted 2,400 feet of tunneling during the year and the work was done under contract to Centennial Development Company of Eureka, Utah.
- 5.1.4** In 1955, Central Farmers Fertilizer Company (“Central Farmers”) purchased the private portion of the Site from Stockholders. In or about 1959, Central Farmers constructed a processing facility near the Site. The processing facility is not part of the Site. From June 1958 through 1962, open pit surface mining was conducted by Wells Cargo, Inc., a contractor hired by Central Farmers to operate the mine.
- 5.1.5** In July 1964, the El Paso Natural Gas Products Company (“El Paso”) purchased the private portion of the site from the Central Farmers, and in October 1964,

El Paso closed the plant facility and moved parts of it to Conda, Idaho, where El Paso was building a new phosphate processing plant. No phosphate ore is presently known to have been produced at the Site after the El Paso purchase in 1964.

- 5.1.6** In May 1972, Agricultural Products Corporation (“APC”), a wholly-owned subsidiary of Beker Industries Corporation (“Beker”) purchased the private portion of the Site from El Paso. APC was dissolved and all of its property holdings, including the private portion of the Site were assigned to Beker. In December 1978, Beker formed the Conda Partnership with Western Cooperative Fertilizers (U.S.) Inc. (“Western”), after which Beker transferred its interest in the private portion of the Site to Conda Partnership.
- 5.1.7** In 1987, Nu-West Industries, Inc. acquired Beker’s interest in the Conda Partnership. In 1992, Nu-West Industries, Inc. acquired the stock of Western, which became a wholly owned subsidiary of Nu-West Industries, Inc. Western changed its name to Nu-West Mining, Inc.
- 5.1.8** In 1995, the Conda Partnership was dissolved and all interest in the Site was conveyed to Nu-West Mining, Inc. Nu-West Mining, Inc. is the current owner of the private land at the Site.
- 5.1.9** The Site is located on the northern portion of the east limb of the Georgetown Syncline, with the former processing facility located between the two limbs. Most of the Site drains into Georgetown Canyon and contributes runoff to Upper Georgetown Creek (upper Georgetown Creek is in the Bear Lake subbasin), its Assessment Unit number is ID 16010201BR022_02b and is listed in Category 5 of IDEQ’s 2010 Integrated Report. The northern-most area of the Site drains to the South Fork of Deer Creek (Assessment Unit #ID17040105SK010_02a) and is listed in Category 5 of IDEQ’s 2010 Integrated Report.
- 5.1.10** Mining activities at the Site included the construction of waste-rock piles comprised of middle-waste shale with elevated concentrations of selenium and other mining-related Hazardous Substances. Sampling results since 1996 at the Site and at similar sites have indicated elevated levels of selenium and other Hazardous Substances in waste rock, soils, vegetation, surface water, and groundwater.
- 5.2** Conclusions of Law. Subject to Section 5.1, and based on the Findings of Fact set forth above in Sections 5.1.1–5.1.10, IDEQ, and the USFS make the determinations in Sections 5.2.1 through 5.2.9.
- 5.2.1** The Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- 5.2.2** The contaminants detected at the Site, including selenium, are Hazardous Substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

- 5.2.3 There has been an actual or threatened “release,” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more known Hazardous Substances from the facility.
- 5.2.4 There has been an actual discharge, as defined in IDAPA 58.01.02.010.27, of one or more known pollutants or hazardous or deleterious materials from the facility to waters of the State of Idaho.
- 5.2.5 Respondents are each a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.010.76.
- 5.2.6 Respondents are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as past and/or current owners and/or operators of the Site and/or as persons who arranged for the disposal of hazardous substances at the Site.
- 5.2.7 Respondents are liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollutants and/or hazardous and deleterious materials.
- 5.2.8 The actual or threatened release of pollutants, Hazardous Substances and/or deleterious materials from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.
- 5.2.9 The Work is necessary to protect public health, welfare or the environment, will be deemed consistent with CERCLA and the NCP, if approved by the Forest Service, and EPHA and HWMA, if approved by IDEQ, and will expedite effective response actions, and is in the public interest.

6 Collateral Use of this CO/ASAOC

- 6.1 Except as set forth in Section 2.7, nothing in this CO/ASAOC shall constitute or be construed as an admission of jurisdiction, liability, fact, or legal conclusion by any of the Parties.
- 6.2 None of the provisions of this CO/ASAOC shall be admissible in evidence against any Party to this CO/ASAOC in any proceeding, other than in a proceeding to enforce this CO/ASAOC or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this CO/ASAOC with the NCP, CERCLA, EPHA, HWMA, or Idaho’s Water Quality Act. Nothing herein shall preclude Respondents from offering this CO/ASAOC into evidence in any proceeding against third parties.

7 Agreement and Order

- 7.1 Based upon the foregoing provisions of this CO/ASAOC, it is hereby ordered and agreed that Respondents shall comply with the provisions of this CO/ASAOC, including but not limited to the SOW and documents incorporated by reference into this CO/ASAOC, and perform the actions required in this CO/ASAOC.

8 Project Manager/Coordinator

- 8.1 IDEQ has been designated the Lead Agency for the Site as set forth in Section 2.1. IDEQ, as the overall Lead Agency for the Site, will coordinate with the Forest Service, as the CERCLA Lead Agency for actions within the Forest Service's delegated CERCLA jurisdiction, and the Support Agencies. The Parties recognize it is important to communicate a single set of instructions to Respondents following consultation among the Agencies. Accordingly, IDEQ shall be responsible for gathering the comments of the other Agencies and communicating the consensus direction to Respondents. IDEQ will appoint a Project Manager. The initial Project Manager for the Site is:

Michael Rowe
Project Manager
Idaho Department of Environmental Quality
444 Hospital Way, Suite 300
Pocatello, ID 83201
Phone: (208) 236-6160
Fax: (208) 236-6168
E-mail: Michael.Rowe@deq.idaho.gov

Respondent Nu-West has designated as the project coordinator for the Site:

Mitchell J. Hart, P.E.
Manager, Mining Projects and Remediation
Nu-West Mining, Inc.
Mail: PO Box 758
Ship: 95 East Hooper
Soda Springs, ID 83276
Phone (Soda Springs): (208) 547-1800
Phone (Dry Valley): (208) 547-3935 Ext. 13
Fax: (208) 547-1807
Cell: (303) 883-1184
E-mail: mitchell.hart@agrium.com

Respondent CFI has designated as the Project Coordinator for the Site:

Craig A. Kovach, P.G.
Director, Environmental Affairs
CF Industries, Inc. Phosphate Operations

660 E. County Line Rd.
Plant City, FL 33565
Phone: (813) 782-1591
Fax: (813) 779-0371
E-mail: ckovach@cfindustries.com
Mail: PO Drawer L, Plant City, FL 33564

- 8.2** The Project Manager and the Forest Service Remedial Project Manager shall be responsible for overseeing implementation of the Work and/or activities required at the Site under this CO/ASAOC. IDEQ, the Forest Service, and/or Respondents may change their respective Project Manager/Project Coordinator and shall notify each other in writing at least five (5) days prior to any such change.
- 8.3** The Respondents and the Project Manager shall send Deliverables and other written communications sent under this CO/ASAOC by regular or overnight mail and/or electronically and consistent with Section 9.6 to the following persons:

For IDEQ: the Project Manager designated in Section 8.1.

For the USFS:

J. M. (Mike) Usher, P.E.
Remedial Project Manager
USDA Forest Service
Intermountain Region (R-04)
324 25th Street
Ogden, UT 84401
Phone: (801) 625-5540
Cell: (801) 450-3412

Consistent with Section 2.2, the Forest Service designee above shall have the authority vested in a "Remedial Project Manager" pursuant to CERCLA and the NCP, for land within the Forest Service's delegated CERCLA jurisdiction.

For the FWS:

Ms. Sandi Fisher
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, ID 83202
Phone: (208) 237-6975 Ext. 102
Fax: (208) 237-8213
E-mail: sandi_fisher@fws.gov

For the Shoshone Bannock Tribes:

Kelly Wright
Shoshone Bannock Tribes

P.O. Box 306 Pima Dr.
Fort Hall, ID 83203
Phone: (208) 478-3903
Fax: (208) 478-3909
E-mail: kwright@shoshonebannocktribes.com

For Respondents: the Project Coordinators designated in Section 8.1.

- 8.4** The Project Manager shall have the authority vested in the Project Manager by the EPHA, the HWMA, and other applicable law. Absence of the Project Manager from the Site shall not be cause for stoppage of Work unless specifically directed by the Project Manager.

9 Work to be Performed

- 9.1** Respondents agree to perform an RI/FS at the Site, consistent with this CO/ASAOC and the attached SOW. Investigation and related activities already have been performed that may be relevant to Respondents in completing the Work under this CO/ASAOC and the SOW, including but not limited to those activities performed in connection with the July 2001 Area-Wide Consent Order/Administrative Order on Consent and other activities performed by Respondents and various other public and private entities. The Parties intend that relevant data from prior investigations after proper data quality assessment shall be considered in the course of the Work.
- 9.2** The general objective of the RI is to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of Hazardous Substances, pollutants or contaminants at or from the Site, and to assess risk to human health and the environment. The general objective of the FS for the Site is to identify and evaluate (based on treatability testing, where appropriate) alternatives for remedial action (if any) designed to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of Hazardous Substances from the Site. The alternatives evaluated shall include, but shall not be limited to, the range of alternatives described in the NCP and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, Respondents shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The FS Report, as amended, and the administrative record shall provide the basis for a proposed plan to be jointly issued under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a), by the Forest Service and under Idaho Code § 39-108 by IDEQ, and shall document the development and analysis of remedial alternatives.
- 9.3** Respondents shall conduct activities and submit Deliverables as provided by this CO/ASAOC and the SOW for the development of the RI/FS and in full accordance with

the standards, specifications, and other requirements of the Work Plan and SAP, as initially approved or modified, and as may be amended by the Project Manager. All such Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance, as may be amended or modified by EPA, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #9355.3-01, October 1988); "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-09A, April 1992) and guidance referenced therein; and guidance referenced in the SOW. In addition, all Work conducted shall be done in accordance with EPHA, HWMA, and Idaho's Water Quality Act. Upon the written request of the Project Manager, Respondents shall provide the Project Manager with non-validated analytical data within thirty (30) days of receiving such data.

- 9.4** Selection of Contractors, Personnel. The Work shall be performed under the direction and supervision of Respondents' qualified personnel or their consultants with experience in CERCLA investigations and response actions. Respondents shall notify the Project Manager of their qualifications or the name and qualifications of any contractors or subcontractors retained to perform the Work at least fifteen (15) days prior to commencement of the portion of the Work proposed to be performed by such contractor or subcontractor. IDEQ and the Forest Service retain the right to disapprove of any or all such contractors and/or subcontractors retained by Respondents, or of Respondents' choice of themselves to do the Work. The Project Manager shall provide a single notification regarding approval or disapproval of contractors or subcontractors selected by Respondents. If the Project Manager disapproves a contractor or subcontractor, the Project Manager will notify Respondents in writing. Respondents shall submit to the Project Manager a list of contractors and/or subcontractors, including the qualifications of each that would be acceptable to Respondents within thirty (30) days after receipt of the Project Manager's disapproval of a contractor. The Project Manager will provide written notice of the names of any contractor(s) and/or subcontractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors and/or subcontractors. Respondents may select any contractor and/or subcontractor from that list that is not disapproved and shall notify the Project Manager of the name of the contractor and or subcontractor selected within twenty-one (21) days after the Project Manager's authorization to proceed. During the course of the RI/FS, Respondents shall notify the Project Manager in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. IDEQ and the Forest Service shall have the same right to disapprove changes and additions to personnel as they have regarding initial notification.
- 9.5** All samples shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control (QA/QC) program equivalent to that specified in the guidance documents listed in the SOW and validated by a third party selected pursuant to section 9.4 of this agreement.

- 9.6** The documents required under this CO/ASAOC to be prepared, submitted, and implemented by Respondents shall be known as “Deliverables.” Certain Deliverables are described more fully below:
- 9.6.1** Work Plan. Respondents shall submit and implement a complete Work Plan that satisfies the SOW.
- 9.6.2** Sampling and Analysis Plan (“SAP”). Respondents shall submit and implement a SAP for the Site that includes a Site health and safety plan (“HASP”), quality assurance project plan (“QAPP”), and field sampling plan (“FSP”) covering all of the Work. These plans shall be developed in accordance with the NCP, any applicable state regulations, and any applicable EPA guidance including EPA’s current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992) and the EPA Contract Laboratory Program National Functional Guidelines for Inorganic Data Review (EPA Publication/540-R-10-011, 2010) and “EPA Contract Laboratory Program Statement of Work for Inorganic Data Review” (March 2004). In addition, the HASP shall comply with all applicable occupational safety and health regulations including the regulations at 29 C.F.R. Part 1910. Also, the FSP and QAPP will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for QA/QC. These procedures shall be consistent with 40 C.F.R. § 300.430(b)(8) and EPA Guidance for Quality Assurance Project Plans (QA/G-5) (EPA/600/R-02/009) (EPA Dec. 2002) or subsequently issued guidance and EPA Requirements for Quality Assurance Project Plans, (QA/R-5) (EPA/240/B-01/003) (March 2001) or subsequently issued guidance. The SAP shall identify laboratories to be used during performance of the Work.
- 9.6.3** RI Report. Respondents shall submit for review and approval an RI Report for the Site consistent with the SOW, the Work Plan, and the SAP.
- 9.6.4** FS Report. Respondents shall submit a FS Report which reflects data collected or approved for use during Site characterization, the Site-specific Remedial Action Objectives (“RAOs”), and the results of the baseline human health and ecological risk assessments. The FS Report shall be prepared in accordance with the SOW and the Work Plan. The FS Report shall document the development and analysis of alternatives and, with the administrative record, shall provide the basis for a Proposed Plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a), for those portions of the Site located on National Forest System land. The State shall utilize the FS Report and the administrative record to provide the bases for the selection of remedial actions for portions of the Site located on private or State-owned lands. For those portions of the Site located on National Forest System land, the Forest Service shall select the remedy, if any, in a Record of Decision. The State of Idaho shall select the remedy, if any, for those portions of the Site located on private or State-owned lands and shall incorporate that decision in a separate Consent Order pursuant to Idaho Code § 39-108.

10 Approval of Plans and Other Deliverables

- 10.1** Respondents initially shall submit all Deliverables in draft form and in accordance with the schedule provided in the SOW, or as otherwise established by the Project Manager. Such Deliverables shall be subject to review, comment, and written approval or disapproval, except the Project Manager will not approve or disapprove of the HASP portion of the SAP. The Project Manager shall consolidate any comments received from the Forest Service and the Support Agencies and provide a single set of comments to Respondents. Respondents shall provide a response to all comments by the Agencies to the Project Manager in accordance with the schedule in the SOW. If necessary, a meeting(s) or conference call(s) shall be held to discuss the response to comments and resolve issues. Approved Deliverables shall be enforceable as a part of this CO/ASAOC. All Work shall be performed in accordance with approved Deliverables, unless otherwise authorized in writing. Failure to comply with any provision of an approved Deliverable may be considered a violation of this CO/ASAOC.
- 10.2** A Deliverable may also be approved with modifications and, subject to the Dispute Resolution provision of this CO/ASAOC, shall be enforceable as part of this CO/ASAOC. In the event Respondents disagree with any decision made under this Section 10, such disagreement shall be resolved under the provisions of Section 21 (Dispute Resolution) of this CO/ASAOC. Upon completion of Dispute Resolution, the Deliverable, as modified and approved through the Dispute Resolution process, shall be incorporated herein and shall be enforceable as part of this CO/ASAOC.
- 10.3** Resubmission. Subsequent to the procedure described in subsection 10.1, Respondents shall amend and submit a revised Deliverable to the Project Manager in accordance with the schedule in the SOW. The revised Deliverable shall address all comments and correct all deficiencies identified by the Project Manager, unless such comments have been revised or withdrawn in writing. Any stipulated penalties applicable to the Deliverable shall accrue during the period specified in the SOW for resubmission by Respondents, but Respondents shall not be liable for payment of such penalties for a timely resubmission unless such resubmission is disapproved or modified due to a material defect.
- 10.3.1** Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient portion of the Deliverable, unless otherwise directed by the Project Manager. Implementation of any non-deficient portion of the Deliverable shall not relieve Respondents of any liability for stipulated penalties.
- 10.3.2** Respondents shall not proceed further with any subsequent activities or tasks until receiving approval, approval on condition, or modification of the following Deliverables: Work Plan and SAP, Draft RI Report, Treatability Testing Work Plan and SAP (if required), and Draft FS Report. While awaiting Project Manager approval, approval on condition, or modification of these Deliverables,

Respondents shall proceed with all other tasks and activities, which may be conducted independently of these Deliverables, in accordance with the schedule set forth under this CO/ASAOC.

- 10.3.3** For all remaining Deliverables not listed above in Section 10.3.2, Respondents shall proceed with all subsequent tasks, activities, and Deliverables without awaiting approval on the submitted Deliverable. IDEQ and the Forest Service reserve the right to stop Respondents from proceeding further, either temporarily or permanently, on any task, activity, or Deliverable at any point during the RI/FS.
- 10.3.4** If IDEQ and the Forest Service disapprove a resubmitted plan, report, or other Deliverable, or portion thereof, the Project Manager may again direct Respondents to correct the deficiencies. IDEQ and the Forest Service shall also retain the right to modify or develop the plan, report, or other Deliverable. Respondents shall implement any such plan, report or other Deliverable as corrected, modified, or developed by IDEQ and the Forest Service, subject only to Respondents' right to invoke Dispute Resolution (Section 21).
- 10.4** The absence of written comments in response to the submission of any Deliverable by Respondents pursuant to the schedules set out under this SOW shall not be construed as approval of the Deliverable under this CO/ASAOC. No informal advice, guidance, suggestion, or comment by the Project Manager or other IDEQ or Forest Service representatives regarding Deliverables, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this CO/ASAOC or to comply with all requirements of this CO/ASAOC.
- 10.5** Unless the Project Manager authorizes a smaller number in writing, Respondents shall provide to the Project Manager an electronic copy and three (3) paper copies of each draft and final Deliverable, including one unbound copy, and shall provide an electronic copy and one paper copy to the Forest Service and each Support Agency. Such copies shall be sent to the contacts listed in Section 8.3 of this CO/ASAOC. All reports, maps and supporting information shall be provided in readily reproducible form. Unless otherwise agreed to by the Parties, electronic copies shall be in a form that can be electronically modified. Paper copies of Deliverables shall be sent by regular or overnight mail.
- 10.6** IDEQ and the Forest Service will jointly prepare a Community Relations Plan for the Site in accordance with applicable EPA guidance and the NCP. Respondents shall provide information and otherwise cooperate in support of the preparation and implementation of such Community Relations Plan.

11 Administrative Record

- 11.1 Consistent with the requirements of 40 C.F.R. §§ 300.800-825, IDEQ and the Forest Service shall determine the contents and location of the administrative record for the Site and shall provide notice to Respondents of these contents and this location. Respondents may submit to the Project Manager for consideration for inclusion in the record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with Respondents' performance of Work. However, nothing in this Section shall be deemed to limit or affect the lawful discretion of IDEQ and the Forest Service to determine the contents of the administrative record.
- 11.2 IDEQ and the Forest Service retain the responsibility for the release of the RI Report and FS Report to the public. IDEQ and the Forest Service retain responsibility for the preparation and the release to the public of the Proposed Plan and Record of Decision in accordance with CERCLA and the NCP, and any applicable state law.

12 Other Applicable Laws

- 12.1 All actions required to be taken pursuant to this CO/ASAOC shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations, subject to the extent Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), do not require a Federal, State, or local permit for Work carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621, and the NCP. Where any portion of the Work otherwise requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- 12.2 Compliance by Respondents with the terms of this CO/ASAOC shall not relieve Respondents of their obligation to comply with CERCLA, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

13 Record Preservation

- 13.1 The original or one copy of all nonidentical records and documents in Respondents' possession, custody, or control, excluding internal drafts of Deliverables, generated or collected pursuant to this CO/ASAOC that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work, unless the Project Manager notifies Respondents in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, Respondents shall notify IDEQ, the Forest Service, and all Support Agencies at least

sixty (60) days before the documents are scheduled to be destroyed and shall provide IDEQ, the Forest Service, and all Support Agencies with the opportunity to take possession of or copy non-privileged material. Such notice is only required for five (5) years following expiration of the ten-year post-completion period, unless extended by request of IDEQ, the Forest Service, or a Support Agency, in writing.

14 Claims Against Third Parties

- 14.1** The Parties to this CO/ASAOC reserve any claims they now have, or may have in the future, against any third party including, but not limited to, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of, or related to, this CO/ASAOC, and any future and/or past costs incurred in connection with the Site or this CO/ASAOC. Nothing in this CO/ASAOC shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this CO/ASAOC for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any Hazardous Substances found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof.

15 Threatened/Endangered Species/Natural Resource Damages

- 15.1** Respondents shall immediately notify the Project Manager of any and all threatened or endangered species encountered on the Site in the course of performing activities under this CO/ASAOC.
- 15.2** For the purposes of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), the Parties agree that, upon the Effective Date of this CO/ASAOC for performance of an RI/FS, a remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within three (3) years after completion of the remedial action.

16 Counterparts

- 16.1** This CO/ASAOC may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document.

17 Access

- 17.1 Beginning on the Effective Date of this CO/ASAOC, the USFS shall permit access at all reasonable times to the portions of the Site located on National Forest System land to Respondents and their authorized representatives, as necessary to perform the Work. Nu-West shall provide access to CFI to carry out the terms of this CO/ASAOC. Respondents with ownership or control over the Site shall also provide access at all reasonable times for IDEQ, the Forest Service, and Support Agency personnel accompanied or authorized by the Project Manager to the Site and to off-Site areas under the ownership and/or control of Respondents as may be needed to implement this CO/ASAOC. Respondents shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this CO/ASAOC, provided that Respondents need not disclose such materials if protected from disclosure by a claim of attorney-client privilege or attorney work product, to the extent such protections are not limited under Sections 18.4 or 18.5.
- 17.2 Respondents shall use their best efforts to obtain such access as may be needed, if any, to private lands not under their ownership and/or control that are necessary to perform the Work. Respondents will use their best efforts to have any access agreement that they obtain include such access by IDEQ and the Forest Service as may be necessary for IDEQ and the Forest Service and their authorized representatives, and for Support Agency personnel accompanied or authorized by the Project Manager, to implement the terms of this CO/ASAOC and shall specify that Respondents are not the representatives of any governmental agencies for purposes of liability associated with Site activities. Respondents shall provide the Project Manager with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that Respondents are unable to obtain consensual access to any private lands, the appropriate governmental agencies may exercise their authorities to obtain necessary access. All persons, including but not limited to IDEQ, the Forest Service, and the Support Agencies, with access to the Site under this Section shall be required to comply with the approved health and safety plans of the Site as well as any other health and safety requirements applicable to the Site; provided the Agencies may elect, at their discretion, to adopt their own health and safety plan applicable to their employees and their contractors. For purposes of this Section, "best efforts" includes the payment of reasonable sums of money in consideration of an access agreement and/or access easement.

18 Sampling/Data Availability/Access to Information

- 18.1 Respondents shall notify the Project Manager at least five (5) Working Days prior to conducting field events, including construction, excavation, drilling and sampling events. The five (5) day notice period may be shortened if the Project Manager agrees that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of another Party,

allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this CO/ASAOC.

- 18.2** Respondents waive any objection to the validity and admissibility of any data generated in the course of performance of Work that have been collected or generated in compliance with this CO/ASAOC and validated in accordance with the QA/QC procedures set forth in the SAP. The Parties do not waive their rights to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.
- 18.3** All results of sampling, tests, modeling or other data (including raw data) generated by Respondents, or on Respondents' behalves, during implementation of this CO/ASAOC, shall be submitted to the Project Manager, upon request, in the subsequent progress report as described in the SOW. Upon request, the Project Manager will make available to Respondents validated data generated by IDEQ and the Forest Service unless it is exempt from disclosure by any federal or state law or regulation. Respondents shall provide to IDEQ and the Forest Service, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CO/ASAOC subject to Sections 18.4 and 18.5.
- 18.4** Respondents agree not to assert any business confidentiality or privilege claim with respect to any analytical data relating to sampling, monitoring, or other data gathering activities required to be performed under this CO/ASAOC or with respect to observations of conditions at or resulting from releases at the Site made or generated in the course of the performance of the Work. Respondents may assert a claim of business confidentiality covering any other type of information submitted to the Project Manager pursuant to the requirements of this CO/ASAOC, provided that such claim is consistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of confidentiality accompanies the information when it is received by the Project Manager, or if the Forest Service has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice. Disclosure of such information to IDEQ shall be governed by the provisions of Sections 18.4 and 18.5 and the Idaho Public Records Act, Idaho Code §§ 9-337–9-350.
- 18.5** Respondents may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If Respondents assert such a privilege with respect to a document or information that is requested by the Project Manager, they shall inform the Project Manager of that decision and provide the Project Manager with the date, author, recipient(s), title, and description of the document or information withheld. Respondents shall also identify which privilege(s) they assert applies to the document or information withheld and explain the basis for the assertion. Based on the information supplied by Respondents, IDEQ and the

Forest Service shall determine whether to accept Respondents' claim of privilege. In the event IDEQ and the Forest Service disagree with Respondents' claim of privilege, Respondents shall promptly disclose the document or information previously withheld, unless Respondents dispute the determination by invoking the Dispute Resolution provisions of Section 21 of this CO/ASAOC. However, no documents, reports or other information created or generated by Respondents and required to be submitted to the Project Manager pursuant to this CO/ASAOC shall be withheld on the grounds that they are privileged. Disclosure of such information to IDEQ shall be governed by the provisions of Sections 18.4 and 18.5 and the Idaho Public Records Act, Idaho Code § 9-337 to 9-350.

- 18.6** IDEQ, the Forest Service, their authorized representatives, and Support Agency personnel accompanied or authorized by the Project Manager, shall have the authority at all reasonable times to inspect activities at the Site and conduct such tests on the Site as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data submitted or monitor activities undertaken by Respondents. Nothing in this Section shall affect the authority of the USFS under applicable laws to inspect lands within its jurisdiction at the Site or conduct such tests on such lands as the USFS deems necessary. Respondents may request split or duplicate samples under Section 18.1 of this CO/ASAOC and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, reports, or other non-privileged information or materials generated during or as a result of the inspection conducted by IDEQ or the Forest Service. Subject to the provisions in Section 18.4 or 18.5 of this CO/ASAOC, IDEQ, the Forest Service, their authorized representatives, and the Support Agencies and their authorized representatives accompanied or authorized by the Project Manager, shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents related to the Work required under this CO/ASAOC. Any claim that such materials may be privileged or confidential shall be governed by Sections 18.4 and 18.5 of this CO/ASAOC. Nothing herein is intended to limit or to expand in any way the right-of-entry or inspection authority of IDEQ or the Forest Service or the Support Agencies under CERCLA or any other applicable legal authority.

19 Emergency Response and Notification

- 19.1** If any incident or change in Site conditions during the Work conducted by Respondents constitutes an emergency situation or may present an immediate threat to the public health, welfare, or the environment, Respondents shall immediately initiate Idaho's Hazardous Materials Incident Command and Response Support Plan by calling 1 (800) 632-8000. Respondents shall then notify the Project Manager of the incident or Site conditions. If the Project Manager is unavailable, Respondents shall then notify the EPA Region 10 Emergency Response and Site Cleanup Unit 24-Hour Duty Officer at (206) 553-1263.

- 19.2** If any act or omission of Respondents or those acting on their behalves, including their officers, employees, agents, contractors, subcontractors, or assigns, in carrying out the Work causes or threatens a release of Hazardous Substances or oil of any kind or form that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this CO/ASAOC, including, but not limited to, the Health and Safety Plan, to prevent, abate, or minimize such release or endangerment caused or threatened by the release. In the event that Respondents fail to take appropriate response actions as required by this Section, and the IDEQ or the Forest Service takes such action instead, Respondents shall reimburse the IDEQ and/or the Forest Service for all costs of the response action not inconsistent with the NCP pursuant to Sections 23 (“Reimbursement of State Response Costs”) and 24 (“Reimbursement of Federal Response Costs”) of this CO/ASAOC.
- 19.3** If IDEQ and/or the Forest Service determine there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, which the Respondents are not otherwise required to address under this CO/ASAOC, the Project Manager shall notify Respondents in writing of modifications to the Work Plan and/or the Deliverables that IDEQ and the Forest Service deem necessary to address the immediate threat. Within five (5) Working Days of the receipt of such notification, Respondents shall notify the Project Manager in writing whether they agree to perform the work required under the proposed modifications. If IDEQ, the Forest Service, and Respondents agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and/or the new Deliverables shall become an attachment to this CO/ASAOC and incorporated herein. In the event of an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, modifications to the work plans may also be made orally by the Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Project Manager’s oral direction.
- 19.4** If Respondents do not agree to perform the work required by the modifications proposed under Section 19.3, IDEQ or the Forest Service may perform the proposed work or take any action deemed necessary under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and/or applicable state law and may seek recovery of any costs it incurs performing such proposed work pursuant to applicable law. Determination(s) by the Project Manager or the Forest Service that an immediate response at the Site is required shall be subject to the Dispute Resolution provisions in Section 21 of this CO/ASAOC. However, Dispute Resolution shall not delay such required immediate response.

20 Additional Investigation and Analysis

- 20.1** Where there is an immediate need, Respondents may implement additional Work or modifications to the Work based on a verbal agreement between the Project Manager and

the Project Coordinators; however, in such cases, written confirmation of that agreement shall be transmitted between the Project Manager and Project Coordinators within ten (10) days of such verbal agreement. If there is no verbal agreement with respect to an immediate need, and at any time during the RI/FS process Respondents identify a need for additional Work or modification to the Work, Respondents shall submit a memorandum documenting the need for the additional or modified Work to the Project Manager within ten (10) days of identification. IDEQ and the Forest Service will determine whether the additional or modified Work will be conducted by Respondents and whether it will be incorporated into plans, reports, and other Deliverables. The SOW and/or Work Plan shall be modified to incorporate any additional or modified Work. Where there is an immediate need, on a limited basis dependent on Site conditions, to take additional samples, and the Project Manager is not available, Respondents may take such additional samples and shall promptly orally notify the Project Manager of such samples and provide written confirmation within five (5) days. If Respondents anticipate a need for additional samples prior to initiation of field work, the Respondents shall contact the Project Manager to coordinate and request approval for the effort to take the additional samples.

- 20.2** If IDEQ and the Forest Service determine that additional work on the Site is required to meet the objectives of this CO/ASAOC and that work is not covered by Section 9 (Work to be Performed) above, the Project Manager may notify Respondents in writing of such determination and specify any proposed changes to any Deliverable to reflect the additional work. Subject to their rights pursuant to Section 21 to invoke Dispute Resolution, Respondents agree to conduct this additional Work pursuant to this CO/ASAOC. Within ten (10) Working Days of receipt of the written determination that additional Work is required, Respondents shall confirm their willingness to perform the additional Work by providing notification to the Project Manager or invoke Dispute Resolution. The SOW and/or Work Plan shall be modified to incorporate the additional Work. Such modifications will be in accordance with the final resolution of the dispute, if any. IDEQ and the Forest Service reserve the right to conduct the Work at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.
- 20.3** Within forty-five (45) days of its notice of agreement to the Project Manager (or the date of the resolution of the dispute, if any), Respondents shall submit to the Project Manager a revised Work Plan or other appropriate Deliverable describing and providing a schedule for performance of the additional Work. The revised Work Plan and/or the new Deliverable approved by the Project Manager shall become an attachment to this CO/ASAOC and incorporated herein. Respondents shall perform all additional tasks, including providing any additional analytical results and reports, as required by the revised Work Plan and/or the new Deliverable. IDEQ and/or the Forest Service reserve the right to perform the Work or take any action deemed necessary under applicable law and may seek recovery of any costs incurred performing such Work pursuant to applicable law.
- 20.4** If prior to the completion of the Work required by a Work Plan, IDEQ and the Forest Service determine that sufficient data have been collected with respect to a particular

portion of the Site or a particular issue then the Project Manager may communicate a decision to accelerate the RI Report and FS process or undertake a removal or remedial action with respect to that particular portion or issue. IDEQ's and the Forest Service's election to undertake this approach may result in one or more Engineering Evaluation/Cost Analyses (EE/CAs) or one or more FSs, the combination of which will address all pathways for the release or threatened release of Hazardous Substances at the Site. Respondents will complete the initial FS on the schedule provided in the SOW. Respondents will complete any EE/CAs or subsequent FSs on a schedule provided in a revised FS or EE/CA Work Plan.

21 Dispute Resolution

- 21.1** The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this CO/ASAOC. A dispute shall be considered to have arisen when Respondents serve the Project Manager with a written Notice of Dispute or Respondents send the Agency billing disputed costs a written Notice of Dispute that indicates they dispute costs the Agency has billed. A Notice of Dispute shall be served electronically or by overnight mail or some equivalent service.
- 21.2** For purposes of this Section 21, the term "reviewing Agency" shall mean IDEQ and the Forest Service for all disputes other than disputes over non-IDEQ or non-Forest Service costs and, in the case of non-IDEQ or non-Forest Service costs, it shall mean the Agency whose costs are disputed. In the first instance, the disputing Parties shall attempt to resolve any dispute arising under this CO/ASAOC by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless the reviewing Agency and Respondents agree in writing to modify the period for informal negotiations. If the disputing Parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following Sections shall apply.
- 21.3** In the event the disputing Parties cannot resolve the dispute through informal negotiations, then the determination of the reviewing Agency shall be binding unless, within fifteen (15) days after the conclusion of the informal negotiations period, Respondents invoke the formal dispute resolution procedures of this Section by serving on the reviewing Agency a written Statement of Position on the matter in dispute. Respondents' written Statement of Position shall be sent electronically or by overnight mail, or some equivalent service, and shall define the dispute and state the basis of Respondents' objections to the position of the reviewing Agency.
- 21.4** Following receipt of Respondents' Statement of Position, the reviewing Agency shall send its written statement of position to Respondents electronically or by overnight mail or some equivalent service.

- 21.5** Following this exchange of Statements of Position, the appropriate supervisory office of the reviewing Agency shall make a final determination resolving the matter in dispute. The appropriate supervisory office for IDEQ is the Director of the Department of Environmental Quality. The appropriate supervisory office for USFS is the Regional Forester. The appropriate supervisory office for FWS (for disputes over FWS costs) is the Field Supervisor, Eastern Idaho Field Office. The appropriate supervisory office for the Tribes for disputes over the Tribes' costs is the Director of the Shoshone-Bannock Tribes Environmental Waste Management Program.
- 21.6** Any decision made by IDEQ as a reviewing Agency pursuant to this Section shall not constitute a final agency action subject to judicial review unless and until IDEQ commences a judicial action to enforce this CO/ASAOC in which case any challenge to a final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273.
- 21.7** Any determination by any Federal Agency pursuant to this Section is governed by Section 113(h) and (j) of CERCLA 42 U.S.C. § 9613(h) and (j), and shall not constitute a final agency action subject to judicial review unless and until the United States commences a judicial action to enforce this CO/ASAOC. Any determination by the Tribes shall not constitute a final agency action unless and until the Tribes commence a judicial action to enforce their rights under this CO/ASAOC. In either case the determination shall only be reviewable in Federal court.
- 21.8** Nothing in this CO/ASAOC precludes the Parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in this Section.
- 21.9** Upon completion of all dispute resolution procedures under this Section, Respondents shall proceed in accordance with the final determination regarding the matter in dispute. If Respondents do not perform any required Work in accordance with the final determination, IDEQ or the Forest Service may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this CO/ASAOC pursuant to applicable law.
- 21.10** The invocation of the dispute resolution provisions of this CO/ASAOC shall not extend, postpone or affect in any way any unrelated obligation of Respondents under this CO/ASAOC not directly in dispute, unless the Project Manager agrees in writing otherwise.
- 21.11** Stipulated penalties with respect to any disputed matter shall accrue from the first day of noncompliance with any applicable provision of this CO/ASAOC and shall continue to accrue for the duration of the dispute resolution process, but payment of the penalties shall be stayed pending resolution of the dispute. In the event Respondents do not prevail on the disputed matter, stipulated penalties shall be assessed and paid, in accordance with Section 26, unless otherwise agreed to by the Parties in writing.

22 Force Majeure

- 22.1 Delays or inability to perform any of the requirements of this CO/ASAOC within the time limits prescribed shall not be a violation of this CO/ASAOC where performance is prevented or delayed by a force majeure event. "Force majeure" is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents performance of any obligation under this CO/ASAOC, despite Respondents' best efforts to fulfill the obligation. Force majeure does not include the financial inability of Respondents to complete performance of the obligation or increased cost of performance. Respondents shall have the burden of proving force majeure by a preponderance of the evidence.
- 22.2 If any event occurs that may materially delay performance of any obligation under this CO/ASAOC or submittal of any Deliverable past the applicable deadline, Respondents shall notify the Project Manager within seven (7) Days of the time Respondents first knew that the event would reasonably be expected to cause a delay in such performance or submittal. Within fourteen (14) Days thereafter, Respondents shall notify the Project Manager in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall preclude Respondents from asserting any claim of force majeure for the period of time of such failure to comply and for any additional delay caused by such failure.
- 22.3 The Project Manager shall notify Respondents in writing of the determination by IDEQ and the Forest Service as to whether force majeure applies to the event or circumstances after receipt of written notice from Respondents. If IDEQ and the Forest Service determine that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task in this CO/ASAOC shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the force majeure circumstance. If IDEQ and the Forest Service disagree with Respondents' force majeure claim, or if there is no agreement on the length of an extension of time, Respondents may invoke the Dispute Resolution provisions in Section 21 of this CO/ASAOC.

23 Reimbursement of State Response Costs

- 23.1 State Response Costs incurred by IDEQ with respect to the Site under this CO/ASAOC will be reimbursed in the following manner:
- 23.1.1 Within thirty (30) days after the Effective Date, Respondents shall pay to IDEQ the sum of \$21,801.60 reimbursing IDEQ for State Response Costs incurred by IDEQ in relation to this CO/ASAOC before July 1, 2013.

23.1.2 Within thirty (30) days of the Effective Date, as an initial deposit, Respondents will pay the sum of Ten Thousand Dollars (\$10,000.00) to be deposited to an account established for this Site. Thereafter, IDEQ shall provide a quarterly accounting and invoice to Respondents for State Response Costs incurred by IDEQ in relation to this CO/ASAOC. Within thirty (30) days of Respondents' receipt of IDEQ's quarterly accounting invoice, Respondents shall reimburse the State for all State Response Costs not inconsistent with the NCP reflected in the accounting invoice. The initial deposit will be returned to Respondents within sixty (60) days of the date IDEQ receives payment of its final State Response Costs.

23.2 All payments to IDEQ shall be made to:

Administrative Services-Accounts Receivable
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

23.3 Respondents may dispute payment of any portion of IDEQ's submitted costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this CO/ASAOC, the inclusion of costs inconsistent with the NCP or State regulations, or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding State Response Costs will be resolved using the Dispute Resolution procedures described in Section 21. Any objection by Respondents shall be made in writing within thirty (30) days of receipt of the quarterly billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by Respondents in accordance with the provisions in the preceding subsections of this Section. In any Dispute Resolution proceeding, Respondents shall bear the burden of establishing their contentions as to inappropriate costs. If IDEQ prevails in the Dispute Resolution proceeding, Respondents shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination.

24 Reimbursement of Federal Response Costs

24.1 Within thirty (30) days after the Effective Date, Respondents shall pay to Forest Service/USDA the sum of \$14,170.76 reflecting Federal Response Costs incurred by the Forest Service/USDA before July 1, 2013.

24.2 Thereafter, Respondents shall reimburse the Forest Service/USDA for all of its Federal Response Costs associated with the Site not inconsistent with the NCP. On a quarterly basis, the Forest Service will send Respondents bills requiring payment that include a cost summary, with USDA Office of the General Counsel costs contained in a separate bill. Respondents shall make all payments within thirty (30) days of Respondents' receipt of each bill requiring payment. Payment shall be made by Electronic Funds Transfer

(“EFT”) or a certified or cashier’s check or checks in accordance with instructions provided by the Forest Service.

24.3 At the time of payment, Respondents shall send notice that payment has been made to:

Tina F. Robison
Caribou-Targhee National Forest
Soda Springs Ranger District
410 E. Hooper Avenue
Soda Springs, ID 83276
E-mail: trobison@fs.fed.us

24.4 Payment of FWS Costs.

24.4.1 Respondents hereby agree to pay up to fifteen thousand dollars (\$15,000.00) per year to pay FWS’s Federal Response Costs. Within thirty (30) days of the Effective Date of this CO/ASAOC Respondents shall pay to FWS \$15,000.00 in prepayment of FWS’s Federal Response Costs. By November 1, 2014, and annually thereafter, FWS shall submit to Respondents an estimated annual cost budget January 1 through December 31. Within thirty (30) days of receipt of the estimated annual cost budget, which shall account for carryover of any funds that may be in the FWS Fund from the previous year, Respondents shall deposit with the FWS an amount sufficient to bring the balance in the FWS Fund to an amount equal to the estimated annual cost budget or \$15,000.00, whichever is less.

24.4.2 FWS shall use such monies to establish an account fund (the “FWS Fund”) dedicated solely to its activities associated with this CO/ASAOC, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. By August 1, 2014, and every six (6) months thereafter, the FWS shall provide Respondents an accounting of its costs, including supporting cost summaries.

24.4.3 Payments to FWS shall be made by electronic funds transfer through the Department of Treasury’s Automated Clearing House/Remittance Express Program. Payments should include the following information:

Receiver Name:	DOI Central Hazardous Materials Fund ALC 1401001
Receiver Tax ID Number:	53-0196949
Receiver Address:	7401 West Mansfield Avenue Mailstop D-2770 Lakewood, CO 80235

Receiver Bank: Federal Reserve Bank
New York, NY
ABA #051036706

Receiver ACH Account No.: 312024

Each payment shall reference: Site Name: Southeast Idaho Phosphate Mining – Georgetown Canyon Phosphate Mine Site CO/ASAOC. In addition, DOI requests that at the time of payment, Respondent send notification of payment referencing the amount of payment and the Site name to the DOI contacts identified in Section 8.3 and to the following individual:

United States Department of the Interior
Central Hazardous Materials Fund
Attn: Fund Manager
1849 C Street, N.W.
Mail Stop 2342
Washington, DC 20240

- 24.4.4** Within one-hundred and twenty (120) days after completion of FWS support activities under this CO/ASAOC, FWS shall provide Respondents with a final cost accounting. In the event that the monies remain in the FWS fund, FWS shall return to the Respondents monies that remain in the FWS fund within thirty (30) days of submission of the final cost accounting.
- 24.5** Payment of Interest to the Forest Service/USDA
- 24.5.1** For purposes of this Section, interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607. 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 and is compounded annually.
- 24.5.2** In the event that payment for Federal Response Costs as specified by the Forest Service/USDA is not made by the due dates specified in this Section, Respondents shall pay interest on the unpaid balance. Interest on Forest Service/USDA Federal Response Costs paid in accordance with this Section 24.5.2 shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. Payments of interest made under this Section shall be in addition to such other remedies or sanctions available by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, the payment of stipulated penalties pursuant to Section 26.
- 24.6** Respondents may dispute payment of any portion of Federal Response Costs, but only on the basis of accounting errors, the inclusion of costs inconsistent with the NCP, or the inclusion of costs outside the scope of this CO/ASAOC. Disputes regarding Federal Response Costs will be resolved using the Dispute Resolution procedures described in Section 21 of this CO/ASAOC. Any objection by Respondents shall be made in writing

within thirty (30) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute. Disputed Forest Service/USDA costs shall be paid by Respondents into an interest-bearing escrow account while the dispute is pending. Respondents shall send to the Forest Service's Project Coordinator at the address provided in Section 8.3, a copy of the transmittal letter, 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. All undisputed costs shall be remitted by Respondents in accordance with the provisions of this Section. In any Dispute Resolution proceeding, Respondents shall bear the burden of establishing their contentions as to disputed costs. If the Forest Service or FWS prevails in the Dispute Resolution proceeding, Respondents shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs for which they did not prevail in the manner described in the preceding sentence. Respondents shall be disbursed any balance of the escrow account within thirty (30) days of the final determination.

25 Reimbursement of Tribal Response Costs

- 25.1** Respondents hereby agree to pay the sum of up to \$20,000 per year to pay the Tribal Response Costs. Within thirty (30) days of the Effective Date of this CO/ASAOC Respondents shall pay to the Tribes \$20,000 in prepayment of Tribal Response Costs. By November 1, 2014, and annually thereafter, the Tribes shall submit to Respondents an estimated annual cost budget and accounting of costs incurred during the previous year, with sufficient detail to establish that such costs were incurred consistent with the NCP and within the scope of this CO/ASAOC. Within thirty (30) days of receipt of the estimated annual cost budget, Respondents shall deposit with the Tribes an amount sufficient to bring the balance in the Tribal Fund to an amount equal to the estimated annual cost budget or \$20,000, whichever is less. The amount of Respondents' annual payment shall be reduced by the amount of any carryover remaining from the previous year or years. The Tribes shall coordinate all of their activities regarding the Site with the Forest Service and other Support Agencies to avoid duplicative oversight costs.
- 25.2** Payments to the Tribes shall be made by certified or cashier's check made payable to the Shoshone-Bannock Tribes and mailed to:

Environmental Waste Management Program
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, ID 83203

Each check shall reference:

Site Name: Southeast Idaho Phosphate Mining –
Georgetown Canyon Mine CO/ASAOC

- 25.3** Respondents may dispute payment of any portion of the Tribal Response Costs, but only on the basis of accounting errors, inadequacy of documentation supporting such costs, the inclusion of costs inconsistent with the NCP, or the inclusion of costs outside the scope of this CO/ASAOC. Disputes regarding the Tribal Response Costs will be resolved using the Dispute Resolution procedures described in Section 21 of this CO/ASAOC. Any objection by Respondents shall be made in writing to the Tribes within thirty (30) days of receipt of the billing statement from the Tribes and shall specifically identify the disputed costs and the basis of the dispute. In any Dispute Resolution proceeding, Respondents shall bear the burden of establishing their contentions as to disputed costs. If the Tribes prevail in the Dispute Resolution proceeding regarding Tribal Response Costs, the disputed expenditures by the Tribes shall be deemed the Tribal Response Costs and no adjustment to the balance of the account fund (the “Tribal Fund”) held by the Tribes shall be required. If Respondents prevail in the dispute resolution proceeding, the disputed amount shall be credited to the balance of the Tribal Fund and shall be available for subsequent use by the Tribes subject to the terms and conditions of this Section 25.
- 25.4** The Tribes shall use such monies to establish an account fund (the “Tribal Fund”) dedicated solely to its activities associated with this CO/ASAOC in accordance with applicable statutes, regulations, and guidance. Within one-hundred and eighty (180) days of the Effective Date of this CO/ASAOC, and every one-hundred and eighty (180) days thereafter, the Tribes shall provide Respondents an accounting of its costs, including supporting cost summaries.
- 25.5** Within one-hundred and twenty (120) days after completion of Tribal support activities under this CO/ASAOC, the Tribes shall provide Respondents with a final cost accounting. In the event that the monies remain in the Tribal Fund, the Tribes shall return such monies to Respondents within thirty (30) days of submission of the final cost accounting.

26 Stipulated Penalties

- 26.1** Unless there has been a written modification of a compliance date or other requirement of this CO/ASAOC by the Project Manager, or a force majeure event as defined herein, in the event Respondents fail to meet any work schedule or payment schedule deadline or requirement of this CO/ASAOC, Respondents shall pay stipulated penalties in the amount of one thousand dollars (\$1,000.00) per day, per violation for the 1st through 14th days of noncompliance; three thousand dollars (\$3,000.00) per day, per violation for the 15th through 30th day of noncompliance; and seven thousand five hundred dollars (\$7,500.00) per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by Respondents shall include complete and timely performance of each activity required under this CO/ASAOC, including, but not limited to,

reimbursement of response costs pursuant to Sections 23, 24, and 25 or complete and timely performance of all Work or any activities described in any plan, statement, or Deliverable approved under this CO/ASAOC.

- 26.2** All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section 9 (“Work to be Performed”), during the period, if any, beginning on the 31st day after the Project Manager’s receipt of such submission until the date that the Project Manager notifies Respondents of any deficiency, and as set forth in the cure provision of Section 10.3, and (2) with respect to a matter subject to Dispute Resolution (Section 21), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the reviewing Agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this CO/ASAOC.
- 26.3** With respect to stipulated penalties accruing for any matter other than non-payment of Response Costs, the Project Manager will notify Respondents in writing of any stipulated penalties owed by Respondents pursuant to this Section. With respect to stipulated penalties accruing for the non-payment of Response Costs, the appropriate State or Federal Agency, which means the Forest Service regarding non-payment of Tribal Response Costs, shall notify Respondents of any stipulated penalties owed by Respondents pursuant to this Section. With respect to any disputed Response Costs, when Respondents have paid the disputed Response Costs into an interest bearing escrow account as required under Sections 24.5, stipulated penalties shall not accrue for non-payment from the date of deposit in the interest bearing account. All penalties shall be paid within thirty (30) days of the date of receipt of the demand for payment, unless Respondents have properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of such thirty (30) day period. Interest shall accrue at the rate provided by Federal or State law, as applicable. Payment shall be made in accordance with instructions provided in the stipulated penalty notification.
- 26.4** Penalties that accrue during any dispute resolution period need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of the decision.
- 26.5** Nothing in this CO/ASAOC shall be considered as prohibiting, altering, or in any way limiting the ability of the Agencies to seek any other remedies or sanctions available by virtue of Respondents’ violation of this CO/ASAOC or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). However, the Agencies shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this CO/ASAOC or in the event that one or

more of IDEQ and the Forest Service assume performance of a portion or all of the Work pursuant to Section 31. Notwithstanding any other provision of this Section, the State or the USFS (and with respect to penalties assessed by the Forest Service on behalf of the Tribes for Respondents' nonpayment of Tribal Response Costs, the Tribes), as appropriate, may at any time and in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this CO/ASAOC.

27 Other Claims

- 27.1** By entering into this CO/ASAOC, the Parties assume no liability for injuries or damages to persons or property resulting from any acts or omissions of any other Party. No Party shall be deemed to be a party to any contract entered into by any other Party, or its contractors, to carry out actions pursuant to this CO/ASAOC.

28 Enforcement

- 28.1** Except for the provisions of this CO/ASAOC related to Federal and Tribal Response Costs, responsibility for enforcement of this CO/ASAOC, as related to private lands subject to this CO/ASAOC, shall be vested in IDEQ. Responsibility for enforcement of this CO/ASAOC, as related to federal lands subject to this CO/ASAOC, shall be vested in the USFS. Determinations regarding compliance with the terms of this CO/ASAOC and related enforcement actions shall be made by the appropriate Agency consistent with the provisions of Sections 2.1 and 2.2 and subject to Section 21 (Dispute Resolution).

29 Covenant Not to Sue by IDEQ, the Forest Service, and the Tribes

- 29.1** In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this CO/ASAOC, and except as otherwise specifically provided in this CO/ASAOC, the IDEQ and Forest Service covenant not to sue or take administrative action against Respondents pursuant to Sections 106, 107, or 113 of CERCLA, 42 U.S.C. § 9606, 9607, or 9613, or any other provision of law, for the Work performed under this CO/ASAOC and for recovery of State Response Costs and Federal Response Costs that are reimbursed by Respondents pursuant to this CO/ASAOC. IDEQ further covenants not to sue Respondents under State law for recovery of State Response Costs that are reimbursed by Respondents pursuant to this CO/ASAOC. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this CO/ASAOC, including, but not limited to, payment of State Response Costs and Federal Response Costs. This covenant not to sue extends only to Respondents and does not extend to any other person.

- 29.2** In consideration of the payments that will be made by Respondents under the terms of this CO/ASAOC, and except as otherwise specifically provided in this CO/ASAOC, the Tribes covenant not to sue or to take administrative action against Respondents pursuant to Sections 106, 107, or 113 of CERCLA, 42 U.S.C. § 9606, 9607, or 9613, or any other provision of law, for recovery of Tribal Response Costs that are reimbursed by Respondents pursuant to this CO/ASAOC. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this CO/ASAOC, including, but not limited to, payment of Tribal Response Costs. This covenant not to sue extends only to Respondents and does not extend to any other person.
- 29.3** This CO/ASAOC requires the performance of an RI/FS but does not itself require Respondents to undertake actions to remediate or clean-up contamination. As such, this CO/ASAOC does not constitute a final remedy for contamination or pollution, if any, resulting from the matters addressed herein. IDEQ and the Forest Service expressly reserve the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this CO/ASAOC shall not operate pursuant to Idaho Code § 39-108(3)(a)(v) or Idaho Code § 39-4413(1)(d) to preclude the IDEQ from seeking additional relief.

30 Covenant Not to Sue by Respondents

- 30.1** With respect to the Work, Federal Response Costs, State Response Costs, Tribal Response Costs, or this CO/ASAOC, Respondents agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.
- 30.2** Respondents covenant not to sue and agree not to assert any claims or causes of action against the Forest Service, or its contractors or employees, with respect to the Work, Federal Response Costs, State Response Costs, Tribal Response Costs, or this CO/ASAOC, as specified in the following Sections 30.2.1 and 30.2.2:
- 30.2.1** Any claim against the Forest Service arising out of the Work or arising out of the response actions for which any costs, including State Response Costs, Tribal Response Costs, and Federal Response Costs, which have or will be incurred, including any claim under the United States Constitution; the Tucker Act, 28 U.S.C. § 1491; or the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common law.
- 30.2.2** Any claim against the Forest Service pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of any costs, including State Response Costs, Tribal Response Costs, and Federal Response Costs that have been or will be incurred under this CO/ASAOC.

- 30.3** These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Sections 31.2 (a), (c), and (e)–(g), but only to the extent that Respondents’ claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

31 Reservation of Rights

- 31.1** Except as expressly provided in this CO/ASAOC, nothing in this CO/ASAOC shall be construed to limit the power and authority of the Forest Service, the United States, or the State of Idaho, if any, to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of Hazardous Substances at or from the Site. Further, except as provided in Section 26 (“Stipulated Penalties”), Section 28 (“Enforcement”) and Section 29 (“Covenant Not to Sue by IDEQ, the Forest Service, and the Tribes”), nothing in this CO/ASAOC shall prevent IDEQ or the United States from seeking legal or equitable relief to enforce any terms of this CO/ASAOC. Nothing in this CO/ASAOC shall prevent the United States, or the State of Idaho, from taking other legal or equitable action as they deem appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.
- 31.2** The covenant not to sue set forth in Section 29 (“Covenant Not to Sue by IDEQ, the Forest Service, and the Tribes”) does not pertain to any matters other than those expressly identified therein. Except as expressly provided in Section 29, the United States and the State of Idaho reserve, and this CO/ASAOC is without prejudice to, all rights, claims, and defenses the United States and the State of Idaho may have, including, but not limited to: (a) the right to bring an action against Respondents under CERCLA or other applicable law for recovery of any unreimbursed response costs incurred in connection with the Site; (b) claims based on a failure by Respondents to meet a requirement of this CO/ASAOC; (c) liability for performance of response action other than the Work and for response costs other than those to be reimbursed by Respondents pursuant to this CO/ASAOC; (d) criminal liability; (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 arising from the past, present, or future disposal, release or threat of release of Hazardous Substances outside of the Site; and (g) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site. The United States and IDEQ expressly reserve the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this CO/ASAOC shall not operate pursuant to Idaho Code § 39-108(3)(a)(v) or Idaho Code § 39-4413(1)(d) to preclude IDEQ from seeking additional relief.

- 31.3** Except as provided in Section 30 (“Covenant Not to Sue by Respondents”), nothing in this CO/ASAOC shall be construed as releasing the United States or the State of Idaho, or any of their agencies or departments, from any liability for any of their actions.
- 31.4** Except as expressly provided in Section 30 (“Covenant Not to Sue by Respondents”), Respondents reserve all rights, claims, and defenses they may have, including the right to bring an action against the United States, the State of Idaho and/or their agencies and departments under CERCLA for recovery of any response costs incurred in connection with the Site. Nothing in this CO/ASAOC shall be deemed to obligate Respondents to perform or take any action pertaining to the selected remedial action. Respondents also reserve any defense that may be asserted by law in response to any enforcement action taken pursuant to IDEQ’s or the United States’ reservation of rights in this Section 31 or any enforcement action taken by the United States or the State of Idaho to enforce this CO/ASAOC with respect to any dispute submitted by the Respondents, or any one of them, to the Dispute Resolution procedures under this CO/ASAOC. CFI reserves the right to assert that it is not legally obligated to perform any activity under this CO/ASAOC that relates to a release of a substance that is not a hazardous substance, as such term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) or Idaho Code § 39-7203(4).
- 31.5** Respondents reserve, and this CO/ASAOC 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 the Forest Service’s selection of response actions, or the oversight or approval of Respondents’ plans, reports, other deliverables or activities.
- 31.6** Respondents reserve, and this CO/ASAOC is without prejudice to, claims against IDEQ, subject to the provisions of the Idaho Code, respectively, 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 IDEQ while acting within the scope of his/her office or employment under circumstances where IDEQ, 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, any such claim shall not include a claim based on IDEQ’s selection of response actions or the oversight or approval of Respondents’ plans or activities.
- 31.7** Work Takeover: In the event IDEQ and/or the Forest Service determine that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or seriously or repeatedly late in their performance of the Work, or are

implementing the Work in a manner which may cause an endangerment to human health or the environment, IDEQ and/or the Forest Service may issue a written notice (“Work Takeover Notice”) to the Respondents. Any Work Takeover Notice will specify the grounds upon which such notice was issued and the portion of the Work affected and will provide Respondents a period of fourteen (14) days (or such longer period as is necessary under the circumstances, as approved by IDEQ or the Forest Service) within which to remedy the circumstances giving rise to the issuance of such notice.

31.7.1 If, after expiration of the notice period specified in Section 31.7 above, Respondents have not remedied to IDEQ’s or the Forest Service’s satisfaction the circumstances giving rise to the issuance of the relevant Work Takeover Notice, IDEQ or the Forest Service may assume the performance of all or any portion of the Work as IDEQ or the Forest Service determines necessary (“Work Takeover”). IDEQ or the Forest Service shall notify Respondents in writing (which writing may be electronic) if IDEQ or the Forest Service determines that implementation of a Work Takeover is warranted under this Section.

31.7.2 Respondents may invoke the Dispute Resolution procedures set forth in Section 21 of this CO/ASAOC to dispute IDEQ’s and/or the Forest Service’s determination that Work Takeover is warranted. However, notwithstanding Respondents’ invocation of such Dispute Resolution procedures, and during the pendency of any such dispute, the IDEQ and the Forest Service may in their sole discretion commence and continue a Work Takeover under this Section until the earlier of:

31.7.2.1 The date that Respondents remedy, to IDEQ’s and/or the Forest Service’s satisfaction, the circumstances giving rise to the issuance of the relevant Work Takeover Notice; or

31.7.2.2 The date that a final decision is rendered in accordance with Section 21 (Dispute Resolution) requiring IDEQ and/or the Forest Service to terminate such Work Takeover.

31.7.3 Costs incurred by IDEQ and the Forest Service in performing the Work pursuant to this Section shall be considered State Response Costs and Federal Response Costs, respectively, that Respondents shall pay pursuant to Section 23 (Reimbursement of State Costs) and Section 24 (Reimbursement of Federal Response Costs). Notwithstanding any other provision of this CO/ASAOC, IDEQ and the Forest Service retain all authority and reserve all rights to take any and all response actions authorized by law.

32 CO/ASAOC Effect/Contribution Protection

32.1 Nothing in this CO/ASAOC shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CO/ASAOC. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims,

demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CO/ASAOC diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

- 32.2** The Parties agree that this CO/ASAOC constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that each Respondent is entitled, as of the Effective Date of this CO/ASAOC, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this CO/ASAOC. The “matters addressed” in this CO/ASAOC are the Work performed or to be performed subject to CERCLA jurisdiction, Federal Response Costs, Tribal Response Costs, and State Response Costs. The Parties agree that this CO/ASAOC constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §§ 9613(f)(3)(B), pursuant to which each Respondent has, as of the Effective Date, resolved its liability to the United States and the State of Idaho for the Work performed or to be performed subject to CERCLA jurisdiction and for Federal Response Costs, Tribal Response Costs, and State Response Costs. Nothing in this CO/ASAOC precludes any of the Parties from asserting any claims, causes of action, or demands against any person not a Party to this CO/ASAOC for indemnification, contribution, or cost recovery.

33 Indemnification

- 33.1** Respondents agree to indemnify and hold harmless the State of Idaho, the Tribes, and the United States and their officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents or those acting on their behalves, including their officers, directors, employees, agents, contractors, or subcontractors, in carrying out activities under this CO/ASAOC. The State of Idaho, the United States, and the Tribes shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this CO/ASAOC. Neither Respondents nor any such contractor shall be considered an agent of the State of Idaho, United States, or the Tribes. The State of Idaho, the Tribes, and the United States shall give Respondents notice of any claim for which they plan to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.
- 33.2** In performing the Work, Respondents have an affirmative duty to protect from injury and damage lands of the United States. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with Respondents’ implementation of this CO/ASAOC. Respondents shall be liable for damage to all roads and trails of the United States caused

by the use of Respondents, or those acting on their behalves, except that damage shall not include reasonable and ordinary wear and tear.

34 Financial Assurance and Insurance

- 34.1** Within sixty (60) days after the Effective Date of this CO/ASAOC, Respondents shall establish and maintain one or more financial instruments or trust accounts or other financial mechanism acceptable to IDEQ and the Forest Service, which together shall total in the amount of one million, five hundred thousand dollars (\$1,500,000.00). Respondents shall fund the financial instruments or trust accounts in one or more of the following forms:
- 34.1.1** A surety bond guaranteeing payment and/or performance of the Work;
 - 34.1.2** One or more irrevocable letters of credit equaling the total estimated cost;
 - 34.1.3** A trust agreement establishing a trust fund containing the estimated cost of the Work with a trustee and terms and conditions acceptable to IDEQ and Forest Service;
 - 34.1.4** A written guarantee to perform the Work executed in favor of IDEQ and Forest Service by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Respondents; provided, any company providing such a guarantee must demonstrate to the satisfaction of IDEQ and Forest Service that it satisfies the financial test requirement of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work, and complies with the requirement of the following Section 34.2; or
 - 34.1.5** A demonstration that Respondents satisfy the requirements of 40 C.F.R. § 264.143(f).
- 34.2** Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to IDEQ and the Forest Service. In the event that IDEQ and the Forest Service determine at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days after receipt of notice of such determination, obtain and present to IDEQ and the Forest Service for approval one of the other forms of financial assurance listed in this Section. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this CO/ASAOC.
- 34.3** If the Respondents seek to demonstrate the ability to complete the Work through a guarantee or demonstration pursuant to this Section, the Respondents shall:
- (a) demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f);

and (b) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by the Project Manager. For the purposes of this CO/ASAOC, wherever 40 C.F.R. § 264.143(f) references “sum of current closure and post-closure cost estimates and the current plugging and abandonment cost estimates,” the dollar amount to be used in the relevant financial test calculations shall be \$1,500,000 for the Work at the Site, plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to the United States by means of passing a financial test.

- 34.4** If the estimated cost to complete the remaining Work set forth in the SOW increases or decreases from the amount set forth in Section 34.1, above, the amount of financial assurance shall be increased to cover any deficit or decreased to match the estimated value of the outstanding Work accordingly. Respondents will either provide increased financial assurance within sixty (60) days of receipt of notice from IDEQ that an increase is required, or invoke formal Dispute Resolution by providing a Notice of Dispute within fifteen (15) days of receipt of the increased financial assurance notice from IDEQ. Respondents may, on any anniversary date of the Effective Date of this CO/ASAOC, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to IDEQ in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by IDEQ. In the event of a dispute, Respondents may reduce the amount of financial security in accordance with the final administrative or judicial decision resolving the dispute.
- 34.5** Prior to commencement of any Work, Respondents shall secure, and shall maintain in force for the duration of this CO/ASAOC, and for two (2) years after the completion of all activities required by this CO/ASAOC, Comprehensive General Liability (“CGL”) insurance policy in the amount of at least \$1 million combined single limit, \$2 million aggregate, including, naming as an additional insured the United States, the State, and the Tribes. The CGL insurance shall include Contractual Liability Insurance in the amount of \$1 million per occurrence, Automobile Insurance with limits of \$1 million, combined single limit, and Umbrella Liability Insurance in the amount of \$5 million per occurrence.
- 34.6** Respondents’ Contractors shall also secure, and maintain in force for the duration of this CO/ASAOC and for two (2) years after the completion of all activities required by this CO/ASAOC the following:
- 34.6.1** Contractor’s Professional Errors and Omissions Insurance in the amount of \$1 million (\$1,000,000.00) per occurrence.
- 34.6.2** Contractor’s Pollution Liability Insurance in the amount of \$1 million (\$1,000,000.00) per occurrence, covering as appropriate both general liability and professional liability arising from pollution conditions.

- 34.7** For the duration of this CO/ASAOC, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing Work on behalf of Respondents, in furtherance of this CO/ASAOC.
- 34.8** If Respondents demonstrate by evidence satisfactory to IDEQ and the Forest Service that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.
- 34.9** Prior to commencement of any Work, Respondents shall provide to the Project Manager certificates of such insurance and a copy of each insurance policy. On the anniversary of the Effective Date of this CO/ASAOC, Respondents shall provide to the Project Manager certificates of such insurance and a copy of each insurance policy amendment and any new insurance policy.

35 Integration/Appendix

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

Appendix 1 - SOW

36 Notice of Completion

- 36.1** When IDEQ and the Forest Service determine that all Work has been fully performed in accordance with this CO/ASAOC with the exception of any continuing obligations required by this CO/ASAOC, including but not limited to: Section 13 ("Record Preservation"), Section 23 ("Reimbursement of State Response Costs"), Section 24 ("Reimbursement of Federal Response Costs"), Section 25 ("Reimbursement of Tribal Response Costs"), Section 29 ("Covenant Not to Sue By IDEQ, the Forest Service, and the Tribes"), Section 30 ("Covenant Not to Sue by Respondents"), Section 31 ("Reservation of Rights"), Section 33 ("Indemnification"), and the insurance provisions (Sections 34.5–34.9) of Section 34 ("Financial Assurance and Insurance"), the Project Manager will provide written notice to Respondents. If IDEQ or the Forest Service

determines that any Work has not been completed in accordance with this CO/ASAOC, the Project Manager will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the RI/FS Work Plan, if appropriate in order to correct such deficiencies, in accordance with Section 37 (“Modification”). Failure by Respondents to correct such deficiencies shall be a violation of this CO/ASAOC.

37 Modification

- 37.1** Minor field modifications to the Work may be made orally by the Project Manager and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the Project Manager’s oral direction. Modification to any plan or schedule may be made by IDEQ and the Forest Service and communicated, in writing, by the Project Manager or at the Project Manager’s direction. Any other requirements of this CO/ASAOC may be modified in writing by mutual agreement of the Parties. In the event Respondents disagree with any modification proposed under this Section, such disagreement shall be resolved in accordance with the Dispute Resolution provisions of Section 21.

38 Miscellaneous

- 38.1** Respondents agree that in connection with the performance of Work, Respondents shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disabilities. Respondents shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this CO/ASAOC. IDEQ shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.
- 38.2** If, while implementing the terms of this CO/ASAOC, Respondents discover any objects of historic, cultural, Tribal, or scientific interest, they shall notify the Project Manager and leave such discoveries intact until and unless otherwise instructed by the Project Manager. For the purposes of this Section, such objects include, but are not limited to, historic or prehistoric ruins, artifacts, or unusual fossils. Compliance with any protective and mitigative measures specified by the Project Manager shall be Respondents’ responsibility.
- 38.3** Written notices required pursuant to this CO/ASAOC may be delivered via e-mail or facsimile.

Georgetown Canyon Mine Site
Consent Order/Administrative Settlement Agreement and Order on Consent

Idaho Department of Environmental Quality

By:  _____

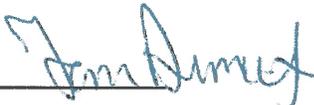
Name: Curt A. Fransen

Title: Director, Idaho Department of Environmental Quality

Date: 3/13/14

Georgetown Canyon Mine Site
Consent Order/Administrative Settlement Agreement and Order on Consent

Nu-West Mining, Inc.

By: Tom Diment 
Name: Tom Diment
Title: PRESIDENT, NU WEST MINING
Date: 2014-02-18.

Georgetown Canyon Mine Site
Consent Order/Administrative Settlement Agreement and Order on Consent

CF Industries, Inc.

By: Douglas C. Barnard

Name: Douglas C. Barnard

Title: SVP, General Counsel, and Secretary

Date: March 7, 2014

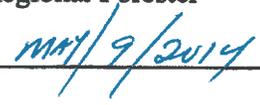
Georgetown Canyon Mine Site
Consent Order/Administrative Settlement Agreement and Order on Consent

**United States Department of Agriculture, Forest Service,
Region 4—Intermountain Region**

By: 

(for) Name: Nora B. Rasure

Title: Regional Forester

Date: 

Georgetown Canyon Mine Site
Consent Order/Administrative Settlement Agreement and Order on Consent

Shoshone-Bannock Tribes

By: Nathan Small

Name: Nathan Small

Title: Chairman, Fort Hall Business Council

Date: 2/7/14

**Statement of Work for the CF Industries Inc.
and Nu-West Mining, Inc. Georgetown Canyon Phosphate Mine
Remedial Investigation and Feasibility Study
Southeastern Idaho Phosphate Mining Resource Area**

1 Introduction

This Statement of Work (SOW) outlines the tasks necessary for Nu-West Mining, Inc., (Nu-West) and CF Industries, Inc., (CFI) (formerly known as Central Farmers Fertilizer Company) to complete the Remedial Investigation and Feasibility Study (RI/FS) at the Georgetown Canyon Mine (Site). Nu-West and CFI shall collectively be referred to as Respondents.

The purpose of the RI/FS is to determine the nature and extent of contamination and any threat to public health and welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site and to provide the basis for identifying the final remedy for the Site by the Lead Agency. This SOW is attached to the Consent Order/Administrative Settlement Agreement and Order on Consent (CO/ASAOC) for the Site RI/FS and is a supporting document for the CO/ASAOC. The technical work described in the SOW provides more information and direction to the Respondents in implementing the CO/ASAOC but is not intended to change the meaning of any CO/ASAOC language. All capitalized terms shall have the meaning set forth in the CO/ASAOC, if defined therein. This SOW is consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 USC §§ 9601–9675 (CERCLA), and the National Oil and Hazardous Substances Pollution Contingency Plan, commonly called the National Contingency Plan (NCP), 40 CFR Part 300. Any discrepancies between the CO/ASAOC and SOW are unintended, and if discrepancies are found, the CO/ASAOC shall control.

The Idaho Department of Environmental Quality (DEQ) has been designated as the Lead Agency for project management, oversight, and implementation; for communication coordination among the Parties; and as point of contact with Respondents. The United States Department of Agriculture Forest Service (Forest Service) will make decisions or take actions under CERCLA relating to lands under the jurisdiction, custody, or control of the Forest Service and communicate those decisions or actions to DEQ. The United States Fish and Wildlife Service and Shoshone-Bannock Tribes have elected to be Support Agencies as defined in the CO/ASAOC. DEQ will communicate in writing to Respondents both DEQ's and the Forest Service's decisions and shall serve as a single point of contact between Respondents and the Agencies.

As defined in Section 4.1 of the CO/ASAOC, the "Site" shall mean the Georgetown Canyon Mine, which includes the areas of overburden disposal associated with the mine. The Site is located approximately 7 miles east of Georgetown in Bear Lake and Caribou Counties, Idaho. The Site occurs primarily on private lands, although the Site is partially located on National Forest System land on the Caribou-Targhee National Forest. Attachment A shows the general Site.

2 Background and Current Status

The Site is located in Bear Lake and Caribou Counties, Idaho, primarily on private lands and partially on National Forest System land. DEQ exercises jurisdictional control over environmental issues in the state of Idaho and on state and privately owned lands; the Forest Service exercises jurisdiction, custody, and control over National Forest System lands on behalf of the United States.

3 Remedial Investigation and Feasibility Study Overview

a. Purpose

The purpose of the RI/FS is to investigate the nature and extent of contamination at the Site and assess the potential risk to human health and welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site and to develop and evaluate alternatives for remedial actions to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The RI and FS are interactive and may be conducted concurrently so that data collected in the RI can influence the development of remedial alternatives in the FS, which in turn affect the data needs and the scope of treatability studies, if necessary.

b. Oversight

The Agencies will provide oversight of the Respondents' activities throughout the RI/FS. Work conducted under the CO/ASAOC is intended to satisfy the legal requirements for an RI/FS under CERCLA; the Idaho Environmental Protection and Health Act, Idaho Code §§ 39-101 to 39-130; and the Hazardous Waste Management Act of 1983, Idaho Code §§ 39-4401 to 39-4432. As such, DEQ will carry out and coordinate oversight of the Respondents' Work as provided by the CO/ASAOC and conducted under this SOW to ensure the satisfaction of all applicable federal and state requirements.

c. Schedule

Refer to Attachment B for the Deliverables and associated schedules.

d. Guidance

The Respondents shall conduct the RI/FS and produce reports according to the CO/ASAOC and SOW, the *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (EPA 1988) (RI/FS Guidance), other guidance the Agencies use in conducting an RI/FS, and any administrative requirements in the CO/ASAOC and this SOW. The RI/FS Guidance describes the report format and the required report content.

e. Roles and Responsibilities

The Respondents shall furnish all necessary personnel, materials, and services needed to perform the RI/FS, except as otherwise specified in the CO/ASAOC. At RI/FS completion, the Agencies

will be responsible for preparing a proposed plan consistent with CERCLA §§ 113(k) and 117(a). The Agencies will also be responsible for selecting a Site remedy and documenting this selection in a Record of Decision (ROD).

f. Remedy Requirements

The remedial action alternative selected by the Agencies will meet the cleanup standards specified in CERCLA § 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements (ARARs), will be cost-effective, will utilize permanent solutions and alternative treatment technologies or resource-recovery technologies to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI/FS and risk assessment (RA) reports, as adopted by the Agencies, will, with the administrative record, form the basis for the selection of the Site remedy, if any, and will provide the information necessary to support the development of the ROD.

4 Task 1—Scoping

Scoping is the initial planning process of the RI/FS. When scoping the specific aspects of this project, the Respondents shall meet with the Agencies to discuss all project planning decisions and special concerns associated with the Site. During the scoping process, the site-specific objectives of the RI/FS, including the preliminary remediation goals (PRGs), will be proposed by the Respondents and approved by the Agencies. The site-specific objectives of the RI/FS will be used to help evaluate the adequacy of the existing information and to identify any data gaps. The Respondents shall develop and document the specific project scope as discussed during the scoping meeting in a Work Plan. Because the work required to complete an RI/FS is not fully known, it may be necessary to modify the Work Plan during the RI/FS to satisfy the objectives of the study.

The Respondents shall perform the following activities as part of the project planning process.

a. Present Site Background

Collect and analyze existing data and document the need for additional data

Before planning RI/FS activities, the Respondents shall thoroughly compile, review, and assess the quality of all existing Site data, which shall include presently available data relating to the varieties and quantities of hazardous substances at the Site and past disposal practices. This documentation shall also include results from any previous sampling events. The Respondents shall refer to Table 2-1 of the RI/FS Guidance for a comprehensive list of data collection information sources (EPA 1988). The Respondents will use this information to identify additional data needed to characterize the Site, to better define potential ARARs, and to develop a range of preliminarily identified remedial alternatives. Respondents shall establish data quality objectives (DQOs), subject to Agency approval, which evaluate the usefulness of existing data. The Agencies shall make the final decisions on the necessary data and DQOs.

Conduct Site visit

The Respondents shall conduct a Site visit during the project scoping phase to assist in developing a conceptual understanding of sources and areas of contamination as well as potential exposure pathways and receptors at the Site. During the Site visit, the Respondents should observe the Site's physiography, hydrology, geology, demography, and land use, as well as natural resource, ecological, and cultural features. This information shall be used to better scope the project and determine the extent of additional data needed to characterize the Site, to better define potential ARARs, and to narrow the range of preliminarily identified remedial alternatives.

b. Project Planning

Once the Respondents have collected and analyzed existing data and conducted a Site visit, the specific project scope shall be planned. Project planning activities include those tasks described below, as well as identifying data needs, developing a Work Plan, designing a data-collection program, and identifying health and safety protocols. The Respondents shall have a kick off meeting with the Agencies to discuss any of these issues and the scoping Deliverables listed below.

Develop a preliminary conceptual site model

Information on the waste sources, pathways, and receptors at the Site shall be used to develop a conceptual understanding of the Site and to evaluate potential risks to human health and the environment. The conceptual site model (CSM) should include known and suspected sources of contamination, types of contamination and affected media, known and potential routes of migration, and known or potential human and environmental receptors. This effort, in addition to identifying locations where sampling is needed, will assist in identifying potential remedial technologies.

The preliminary CSM for the ecological risk assessment (ERA) shall include species and their habitats that could be impacted by Site-related contamination based upon information generated during the historical review and Site visit and shall show the relationships among species and potential exposure pathways. The preliminary CSM for the human health risk assessment (HHRA) shall include all potential exposure pathways.

Refine and document preliminary remedial action objectives and alternatives

Once existing Site information has been analyzed and an understanding of the potential Site risks have been determined, the Respondents shall review and, if necessary, refine the remedial action objectives (RAOs) identified for each actually or potentially contaminated medium. The revised RAOs will be documented in a technical memorandum and be subject to the Agencies' approval. The Respondents shall then identify a preliminary range of broadly defined potential remedial action alternatives and associated technologies. The range of potential alternatives shall encompass, where appropriate, alternatives in which treatment significantly reduces the toxicity, mobility, and/or volume of the waste; alternatives that involve containment with little or no treatment; and a no-action alternative.

Document the need for treatability studies

If the Respondents or Agencies have identified remedial actions involving treatment, treatability studies shall be required, except where the Respondents can demonstrate to the satisfaction of the Agencies that such studies are not needed. Where treatability studies are needed, initial treatability testing activities (such as research and study design) shall be planned to occur concurrently with site characterization activities.

Begin preliminary identification of potential applicable or relevant and appropriate requirements

The Respondents shall conduct a preliminary identification of potential state and federal ARARs (chemical-specific, location-specific, and action-specific) to assist in the refinement of RAOs and the initial identification of remedial alternatives and ARARs associated with particular actions. ARAR identification will continue as Site conditions, contaminants, and remedial action alternatives are better defined.

c. Scoping Deliverables

At the conclusion of the project planning phase, the Respondents shall submit a Work Plan that shall be reviewed and approved by the Agencies prior to the initiation of field activities. The Respondents shall submit a sampling and analysis plan (SAP), which will include a site health and safety plan (HASP), and a risk assessment work plan.

Work plan

The Respondents shall submit to the Agencies for review and approval a Work Plan documenting the decisions and evaluations completed during the scoping process. The Work Plan shall be developed in conjunction with the SAP and HASP, although each plan may be delivered under separate cover. The Work Plan shall include a comprehensive description of the Work to be performed, including the methodologies to be used, as well as a corresponding schedule for completion. In addition, the Work Plan shall include the rationale for performing the required activities. Specifically, the Work Plan shall present the RI/FS objectives and a statement of potential problems posed by the Site. The Work Plan shall include a Site background summary with the Site description, including its geographic location, and to the extent possible, a description of the Site's physiography, hydrology, hydrogeology, geology, demography, land use, and ecological, cultural, and natural resource features; a synopsis of the Site's history and a description of previous response actions, if any, that have been conducted at the Site by local, state, federal, or private parties; and a summary of the existing data in terms of physical and chemical characteristics of the contaminants identified and their distribution among the environmental media at the Site.

An integral part of the Work Plan is a detailed description of the tasks to be performed, information needed for each task, information to be produced during and at the conclusion of each task, and a description of the Deliverables that will be submitted to the Agencies. This includes the Deliverables described in this SOW; a schedule for each of the required activities that is consistent with the RI/FS Guidance; a project management plan, including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format, and backup data management) appropriate for reporting to the

Agencies; and work sessions to introduce and review key RI/FS work elements. A comprehensive description of the contents of the required Work Plan is provided in Appendix B of the RI/FS Guidance. Because of the unknown nature of the Site and iterative nature of the RI/FS, additional data requirements and analyses may be identified throughout the process. The Respondents shall submit a technical memorandum documenting the need for additional data and identifying the DQOs whenever such requirements are identified. In any event, the Respondents are responsible for fulfilling additional data and analytical requests made by the Agencies consistent with the general scope and objectives of the RI/FS. The Work Plan shall reflect coordination with treatability study requirements, if treatability studies are initiated. It shall include a process for and manner of identifying federal and state ARARs (chemical-specific, location-specific, and action-specific).

Sampling and analysis plan

The Respondents shall prepare a SAP to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet DQOs. The SAP provides a mechanism for planning field activities and consists of a field sampling plan (FSP) and a quality assurance project plan (QAPP). These documents may be compiled in a SAP.

The FSP shall define in detail the sampling and data-gathering methods that will be used on the project. It shall include sampling objectives, sample location and frequency, sampling equipment and procedures, and sample handling and analyses. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that will be used to achieve the desired DQOs. The DQOs shall, at a minimum, reflect use of analytical methods to identify contamination and remediate contamination consistent with the levels for RAOs identified in the NCP. In addition, the QAPP shall address the following: sampling procedures; sample custody; analytical procedures; data reduction, validation, and reporting; and personnel qualifications.

The Respondents shall demonstrate in advance, and to the satisfaction of the Agencies that each laboratory it may use is qualified to conduct the proposed work. This includes the use of methods and analytical protocols for the constituents of potential concern (COPCs) in the media of interest within detection and quantification limits consistent with both QA/QC procedures and DQOs approved by the Agencies in the QAPP for the Site. Each laboratory shall have and follow an approved QA program. If a laboratory that is not in the Contract Laboratory Program (CLP) is selected, such laboratory shall use methods consistent with CLP methods, and its QA/QC procedures shall be submitted for the Agencies' review and approval. The Agencies may require the Respondents to submit detailed information to demonstrate that the laboratory is qualified to conduct the work, including personnel qualifications, equipment, and material specifications. The Respondents shall ensure that the Agencies have access to laboratory personnel, equipment, and records regarding sample collection, transportation, and analyses.

The SAP, FSP, and QAPP shall be prepared in accordance with United States Environmental Protection Agency (EPA) DQO guidance documents (EPA 2000, 2002a, 2002b, and 2006 or subsequently published guidance) as well as the *Contract Laboratory Program National Functional Guidelines for Inorganic Superfund Data Review* (EPA 2010) and any other appropriate EPA guidance documents. To the extent permitted by site-specific considerations,

the SAP shall be consistent with those developed for other regional phosphate mining sites addressed under CERCLA.

Potential target analytes

Waste rock-derived potential target analytes include, but are not limited to, those listed in Attachment C for the various media of interest (soils, sediments, vegetation, surface water, ground water, and aquatic and terrestrial biota). Other constituents may be added to and or deleted from the preliminary COPC list based on new data and Agency and Respondent review. Additional COPCs related to other industrial activities such as garages and maintenance shops, if any, may be identified through the scoping process. In the event other industrial activities are discovered, additional COPCs will be determined using applicable state regulations and guidance documents.

Ground water and surface water

The sampling results of the analytes listed in Attachment C shall be screened by comparison to appropriate benchmarks.

As the RI progresses, the Respondents shall review the results of ground water and surface water sampling (this includes prior sampling conducted at the Site), shall compare the analytical results for each of the COPCs against the screening levels, and shall recommend respective COPCs to be eliminated from the list provided in Attachment C for subsequent sampling events. Upon approval by the Agencies, the COPCs eliminated by this process shall not be included in the analyses for subsequent ground water and surface water sampling events unless new information warrants such analysis. Follow-up sampling of ground water or surface water pathways may be required to ensure that all release sources and contaminant migration routes have been identified.

Soils, sediments, vegetation, and biota

The sampling results of the analytes listed in Attachment C shall be screened by comparison to appropriate benchmarks. Follow-up sampling of soils, sediments, vegetation, or biota pathways may be required to ensure that all release sources and contaminant migration routes have been identified.

Site health and safety plan

A HASP shall be prepared in conformance with the Respondents' health and safety program and shall comply with the Occupational Safety and Health Administration regulations and protocols. The HASP shall include the 11 elements described in the RI/FS Guidance (EPA 1988). These elements include the following:

1. The name of a Site health and safety officer and the names of key personnel and alternates responsible for Site safety and health
2. A health and safety risk analysis for existing Site conditions and for each Site task and operation
3. Employee training assignments
4. A description of personal protective equipment to be used by employees for each of the Site tasks and operations being conducted
5. Medical surveillance requirements

6. A description of the frequency and types of air monitoring, personnel monitoring, environmental sampling techniques, and instrumentation to be used
7. Site control measures
8. Decontamination procedures
9. Standard operating procedures for the Site
10. A contingency plan that meets the requirements of 29 CFR 1910.120(l)(1) and (l)(2)
11. Entry procedures for confined spaces.

The Agencies will not approve the Respondents' HASP; rather, the Agencies shall review it to ascertain that all necessary elements are included and that the plan provides for the protection of human health and the environment.

Risk assessment work plan

An HHRA and ERA are part of the Work Plan. The HHRA must be conducted according to current EPA guidance. The HHRA should evaluate the potential for current and future adverse human health effects that may be caused by contaminant release from the Site if no action is taken. The HHRA should consist of two phases: problem formulation and risk quantification. The problem formulation phase will identify the conditions at and surrounding the Site that can influence human exposure from site-related releases. The risk quantification phase of the HHRA shall include the four tasks identified below and should use the information developed during the problem formulation phase of the HHRA:

1. Exposure Assessment—Identifies the pathways by which potential human exposures could occur, describes how they are evaluated, and evaluates the magnitude, frequency, and duration of these exposures
2. Toxicity Assessment—Summarizes the toxicity of the contaminants of potential concern and the relationship between the magnitude of exposure and occurrence of adverse health effects
3. Risk Characterization—Integrates information from the exposure and toxicity assessments to characterize the risks to human health from potential exposure to chemicals in environmental media
4. Uncertainty Analysis—Summarizes the basic assumptions used in the HHRA, as well as limitations of data and methodology

Under EPA guidance (EPA 1998), a baseline ERA shall include the following three interrelated phases:

1. Problem Formulation Phase—this phase shall begin the process by defining the objectives and scope of the ecological assessment. Problem formulation identifies ecological resources and attributes at the Site and the stressors that could affect these attributes. The outputs of problem formulation include (1) the conceptual exposure model (CEM) to identify the pathways by which exposure to chemicals of potential ecological concern (COPECs) can occur for ecological receptors and (2) identification of ecological endpoints that provide measures of the health of ecosystems at the Site.
2. Analysis Phase—the analysis phase shall be directed by the results of the problem formulation. This phase will estimate the magnitude of actual or potential ecological exposures to representative wildlife species (characterization of ecological exposure)

and identify the types of ecological effects that can result from exposure to site-related chemicals (characterization of ecological effects). The outputs of the analysis phase are a profile of potential exposure at the Site and a profile of the toxicological properties of Site-related chemicals (stressor-response profile). These products provide the basis of the risk characterization.

3. Ecological Risk Characterization Phase—this final phase of the ERA shall integrate the ecological exposure and effects assessments to estimate the potential for adverse impacts to ecological receptors from exposure to Site COPECs. This phase shall include a discussion of the lines of evidence and the assumptions and limitations of the analyses.

The Work Plan must document the guidance, data evaluation approach (representativeness, grouping, and processing), exposure quantification methods and assumptions, and sources of toxicity factors to be used in the ERA and HHRA.

The Work Plan and various SAPs should describe the details of the site investigation and the DQOs, as well as the data analysis methods to be used to define or quantify the risks at the site. If prepared properly, most of the technical details and professional judgment needed to complete the baseline HHRA and ERA will have already been incorporated into the Work Plan and SAPs. The Work Plan and SAPs, after implemented, should provide the Project Manager with the information needed to incorporate risk management decisions into the site remedy selection process.

5 Task 2—Community Relations

The development and implementation of community relations activities are the responsibility of the Agencies. Although implementation of the community relations plan is the responsibility of the Agencies, upon the Agencies' request, in a timely manner, the Respondents may assist by providing information on the Site's history, preparing presentation materials, participating in public meetings, and preparing fact sheets for distribution to the general public.

6 Task 3—Site Characterization

As part of the RI, the Respondents shall perform the activities described in this task, which includes preparing data summary reports (DSRs) and the RI report. The overall objective of RI/FS site characterization is to describe areas of the Site that may pose a threat to human health or the environment. This objective is accomplished by first determining the Site's physiography, geology, and hydrology/hydrogeology, and defining surface and subsurface pathways of migration. The Respondents shall identify the sources of contamination and define their nature, extent, and volume, including their physical and chemical constituents, and the concentrations of such constituents relative to background in the affected media at appropriately incremental locations. The Respondents shall also investigate the extent of contaminant migration and any changes in physical or chemical characteristics to provide a sufficient understanding of its nature and extent. Respondents shall use this information to determine and predict contaminant fate and transport and determine potential receptors in evaluating human and ecological risk.

The Work Plan, SAP, and HASP shall be implemented during this phase of the RI/FS. The Respondents shall collect and analyze field data to accomplish the objectives of the RI/FS. The Respondents shall notify the Agencies at least five Working Days in advance of the field work regarding the planned dates for the RI/FS field activities. The Agencies may waive the five-day notification requirement as appropriate (e.g., when time-critical sampling occurs during high spring runoff). In such instances, the Agencies shall be notified as soon as practicable in advance of field activities. The Respondents shall demonstrate that the laboratory and type of laboratory analyses that will be used during site characterization meet the specific QA/QC requirements and DQOs of the RI as specified in the SAP. When site conditions are unknown, activities are often iterative, and to satisfy the objectives of the RI/FS, it may be necessary for the Respondents to supplement the work specified in the initial Work Plan. In addition to the Deliverables below, the Respondents shall provide quarterly progress reports (also Deliverables) and participate in periodic work sessions when requested by the Agencies.

a. Field Investigation

The field investigation shall include gathering data to define Site physical and biological characteristics, sources of contamination, and the nature and extent of contamination at the Site. The investigation will be performed in accordance with applicable EPA guidance including *Guidance for Choosing a Sampling Design for Environmental Data Collection* (EPA 2002a). The Respondents shall perform these activities in accordance with the Work Plan and SAP. At a minimum, the following activities shall be addressed.

Implement and document field support activities

The Respondents shall initiate field support activities following approval of the Work Plan and SAP. Field support activities may include obtaining access to the Site, scheduling, and procuring equipment, office space, laboratory services, and/or contractors. The Respondents shall notify the Project Manager at least two weeks prior to initiating field support activities so the Agencies may adequately schedule oversight tasks. The Agencies may waive the two-week notification requirement as appropriate (e.g., a limited time window to implement field activities following approval of the Work Plan and SAP). The Respondents shall also notify the Project Manager, in writing, upon completion of field support activities.

Investigate and define Site physical and biological characteristics

The Respondents shall collect data on the physical and biological characteristics of the Site and its surrounding areas, including the physiography, geology, hydrology, and specific physical characteristics identified in the Work Plan as related to the presence and migration of hazardous substances, the evaluation of risks to human health and the environment, and the development and evaluation of remedial action alternatives. This information shall be ascertained through a combination of physical measurements, observations, and sampling efforts and will be used to define potential transport pathways and human and ecological receptor populations. In defining the Site's physical characteristics, the Respondents shall also obtain sufficient engineering data to project contaminant fate and transport and the development and screening of remedial action alternatives, including information to assess treatment technologies.

Define sources of contamination

The Respondents shall locate and determine the nature and extent of each contaminant source at the Site, including the physical characteristics, chemical constituents, and concentrations for all known and discovered sources of contamination. The Respondents shall conduct sufficient sampling to define the boundaries of the contaminant sources to the level established in the QA/QC plan and DQOs. Consistent with the RI/FS Guidance, data-collection efforts will be focused on the data quality and quantity necessary and sufficient to meet RI/FS objectives and to support the development, evaluation, and selection of remedial alternatives.

Defining the source of contamination shall include analyzing the potential for contaminant release (e.g., long-term leaching from soil), contaminant mobility and persistence, and characteristics important for evaluating remedial actions, including information to assess treatment technologies.

Describe the nature and extent of contamination

As a final step of the field investigation, the Respondents shall describe the nature and extent of contamination, using the information gathered during the prior phases of the field investigation, to make a preliminary estimate of the contaminants that may have migrated. The Respondents shall then implement an investigation program and any study program identified in the Work Plan or SAP to identify and quantify the concentration and migration of contaminants through the various media at the Site. If additional data gaps are identified after the initial investigation program, additional characterization and investigation may be implemented in a phased approach. In addition, the Respondents shall gather data for calculations of contaminant fate and transport. This process shall be continued until the area and depth of contamination are known to the level established in the QA/QC plan and DQOs. The level of risk presented by the Site will be determined during the RI. The Respondents shall use this information to determine aspects of the appropriate remedial action alternatives to be evaluated.

b. Data Analyses***Evaluate Site characteristics***

The Respondents shall analyze and evaluate the data to describe (1) Site physical and biological characteristics; (2) natural background levels of constituents of concern; (3) contaminant source characteristics; (4) nature and extent of contamination; and (5) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses shall be used in the analysis of contaminant fate and transport. The evaluation shall include the actual and potential magnitude of releases from the sources and horizontal and vertical extent of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, the Respondents shall identify such models to the Agencies for approval in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to the Agencies together with a sensitivity analysis. The RI data shall be presented in a format (i.e., on computer disc or equivalent) to facilitate risk assessment preparation. The Respondents shall consult with the Agencies concerning any data gaps and then collect such data as required to address the identified data gaps prior to completing the risk assessment (EPA 1992b). The evaluation shall provide any

information relevant to Site characteristics that can be used to evaluate the need for remedial action in the risk assessment and to develop and evaluate remedial alternatives. Analyses of data collected for site characterization shall meet the DQOs developed in the QA/QC plan stated in the SAP (or revised during the RI).

c. Data Management Procedures

The Respondents shall consistently document the quality and validity of field and laboratory data compiled during the RI.

Document field activities

Information gathered during site characterization shall be consistently documented and adequately recorded by the Respondents in well-maintained field logs and laboratory reports. The methods of documentation shall be specified in the Work Plan or the SAP. Field logs shall be used to document observations, measurements, and significant events that occur during field activities. Laboratory reports shall document sample custody, analytical responsibility, analytical results, adherence to prescribed protocols, nonconformity events, corrective measures, and/or data deficiencies.

Maintain sample management and tracking

The Respondents shall maintain field reports, sample shipment records, analytical results, and QA/QC reports to ensure that validated analytical data generated during the RI/FS process are reported and used in developing and evaluating remedial alternatives. Analytical results developed under the Work Plan shall not be included in any site characterization reports unless accompanied by or cross-referenced to a corresponding QA/QC report. All sampling and testing data, QA/QC documentation, and chain-of-custody forms maintained by the Respondents shall be in an electronic format acceptable to the Agencies. In addition, the Respondents shall establish a data security system to safeguard chain-of-custody forms and other project records to prevent loss, damage, or alteration of project documentation. Samples may be disposed of or retained in accordance with EPA guidance.

Validate data

The Respondents will use a third party to validate datasets using the general protocol and process described in the QAPP and appropriate EPA guidance.

All validated data shall be made available to the Agencies in electronic format (i.e., computer disc or equivalent). The validated data, along with QA/QC information and data validation summaries, shall be submitted in electronic format within 120 calendar days from the date of collection of the last sample from each sampling event. All validated data shall also be submitted in an electronic data deliverable (EDD) database.

d. Site Characterization Deliverables

The Respondents shall prepare periodic DSRs, an RI report, and an RA report. The Respondents may prepare other reports (e.g., background levels, data quality, and usability evaluation) as needed.

Data summary reports

After completing each annual field season's sampling and analyses, the Respondents shall prepare a concise site characterization DSR. This report shall review the investigative activities that have taken place and describe and display Site data documenting the location and characteristics of surface and subsurface features and contamination at the Site, including the affected media, locations, types, physical state, concentrations, and quantities of contaminants. In addition, the Respondents shall document the location, dimensions, physical condition, and varying concentrations of each contaminant throughout each source and the extent of contaminant migration through each of the affected media. Each DSR shall also identify any data gaps and additional and/or modified sampling and analysis that shall be included in modifications to the SAP for each subsequent field season. If acceptable to the Agencies, following the final field season of data collection, the DSR can be eliminated as a separate Deliverable, and the information collected during the final field season can be presented in the RI report.

Remedial Investigation report

The Respondents shall prepare and submit a draft RI report to the Project Manager for review and approval by the Agencies, according to the established schedule. This report shall summarize the results of field activities to characterize the Site, sources of contamination, nature and extent of contamination, and the fate and transport of contaminants. The Respondents shall refer to the RI/FS Guidance for an outline of the report format and contents. A suggested RI report format is also provided in Attachment D. Following comment by the Agencies and the incorporation of Agencies' modifications, the Respondents shall prepare a final RI report that satisfactorily addresses the Agencies' comments.

Risk assessment

The Respondents shall conduct an HHRA and ERA to assess the potential human health and environmental risks posed by the Site in the absence of any remedial action using exposure point concentrations developed from data collected at the Site.

The HHRA shall include the following components:

- Identification of COPCs that are considered to be most important to the human health evaluation
- Exposure assessment to identify the pathways by which potential human exposure could occur and estimate the magnitude, frequency, and duration of the exposure and the related uncertainties for contaminant toxicity (e.g., weight of evidence for a chemical's carcinogenicity)
- Toxicity assessment to summarize the toxicity of the selected chemicals and the relationship between magnitude of exposure and adverse human health effects
- Risk characterization integrating the toxicity and exposure assessments to estimate the potential risks to human health from exposure to chemicals in environmental media

The HHRA shall be consistent with EPA human health risk assessment guidance (EPA 1989, 1991a, 1991b, 1992a, 1992b, 1992c, 1995, 2004a, 2005).

Respondents shall conduct the ERA using EPA's eight-step process. The ERA will evaluate the likelihood of adverse ecological effects occurring as a result of exposure to physical or chemical stressors. The ERA shall contain detailed information regarding the contact or co-occurrence of stressors with the biological community at the site. Exposure profiles shall be developed to identify ecological habitats and pathways of exposure. The ERA also shall characterize the sources and distribution of stressors in the environment. The ERA shall be conducted in accordance with EPA ecological risk assessment guidance (EPA 1997a, 1997b, and 1998).

Risk assessment report

The Respondents shall prepare and submit a draft RA report to the Agencies for review and approval by the Agencies. This report shall summarize the results of the site-specific HHRAs and ERAs. Following review by the Agencies, the Respondents shall prepare a final RA report that adequately addresses the Agencies' comments and modifications. The RA report will be incorporated into the RI report.

7 Task 4—Treatability Studies

If candidate treatment technologies have not been sufficiently demonstrated or cannot be adequately evaluated for the Site on the basis of available information, the Respondents shall conduct treatability testing if the Agencies determine that such testing is needed to analyze the remedial alternatives. A separate HASP for the treatability study may be necessary. In addition, if applicable, testing results and operating conditions shall be used in the detailed design of the selected remedial technology. The following activities shall support any treatability testing performed for the study.

a. Determination of Candidate Technologies and Need for Testing

The Respondents shall identify in a technical memorandum, subject to the Agencies' review and approval, candidate technologies for a treatability study program during project planning (Task 1). The listing of candidate technologies shall cover the range of technologies required for alternatives analysis. The specific data requirements for the testing program will be determined and refined during site characterization and the development and screening of remedial alternatives (Tasks 3 and 5, respectively).

Conduct literature survey and determine the need for treatability testing

The Respondents shall conduct a literature survey to gather information concerning the performance, relative costs, applicability, removal efficiencies, operation and maintenance requirements, and implementability of candidate technologies. If practical candidate technologies have not been sufficiently demonstrated or cannot be adequately evaluated for this Site on the basis of available information, the Respondents shall conduct treatability testing. Where the Agencies have determined that treatability testing is required, and unless the Respondents can demonstrate to the Agencies' satisfaction that it is not necessary, the Respondents shall submit an SOW to the Project Manager outlining the steps and data necessary to evaluate and initiate the treatability testing program.

Evaluate treatability testing

When the Agencies have determined that the Respondents shall perform a treatability study, the Parties will decide on the type of treatability testing to use (e.g., bench versus pilot). Because of the time required to design, fabricate, and install pilot-scale equipment, as well as perform testing for various operating conditions, the decision whether or not to perform pilot testing should be made as early in the process as possible to minimize potential delays of the FS. To ensure that a treatability testing program is completed on time and with accurate results, the Respondents shall submit to the Project Manager either a treatability testing work plan or an amendment to the original Site Work Plan for the Agencies' review and approval.

b. Treatability Deliverables

When treatability testing is conducted, the required Deliverables, in addition to the memorandum identifying candidate technologies, shall include a work plan, SAP, and final treatability study evaluation report. The Agencies may also require a treatability study HASP, where appropriate.

Prepare a treatability testing work plan

The Respondents shall prepare a treatability testing work plan or amendment to the original Site Work Plan for the Agencies' review and approval, describing the Site background, remedial technologies to be tested, test objectives, experimental procedures, treatability conditions to be tested, performance measurements, analytical methods, data management and analyses, health and safety, and residual waste management. The DQOs for treatability testing shall be documented as well. If pilot-scale treatability testing is to be performed, the pilot-scale work plan will describe equipment, installation and start-up, operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot-scale performance, and a detailed HASP. If testing is to be performed off-Site, permitting requirements shall be addressed.

Prepare a treatability study sampling and analysis plan

If the original QAPP or FSP does not adequately define the activities to be performed during the treatability tests, the Respondents shall prepare and submit for the Agencies' approval a separate treatability study SAP or amendment to the original Site SAP. Task 1.c of this SOW provides additional information on the requirements of the SAP.

Prepare a treatability study health and safety plan

If the original HASP does not adequately define the activities to be performed during the treatability tests, Respondents shall develop a separate or amended HASP. Task 1.c provides additional information on the requirements of the HASP. The Agencies are not required to approve the treatability study HASP.

Develop a treatability study evaluation report

Following completion of treatability testing, the Respondents shall analyze and interpret the testing results in a technical report to the Agencies. Depending on the sequence of activities, this report may be a part of the RI report or the FS report or a separate Deliverable. The report shall evaluate each technology's effectiveness, implementability, cost, and actual results as compared

with predicted results. The report shall also evaluate full-scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

8 Task 5—Feasibility Study

The FS comprises two primary activities: (1) development and screening of alternatives and (2) detailed analysis of alternatives. The alternatives surviving the screening process will be subject to the detailed analysis process. The results of these two FS components will comprise the draft FS report. Interim Deliverables associated with these activities will be identified in the Work Plan.

a. Development and Screening of Remedial Alternatives

The development and screening of remedial alternatives is performed to develop an appropriate range of remedial alternatives for further evaluation. This range of alternatives shall include, as appropriate: (1) options in which treatment is used to reduce the toxicity, mobility, or volume of wastes; (2) options involving containment with little or no treatment; (3) options involving both treatment and containment; and (4) a no-action alternative.

Concurrently with the RI site characterization task, the Respondents shall begin to develop and evaluate a range of appropriate remedial options which, at a minimum, ensure protection of human health and the environment and comply with ARARs. This task shall run concurrently with the Site RI. The Respondents shall perform the following activities as part of the development and screening of remedial alternatives.

Refine and document remedial action objectives

The Respondents shall review and, if necessary, modify the site-specific RAOs, specifically the PRGs, based on the RA results. The revised PRGs will be documented in a technical memorandum that will be reviewed and approved by the Agencies. These modified PRGs shall specify the contaminants and media of interest, exposure pathways and receptors, and an acceptable contaminant level or range of levels (at particular locations for each exposure route).

Develop general response actions

The Respondents shall develop general response actions for each medium of interest, which may include containment, treatment, excavation, pumping, or other actions (including no action), singly or in combination, to satisfy the RAOs.

Identify areas or volumes of media

The Respondents shall identify areas or volumes of media to which general response actions may apply, taking into account requirements for protectiveness as identified in the RAOs. The chemical and physical characterization of the Site shall also be taken into account.

Identify, screen, and document remedial technologies

The Respondents shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. General response actions shall

be refined to specify remedial technology types. Technology process options for each of the technology types shall be identified either concurrently when identifying technology types or following the screening of the considered technology types. Process options shall be evaluated based on effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The technology types and process options shall be summarized and included in a technical memorandum. The Respondents shall specify the reasons for eliminating alternatives.

Assemble and document alternatives

The Respondents shall assemble selected representative technologies into alternatives for each affected medium. Together, all of the alternatives will represent a range of treatment and containment combinations that will address each medium by operable unit or site as a whole. The Respondents shall prepare a summary of the assembled alternatives and their related action-specific ARARs for inclusion in a technical memorandum. The reasons for eliminating alternatives during the preliminary screening process shall be specified.

Refine alternatives

The Respondents shall refine the remedial alternatives to identify contaminant volume addressed by the proposed process and sizing of critical unit operations as necessary. Sufficient information shall be collected for an adequate comparison of alternatives. PRGs for each chemical in each medium shall also be modified as necessary to incorporate any new risk assessment information presented in the RA report. Additionally, action-specific ARARs shall be updated as the remedial alternatives are refined.

Conduct and document screening evaluation of each alternative

The Respondents may perform a final screening process based on short- and long-term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is necessary only when there are many feasible alternatives available for detailed analysis. If necessary, alternatives shall be screened to ensure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that was initially developed. The range of remaining alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondents shall prepare a technical memorandum that summarizes the results of the screening evaluation, provides the reasoning employed in the screening process, identifies alternatives that remain after screening, and identifies the action-specific ARARs for the alternatives that remain after screening.

b. Detailed Analysis of Alternatives

The Respondents shall conduct a detailed analysis of remedial alternatives, which shall analyze each alternative against a set of nine evaluation criteria, and conduct a comparative analysis of all options using the same nine evaluation criteria as a basis for comparison. This analysis is the final task to be performed by the Respondents during the FS.

The Respondents shall apply nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will be protective of human health and the

environment; will be in compliance with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria consist of the following: (1) overall protection of human health and the environment; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: Criteria 1 and 2 are threshold criteria that shall be met [unless a specific ARAR is waived]; Criteria 3–7 are primary balancing criteria; and Criteria 8 and 9 are modifying criteria evaluated by the Agencies after receiving public comments following release of the RI/FS report and a proposed remedial action plan to the general public.) For each alternative, the Respondents shall provide: (1) a description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative and (2) a discussion of the individual criterion assessment. Since the Respondents do not have direct input on Criteria 8 (state or support agency acceptance) and 9 (community acceptance), these will be addressed by the Agencies.

Compare alternatives against each other and document the comparison of alternatives.

The Respondents shall perform a comparative analysis between the remedial alternatives. Each alternative shall be compared against the others using the evaluation criteria as a basis of comparison. The Respondents shall prepare a technical memorandum summarizing the results of the comparative analysis. The technical memorandum will identify and recommend a remedial alternative for selection. Selection of the preferred alternative is reserved by the Agencies.

c. Feasibility Study Report

The Respondents shall prepare a draft FS report for the Agencies' review and comment. This report, as ultimately adopted or amended by the Agencies, provides a basis for remedy selection by the Agencies and documents the development and analysis of remedial alternatives. The Respondents shall refer to the RI/FS Guidance for an outline of the report format and the required report content (EPA 1988). A suggested format for the report can be found in Attachment E of this SOW. The Respondents shall prepare a final FS report that adequately addresses the Agencies' comments.

9 Remedial Investigation/Feasibility Study Project Management

The Respondents will prepare and submit quarterly project deliverables status reports (PDSRs) to the Agencies to aid in project planning and resource allocation. These reports will document the status of all in-process Deliverables (including interim Deliverables, technical memoranda, and specific Deliverables identified in the CO/ASAOC and in this SOW) and Deliverables projected for submission. These PDSRs will be submitted according to the schedule in Attachment B.

10 References

The following list, although not comprehensive, includes many of the regulations and guidance documents that apply to the RI/FS process.

- CFR (Code of Federal Regulations). April 17, 2013. *National Oil and Hazardous Substances Pollution Contingency Plan (NCP)*. 40 CFR Part 300.
- DEQ (Idaho Department of Environmental Quality). 2004. *Area Wide Risk Management Plan: Removal Action Goals and Objectives, and Action Levels for Addressing Releases and Impacts from Historic Phosphate Mining Operations in Southeast Idaho*. Boise, ID: DEQ. WST.RMIN.SEA.W.6005.67068.
- EPA (United States Environmental Protection Agency). 1988. *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*. Interim Final. Washington, DC: Office of Emergency and Remedial Response.
- EPA (United States Environmental Protection Agency). 1989. *Risk Assessment Guidance for Superfund (RAGS), Volume I: Human Health Evaluation Manual*. Interim Final. Washington, DC: EPA.
- EPA (United States Environmental Protection Agency). 1991a. *Human Health Evaluation Manual, Supplemental Guidance: Standard Default Exposure Factors*. Washington, DC: EPA.
- EPA (United States Environmental Protection Agency). 1991b. *Risk Assessment Guidance for Superfund Volume I, Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals)*. Interim Final. Washington, DC: Office of Research and Development. EPA/540/R-92/003.
- EPA (United States Environmental Protection Agency). 1992a. *Supplemental Guidance to RAGS: Calculating the Concentration Term*. Washington, DC: Office of Solid Waste and Emergency Response. Publication 9285.7-081.
- EPA (United States Environmental Protection Agency). 1992b. *Guidance for Data Useability in Risk Assessment (Part A)*. Washington, DC: Office of Emergency and Remedial Response. OSWER Directive 9285.7-09A.
- EPA (United States Environmental Protection Agency). 1992c. *Guidance on Risk Characterization for Risk Managers and Risk Assessors*. Washington, DC: Office of the Administrator.
- EPA (United States Environmental Protection Agency). 1995. *Guidance for Risk Characterization*. Washington, DC: EPA Science Policy Council.
- EPA (United States Environmental Protection Agency). 1997a. *Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments*. Washington, DC: EPA. EPA 540-R-97-006.

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- EPA (United States Environmental Protection Agency). 2001. *Risk Assessment Guidance for Superfund (RAGS): Volume I – Human Health Evaluation Manual (Part D), Standardized Planning, Reporting and Review of Superfund Risk Assessments*. Final. Washington, DC: EPA. Publication 9285.7-47.
- EPA (United States Environmental Protection Agency). 2002a. *Guidance for Choosing a Sampling Design for Environmental Data Collection*. Washington, DC: EPA. EPA QA/G-5S. EPA/240/R-02/005.
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- EPA (United States Environmental Protection Agency). 2004a. *Risk Assessment Guidance for Superfund–Volume I: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment)*. Final. Washington, DC: EPA. EPA/540/R/99/005.
- EPA (United States Environmental Protection Agency). 2005. *Guidelines for Carcinogen Risk Assessment*. Washington, DC: EPA. EPA/630/P-03/001F.
- EPA (United States Environmental Protection Agency). 2006. *Guidance on Systematic Planning Using the Data Quality Objectives Process*. Washington, DC: EPA. EPA QA/G-4. EPA/240/B-06/001.
- EPA (United States Environmental Protection Agency). 2010. *Contract Laboratory Program National Functional Guidelines for Inorganic Data Review*. Washington, DC: EPA. OSWER 9240 1-51. EPA 540-R-10-011.
- Lee, W.H. *A History of Phosphate Mining in Southeastern Idaho*. United States Geological Survey Open-File Report 00-425, Version 1.0.

Georgetown Canyon RI/FS Statement of Work Attachments:

Attachment A—Site Map

Attachment B—Schedule

Attachment C—Preliminary COPC List and Analytical Parameters

Attachment D—Suggested RI Report Format

Attachment E—Suggested FS Report Format

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Attachment A—Site Map

Attachment B—Schedule

Georgetown Canyon Phosphate Mine Remedial Investigation/Feasibility Study Statement of Work Deliverables Schedule

(Note: all days are calendar days and are counted from the receipt date when triggered by written communication.)

It is the intent that all Deliverables will require only two iterations (i.e., draft final and final versions). When that is not possible, then additional versions will be necessary as outlined below.

Work Plan (WP)/Sampling and Analysis Plan (SAP)/Site Health and Safety Plan (HASP):

- Draft due within 120 days after the Effective Date of the CO/ASAOC
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold a meeting/conference call to discuss responses
- Within 30 days of above meeting/call submit a revised RI/FS WP/SAP/HASP for agency approval (Note: Agencies do not approve the HASP)
- The process will continue until a final RI/FS WP/SAP is approved

Data Summary Reports (DSRs):

- Draft DSRs due within 120 days of completion of each season's field work or within 90 days of the receipt of final laboratory data, whichever is earlier
- 30 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold a meeting/conference call to discuss responses
- Within 30 days of above meeting/call submit revised DSRs for agency approval
- The process will continue until final DSRs are approved

Remedial Investigation (RI) Report:

- Within 5 days of receipt of final laboratory data, Respondents shall provide written notification to the Lead Agency identifying receipt date of final laboratory data
- Submit draft RI report within 120 days after receipt of laboratory data from the final field season
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold a meeting/conference call to discuss responses
- Within 30 days of above meeting/call submit a revised RI report for agency approval
- The process will continue until a final RI report is approved

Risk Assessment (RA) Report:

- Submit draft RA report within 60 days after submittal of final RI report
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold meeting/conference call to discuss responses

- Within 30 days of above meeting/call submit a revised RA report for agency approval
- The process will continue until a final RA report is approved

Feasibility Study (FS):

- Submit draft FS within 120 days after RA report approval
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold a meeting/conference call to discuss responses
- Within 30 days of above meeting/call submit a revised FS for agency approval
- The process will continue until a final FS is approved

Data Validation Summaries (DVSs):

- DVSs due within 90 days from the date of collection of the last sample from each sampling event. Within 5 days of the completion of each season's field work, Respondents will provide written notification to the Lead Agency identifying the date of collection of the last sample from each sampling event.

Project Deliverables Status Reports (PDSRs):

- Submit by the second Friday of January, April, July, and October

Interim Deliverables:

- Draft interim Deliverables as identified in the Statement of Work (e.g., technical memoranda associated with development and screening of remedial alternatives and detailed analysis of alternatives, preliminary remedial goals, remedial action objectives, etc.) or as required by the Agencies (e.g., any additional report associated with site characterization deliverables, and evaluation of historic data quality and usability) shall be due within 30 days of receipt of notice by Respondents that said Deliverable is required
- 45 days for Agencies to submit comments (for planning purposes)
- 21 days for Respondents to submit response to Agencies' comments
- Within 21 days hold a meeting/conference call to discuss responses
- Within 30 days of above meeting/call submit a revised document for agency approval
- The process will continue until a final version is approved

Attachment C—Preliminary COPC List and Analytical Parameters

Ground Water	Surface Water	Sediment and Soil	Vegetation/ Biota
Field Measurements			
Ground water elevation	Discharge		
Temperature	Temperature		
pH	pH		
Specific conductance	Specific conductance		
Dissolved oxygen	Dissolved oxygen		
Turbidity	Turbidity		
Oxidation reduction potential	Oxidation reduction potential		
Ferrous iron			
Ferric iron			
Metals (Total and Dissolved for Aqueous and Total for Solids)			
Aluminum	Aluminum	Aluminum	Aluminum
Antimony	Antimony	Antimony	Antimony
Arsenic	Arsenic	Arsenic	Arsenic
Barium	Barium	Barium	Barium
Beryllium	Beryllium	Beryllium	Beryllium
Boron	Boron	Boron	Boron
Cadmium	Cadmium	Cadmium	Cadmium
Chromium	Chromium III*	Chromium	Chromium
	Chromium VI*		
Cobalt	Cobalt	Cobalt	Cobalt
Copper	Copper	Copper	Copper
Iron	Iron	Iron	Iron
Lead	Lead	Lead	Lead
Manganese	Manganese	Manganese	Manganese
Mercury	Mercury	Mercury	Mercury
Molybdenum	Molybdenum	Molybdenum	Molybdenum
Nickel	Nickel	Nickel	Nickel
Selenium, total recoverable	Selenium, total recoverable	Selenium	Selenium
Silver	Silver	Silver	Silver
Thallium	Thallium	Thallium	Thallium
Uranium	Uranium	Uranium	Uranium
Vanadium	Vanadium	Vanadium	Vanadium
Zinc	Zinc	Zinc	Zinc

Ground Water	Surface Water	Sediment and Soil	Vegetation/ Biota
General Cations			
Calcium	Calcium		
Magnesium	Magnesium		
Potassium	Potassium		
Sodium	Sodium		
General Anions			
Chloride	Chloride		
Fluoride	Fluoride		
Nitrate/Nitrite as N	Nitrate/Nitrite as N		
Total phosphorus	Total phosphorus		
Sulfate	Sulfate		
Other Analyses			
Alkalinity (alkalinity, bicarbonate carbonate, hydroxide)	Alkalinity (alkalinity, bicarbonate carbonate, hydroxide)		
Ammonia	Ammonia		
Hardness	Hardness		
Total organic carbon	Total organic carbon	Total organic carbon	
Total dissolved solids	Total dissolved solids		
Total suspended solids	Total suspended solids		
		pH	
		Nitrogen	
		Phosphorus	
Oxygen Isotopes			
Deuterium	Deuterium		
Oxygen-18	Oxygen-18		

* Respondents shall analyze for total chromium; speciation of chromium (i.e., CrIII and CrVI) need only be done when concentration of total chromium meets or exceeds the maximum contaminant level for chromium VI.

Attachment D—Suggested RI Report Format

Executive Summary

1. Introduction

- 1.1 Purpose of Report
- 1.2 Site Background
 - 1.2.1 Site Description
 - 1.2.2 Site History
 - 1.2.3 Previous Investigations (including discussion on evaluation of historic data quality and usability)
- 1.3 Report Organization

2. Study Area Investigation

- 2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:
 - 2.1.1 Surface Features (topographic mapping, etc.) (natural and manmade features)
 - 2.1.2 Contaminant Source Investigations
 - 2.1.3 Meteorological Investigations
 - 2.1.4 Surface Water and Sediment Investigations
 - 2.1.5 Geological Investigations
 - 2.1.8 Soil and Vadose Zone Investigations
 - 2.1.7 Ground Water Investigations
 - 2.1.8 Human Population Surveys
 - 2.1.9 Ecological Investigations
- 2.2 If technical memoranda documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter.

3. Physical Characteristics of the Study Area

- 3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:
 - 3.1.1 Surface Features
 - 3.1.2 Meteorology
 - 3.1.3 Surface Water Hydrology
 - 3.1.4 Geology
 - 3.1.5 Soils
 - 3.1.6 Hydrogeology
 - 3.1.7 Demography and Land Use
 - 3.1.8 Ecology

4. Nature and Extent of Contamination

- 4.1 Presents the results of site characterization, both natural chemical components and contaminants in some, but not necessarily all of the following media:
 - 4.1.1 Sources (lagoons, sludges, tanks, etc.)
 - 4.1.2 Soils and Vadose Zone
 - 4.1.3 Ground Water
 - 4.1.4 Surface Water and Sediments

- 4.1.5 Air
- 4.1.6 Vegetation
- 4.1.7 Aquatic and Terrestrial Biota

5. Contaminant Fate and Transport

- 5.1 Potential Routes of Migration (i.e., air, ground water, etc.)
- 5.2 Contaminant Persistence
 - 5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest.
- 5.3 Contaminant Migration
 - 5.3.1 Discuss factors affecting contaminant migration for the media of importance (e.g., sorption onto soils, solubility in water, movement at ground water, etc.).
 - 5.3.2 Discuss modeling methods and results, if applicable.

6. Baseline Risk Assessment

- 6.1 Human Health Evaluation
 - 6.1.1 Exposure Assessment
 - 6.1.2 Toxicity Assessment
 - 6.1.3 Risk Characterization
- 6.2 Environmental Evaluation

7. Summary and Conclusions

- 7.1 Summary
 - 7.1.1 Nature and Extent of Contamination
 - 7.1.2 Fate and Transport
 - 7.1.3 Risk Assessment
- 7.2 Conclusions
 - 7.2.1 Data Limitations and Recommendations for Future Work
 - 7.2.2 Recommended Remedial Action Objectives

Appendices

1. Technical Memoranda on Field Activities (if available)
2. Analytical Data and CA/OC Evaluation Results
3. Risk Assessment Methods
4. Evaluation of historic data quality and usability

Attachment E—Suggested FS Report Format

Executive Summary

I. Introduction

- 1.1 Purpose and Organization of Report
- 1.2 Background Information (Summarized from RI Report)
 - 1.2.1 Site Description
 - 1.2.2 Site History
 - 1.2.3 Nature and Extent of Contamination
 - 1.2.4 Contaminant Fate and Transport
 - 1.2.5 Baseline Risk Assessment

2. Identification and Screening of Technologies

- 2.1 Introduction
- 2.2 Remedial Action Objectives—Presents the development of remedial action objectives for each medium of interest (i.e., ground water, soil, surface water, air, etc.). For each medium, the following should be discussed:
 - Contaminants of interest
 - Allowable exposure based on risk assessment (including ARARs)
 - Development of remediation goals
- 2.3 General Response Actions—For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure technologies may be applied.
- 2.4 Identification and Screening of Technology Types and Process Options—For each medium of interest describe the following:
 - 2.4.1 Identification and Screening of Technologies
 - 2.4.2 Evaluation of Technologies and Selection of Representative Technologies

3. Development and Screening of Alternatives

- 3.1 Development of Alternatives—Describes rationale for combination of technologies/media into alternatives. Note: This discussion may be by medium or for the site as a whole.
- 3.2 Screening of Alternatives (if conducted)
 - 3.2.1 Introduction
 - 3.2.2 Alternative 1
 - 3.2.2.1 Description
 - 3.2.2.2 Evaluation
 - 3.2.3 Alternative 2
 - 3.2.3.1 Description
 - 3.2.3.2 Evaluation
 - 3.2.4 Alternative 3
 - 3.2.4.1 Description
 - 3.2.4.2 Evaluation

4. Detailed Analysis of Alternatives

- 4.1 Introduction

4.2 Individual Analysis of Alternatives

4.2.1 Alternative 1

4.2.1.1 Description

4.2.1.2 Assessment

4.2.2 Alternative 2

4.2.2.1 Description

4.2.2.2 Assessment

4.2.3 Alternative 3

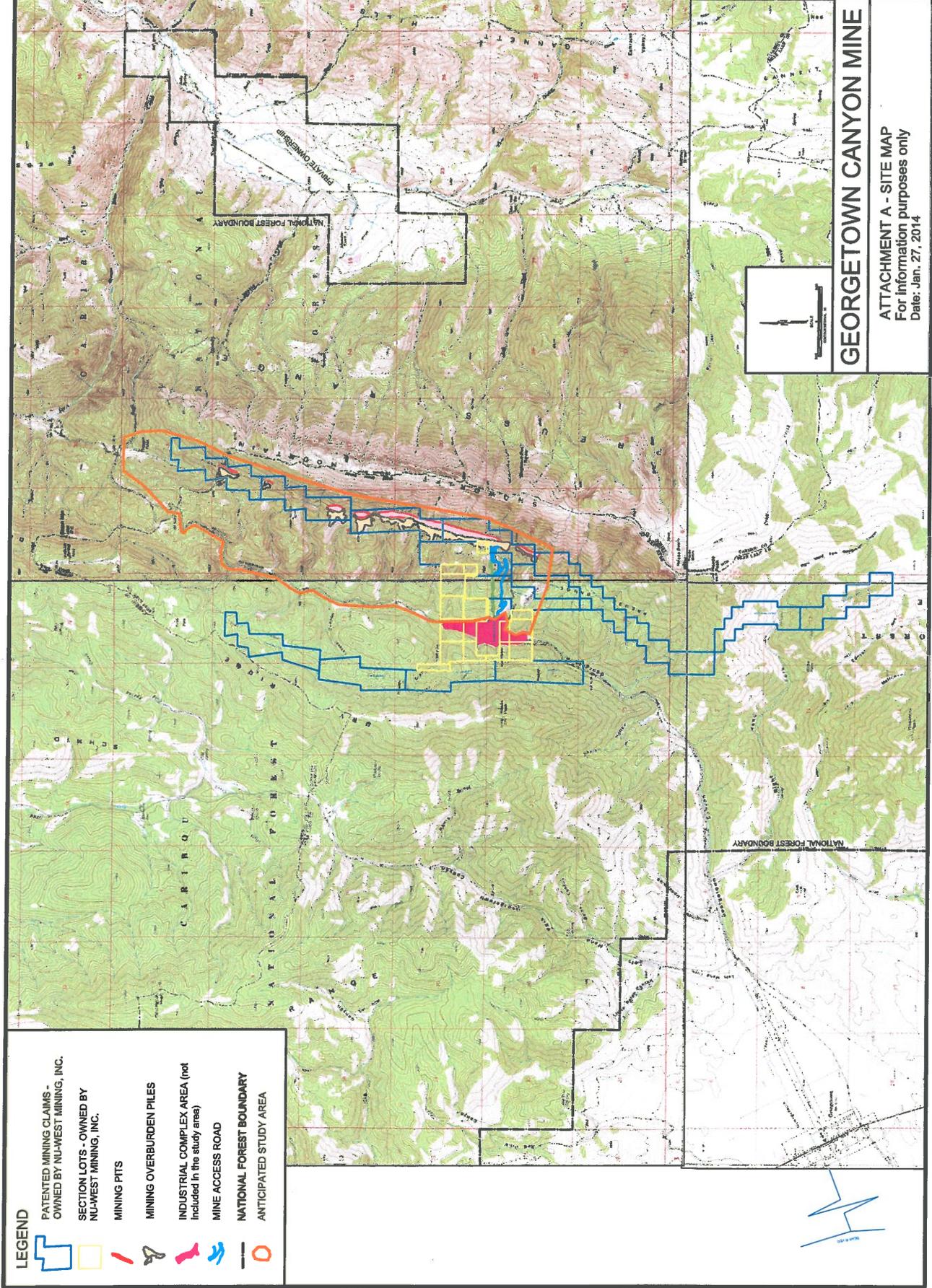
4.2.3.1 Description

4.2.3.2 Evaluation

4.3 Comparative Analysis

Bibliography

Appendices



LEGEND

-  PATENTED MINING CLAIMS - OWNED BY NU-WEST MINING, INC.
-  SECTION LOTS - OWNED BY NU-WEST MINING, INC.
-  MINING PITS
-  MINING OVERBURDEN PILES
-  INDUSTRIAL COMPLEX AREA (not included in the study area)
-  MINE ACCESS ROAD
-  NATIONAL FOREST BOUNDARY
-  ANTICIPATED STUDY AREA



GEORGETOWN CANYON MINE

ATTACHMENT A - SITE MAP
 For information purposes only
 Date: Jan. 27, 2014

