

UNITED STATES DEPARTMENT OF JUSTICE  
AND  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8  
AND  
STATE OF MONTANA

\_\_\_\_\_  
IN THE MATTER OF: )  
 )  
Idaho Pole Co. Superfund Site, )  
Bozeman, Montana )  
 )  
Scout DAC, LLC, )  
 )  
Purchaser )  
\_\_\_\_\_)

CERCLA Docket No. \_\_\_\_\_

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT FOR REMOVAL  
ACTION AND PAYMENT OF  
RESPONSE COSTS BY  
PROSPECTIVE PURCHASER**

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## I. GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser (“Settlement”) is entered into voluntarily by and between the United States on behalf of the Environmental Protection Agency (“EPA”), the State of Montana (“State”) through the Montana Department of Environmental Quality (“DEQ”), and the prospective purchaser, Scout DAC, LLC (“Purchaser”). This Settlement provides for the performance of a removal action by Purchaser and the payment of certain response costs incurred by the United States at or in connection with the property located at Cedar Street, Bozeman, Montana 59715 near the northern limits of Bozeman, Montana, in the east half of Section 6 and the west half of Section 5, and the north half of Section 8, Township 2 South, Range 6E of Gallatin County (the “Property”), which is part of the Idaho Pole Co. Superfund Site (“Site”) in Bozeman, Montana. The Property is more fully described in Appendix 2.

2. This Settlement is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official. DEQ enters into this Settlement pursuant to CERCLA and the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. 75-10-701, *et seq.* (“CECRA”).

3. Purchaser agrees to undertake all actions required by the terms and conditions of this Settlement. In view of the risk of claims under CERCLA being asserted against Purchaser upon it becoming an owner of the Property, one of the purposes of this Settlement is to resolve Purchaser’s potential CERCLA liability in accordance with the covenants not to sue in Section XVIII (Covenants Not to Sue by United States and State of Montana), subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States and State of Montana).

4. The resolution of this potential liability, in exchange for Purchaser’s performance of the Work, is fair, reasonable, and in the public interest.

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

## II. PARTIES BOUND

6. This Settlement is binding upon the United States, including EPA, the State, and Purchaser and upon Purchaser's successors and assigns. Any change in ownership or corporate status of Purchaser does not alter Purchaser's rights or responsibilities under this Settlement.

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

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

## III. DEFINITIONS

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement, the following definitions apply:

“2016 Institutional Controls” means the Restated and Amended Declaration of Institutional Controls on Real Property recorded on August 15, 2016, in Gallatin County, Montana, by Idaho Pole Company (document number 2554371).

“CECRA” means the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. § 75-10-701, *et. seq.*

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

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

“DEQ” means the Montana Department of Environmental Quality and any successor departments or agencies.

“DOJ” means the United States Department of Justice and its successor departments, agencies, or instrumentalities.

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

“EPA” means the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” means:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property prior to or as of the Effective Date;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto, under or from the Property after the Effective Date.

“Future Response Costs” means all costs, including, but not limited to, direct and indirect costs, that the United States incurs (1) in reviewing or developing deliverables submitted pursuant to this Settlement, (2) in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement costs, (3) the costs incurred pursuant to Section VIII (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, and/or to secure implement, monitor, maintain, or enforce institutional controls, including, but not limited to, the amount of just compensation); Section XII (Emergency Response and Notification of Releases); Paragraph 91 (Work Takeover); Paragraph 110 (Access to Financial Assurance)]; and Section XIV (Dispute Resolution), and (4) all litigation costs.

“Idaho Pole Site Letter of Credit” means the irrevocable letter of credit established as financial assurance for the implementation of the Removal Work Plan under the terms of Appendix 5.

“Idaho Pole Co. Superfund Site Special Account” means the EPA Hazardous Substance Superfund Special Account Number 0862, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Remedial Design/Remedial Action Unilateral Administrative Order, EPA Docket No. CERCLA VIII-93-26.

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

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

“OSC” means the On-Scene Coordinator as defined in 40 C.F.R. § 300.5.

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

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

“Post-Removal Site Control” means actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(l) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“Property” means that portion of the Site, encompassing approximately 36.039 acres, to be acquired by Purchaser, which is generally depicted in appendices 2 and 3 of this Settlement.

“Purchaser” means Scout DAC, LLC as the prospective purchaser of the Property.

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

“Removal Work Plan Scope” means the document describing the activities Purchaser must perform to implement the removal action pursuant to this Settlement, as set forth in Appendix 4, and any modifications made thereto in accordance with this Settlement.

“Revised Institutional Controls” means the Restated and Amended Declarations of Institutional Controls on Real Property to be recorded by Purchaser in Gallatin County, Montana, after closing, on each of the four parcels constituting the Property.

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

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

“Settlement” means this Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser, all appendices attached hereto

(listed in Section XXIX (Integration/Appendices)), and all deliverables included under and incorporated by reference into this Settlement. In the event of conflict between this Settlement and any appendix, this Settlement controls.

“Site” means the Idaho Pole Co. Superfund Site, encompassing approximately 87 acres, located at Cedar Street, Bozeman, Montana 59715 and depicted generally on the map attached as Appendix 1.

“State” means the State of Montana.

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

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

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

“Work” means all activities and obligations Purchaser is required to perform under this Settlement, except those required by Section X (Record Retention).

#### **IV. STATEMENT OF FACTS**

10. The 87-acre Site is located in the City of Bozeman, Gallatin County, Montana. The Site is located roughly one mile from the center of Bozeman, and is the largest undeveloped property remaining within city limits.

11. Between the late 1800s and early 1940s, Burlington Northern Railway Company (“BNRC”), the predecessor company to Burlington Northern Santa Fe Railway Company (“BNSF”), operated a five-stall roundhouse south of Cedar Street and east of L Street. In 1945, the Idaho Pole Co. (“IPC”) wood treating facility began operation using creosote to preserve wood. In 1952, the company switched to pentachlorophenol mixed with a heated carrier oil (similar to fuel oil such as diesel) for the wood treating solution. Site processes included pole treatment in butt vats with the later addition of pressurized heated retort equipment in the area south of Cedar Street. Treated poles were stacked for drying and shipment in the area. Pole treatment processes included pole peeling with a bark-fill area for wood waste north of Cedar Street. In 1975, a pressurized heated retort was added for treating full-length poles. In the early 1980s, the pole-length vats were removed. There was also a drying area where treated poles were stored prior to shipment. IPC continued wood treating with a pressurized heated retort and butt-dipping vat until September 1997, when the company ceased wood-treating operations.



12. The contaminants of concern are pentachlorophenol (“PCP”), polycyclic aromatic hydrocarbons (“PAHs”), polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (“dioxins/furans”).

13. In 1984, EPA proposed the facility for listing on the National Priorities List (“NPL”). On June 10, 1986, EPA finalized the NPL listing.

14. In 1992, EPA selected the remedy in a Record of Decision (“ROD”). EPA subsequently clarified the remedy in 1996 and 1998 Explanations of Significant Differences.

15. The selected remedy in the 1992 ROD, as amended, includes components for soil, sediment and groundwater treatment, as well as institutional controls.

16. Soil and sediment components of the remedy selected in the ROD include excavation and surface land biological treatment of 24,000 cubic yards of impacted materials. Treated soils have been placed in an on-site 4.5-acre repository referred to as the Treated Soils Area (“TSA”). The 2020 Five-Year Review Report identifies concerns related to the TSA cap.

17. Groundwater components of the remedy selected in the ROD include groundwater extraction wells, biological treatment, and return of treated water to the aquifer to enhance in-situ biological degradation and to control potential migration of contaminants. Currently, EPA is in the process of overseeing a Focused Feasibility Study to modify the groundwater remedy.

18. All components of the remedy are construction-complete including groundwater. The soil and sediment components were determined to be complete and were deleted from the NPL in 2020.

19. After EPA signed the 1992 ROD, the Agency initiated negotiations with potentially responsible parties, IPC and BNRC (now known as BNSF), for implementation of the selected remedy, including remedial design (“RD”) and remedial action (“RA”). These negotiations were unsuccessful.

20. On August 26, 1993, EPA issued a Unilateral Administrative Order requiring that the PRPs implement the RD/RA process. EPA became the lead oversight agency for the PRP-lead RD/RA at that time with DEQ as the support agency.

21. The 1993 UAO remains in effect and IPC and BNSF continue to implement the selected remedy and pay EPA oversight costs, which are placed in the Idaho Pole Co. Superfund Site Special Account. IPC is the work party and BNSF provides financial and technical support under the UAO.

22. On or about November 2, 2001, the Montana Department of Natural Resources and Conservation designated a Controlled Groundwater Use Area by Final Order in the Matter of Petition No. 41-H-114172 to the Department of Natural Resources and Conservation for Designation of a Controlled Groundwater Area (“CGA”) in Gallatin County. This CGA



restricts use of groundwater beneath the Site for any purpose, except as provided in the remedial action or as otherwise authorized by EPA and DEQ.

23. On or about August 15, 2016, Idaho Pole Company recorded the 2016 Institutional Controls for seven parcels, including the four parcels that constitute the Property.

24. In 2020, EPA partially deleted portions of the Site from the NPL where EPA determined no further action is needed to protect human health and the environment. Specifically, the deleted areas are comprised of surface and unsaturated subsurface soils. The remaining areas, including TSA and the groundwater encompassed by the CGA remain on the NPL.

25. In a July 21, 2021 meeting between Purchaser, EPA, and DEQ, Purchaser stated that it wishes to enter into a three-party Settlement with the United States and the State.

26. On August 26, 2021, EPA issued a CERCLA section 107(d)(1) reasonable steps letter to Purchaser. The purpose of this letter is to provide Purchaser with information the EPA has about the Property; present concerns that the community has raised with the EPA about the Property; and identify potentially applicable federal statutory and regulatory provisions and policies under CERCLA as of the date of the letter. This letter also describes the activities Purchaser proposes to perform at the Property related to additional soil characterization activities, which would render care or assistance under CERCLA Section 107(d)(1) in accordance with the National Contingency Plan (“NCP”), 40 C.F.R. Part 300, as well as outline some reasonable steps the EPA would anticipate that the Prospective Purchaser would take as required by Section 101(40)(B)(iv) of CERCLA in preparation for acquiring the Property. EPA conferred with DEQ on the issuance of this reasonable steps letter, and DEQ concurred with the issuance of the letter. Since the issuance of the August 26, 2021 letter, Purchaser has completed the additional soil characterization activities. The results of the surface soil sampling were documented in the *Idaho Pole Superfund Site Soils Characterization Report*, dated March 2022. Subsurface soil samples were collected in April 2022, and the results of this sampling will be documented in an addendum to the *Idaho Pole Superfund Site Soils Characterization Report*.

27. Purchaser has agreed to record the Revised Institutional Controls for the four parcels that constitute the Property, which will supersede the 2016 Institutional Controls.

## V. DETERMINATIONS

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

- a. The Site is a “facility,” and the Property is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at the Site and the Property, as identified in the Statement of Facts above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

- c. Purchaser is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The conditions described in the Statement of Facts above constitute an actual or threatened “release” of a hazardous substance from the Site and the Property as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- e. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

29. Purchaser shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors within 30 days after the City of Bozeman Site Plan Approval or before any Work. Purchaser shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors retained to perform the Work at least 14 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors retained by Purchaser. If EPA disapproves of a selected contractor, Purchaser shall retain a different contractor and shall notify EPA of that contractor’s name, title, contact information, and qualifications within 30 days after EPA’s disapproval. With respect to any proposed contractor, Purchaser shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Purchaser are subject to EPA’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

30. Purchaser has designated, and EPA has not disapproved, the following individual as Project Coordinator, who will be responsible for administration of all actions by Purchaser required by this Settlement: Lisa DeWitt, Project Manager for Weston Solutions, 805 N. Last Chance Gulch, Helena, MT 59601, (406) 646-2419 (office), (406) 461-1055 (cell), [Lisa.DeWitt@WestonSolutions.com](mailto:Lisa.DeWitt@WestonSolutions.com). Purchaser will ensure, to the greatest extent possible, that the Project Coordinator is present on the Property or readily available during the Work. Notice or communication relating to this Settlement from EPA to Purchaser’s Project Coordinator constitutes notice or communication to Purchaser. Purchaser has the right, subject to Paragraph 29, to change its designated Project Coordinator. Purchaser shall notify EPA 14 days before such a change is made. The initial notification by Purchaser may be made orally to EPA but shall be promptly followed by a written notice. EPA retains the right to disapprove of a Project

Coordinator who does not meet the requirements of Paragraph 29. If EPA disapproves of the Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within 30 days following EPA's disapproval.

31. EPA has designated Roger Hoogerheide of the Superfund and Emergency Management Division, Region 8, as its Remedial Project Manager ("RPM"). EPA has the right to change its designated RPM. DEQ has designated Gordon Levin as its State Project Officer ("SPO"). DEQ has the right to change its designated SPO. Unless otherwise specified in this Settlement, notice or communication from Purchaser to EPA and DEQ shall be in writing and shall be sent to the RPM and Project Officer in accordance with Paragraph 122.

32. The RPM is responsible for overseeing Purchaser's implementation of this Settlement. The RPM has the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the RPM from the Property is not cause for stoppage of Work unless specifically directed by the RPM.

## **VII. REMOVAL ACTION TO BE PERFORMED**

33. Purchaser shall perform, at a minimum, all actions necessary to implement the Removal Work Plan Scope set forth in Appendix 4. The actions to be implemented generally include, but are not limited to, the following:

(1) Removal of treated soils from Pit 4 north of Cedar Street, a portion of which are currently within revised FEMA floodway boundaries, and consolidation with other treated soils in the TSA south of Cedar Street prior to implementation of the activities described in subparagraph 33(2) below;

(2) Additional clean cover and a composite cap over the 4.5-acre TSA to bolster the existing repository cap, which increases the long-term integrity of the cap, and minimizes the potential for groundwater infiltration;

(3) Improved stormwater management, which reduces infiltration of snow melt into the TSA and precipitation into the underlying alluvial aquifer upgradient of the Barkfill source area; and

(4) Establishment of the utility corridor to avoid contact with groundwater contamination and the TSA, which minimizes the potential for creation of new preferential pathways for the migration of contaminated groundwater and exposure of utility workers to treated soils.

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

### 35. Submission and Review of Deliverables

a. **General Requirements for Deliverables.** Purchaser shall submit all deliverables to EPA and DEQ in electronic form, unless otherwise specified by the RPM.

b. **Technical Specifications for Deliverables**

(1) Sampling and monitoring data must be submitted in standard Regional Electronic Data Deliverable (EDD) format prescribed in the Removal Work Plan. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

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

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

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

c. **Review and Incorporation of Deliverables.** Unless otherwise provided, EPA will, after a reasonable opportunity for DEQ review and comment, approve, disapprove, require revisions to, or modify deliverables in whole or in part that are submitted by Purchaser under this Settlement. If EPA requires revisions, EPA will provide a deadline for the resubmission, and Purchaser shall submit the revised deliverable by the required deadline. Once approved or approved with modifications, Purchaser shall implement the Removal Work Plan or other deliverables in accordance with the EPA-approved schedule, and the deliverable will be incorporated into and fully enforceable under this Settlement. Purchaser shall not

commence or perform any Work except in conformance with the terms of this Settlement.

- d. Purchaser may seek subsequent modifications to approved deliverables in accordance with this Paragraph 35.

### 36. **Removal Work Plan**

- a. Within 30 days after City of Bozeman Site Plan Approval, in accordance with Paragraph 35 (Submission of Deliverables), Purchaser shall submit to EPA for review and approval a draft work plan for performing the removal action (the “Removal Work Plan”) generally described in Paragraph 33 above and in the Removal Work Plan Scope set forth in Appendix 4. The draft Removal Work Plan must provide a description of, and an expeditious schedule for, the actions required by this Settlement.
- b. If EPA requires revisions, Purchaser shall submit a revised draft Removal Work Plan within 30 days of receipt of EPA’s notification of the required revisions. Upon approval or approval with modifications of the Removal Work Plan, Purchaser shall commence implementation of the Removal Work Plan as approved in writing by EPA and in accordance with the schedule included therein.

37. **Health and Safety Plan.** Within 30 days after the City of Bozeman Site Plan Approval or before any Work, Purchaser shall submit for EPA review and comment, in accordance with Paragraph 35, a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. Purchaser shall prepare the plan in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (November 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaosc.org/HealthSafetyManual/manual-index.htm>. In addition, Purchaser shall ensure that the plan complies with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan must also include contingency planning. Purchaser shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

### 38. **Quality Assurance, Sampling, and Data Analysis**

- a. Purchaser shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002)

(<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA-50-B-04-900A-900C, DOD-DTIC-ADA-427785 (March 2005).

- b. Sampling and Analysis Plan. Within 30 days after the City of Bozeman Site Plan Approval or before any Work, Purchaser shall submit a Sampling and Analysis Plan to EPA and the State for review and approval consistent with the Removal Work Plan. The Sampling and Analysis Plan shall address any collection of data under the Removal Work Plan, and must consist of a Field Sampling Plan (“FSP”) and a Quality Assurance Project Plan (“QAPP”), the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002) (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA-50-B-04-900A-900C, DOD-DTIC-ADA-427785 (March 2005).
- c. Purchaser shall ensure that EPA and DEQ personnel and their authorized representatives are allowed access at reasonable times to all laboratories used by Purchaser in implementing this Settlement. In addition, Purchaser shall ensure that such laboratories analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Purchaser shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<https://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846/sw-846-compendium>), “Standard Methods for the Examination of Water and Wastewater” (<https://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<https://www3.epa.gov/ttnamti1/airtox.html>).



- d. However, upon approval by EPA, after a reasonable opportunity for review and comment by DEQ, Purchaser may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, American Society for Testing and Materials (ASTM), National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA). Purchaser shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissue notice May 2006) (<https://www.epa.gov/quality/epa-qar-2-epa-requirements-quality-management-plans>), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Purchaser shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.
- e. Upon request, Purchaser shall provide split or duplicate samples to EPA and DEQ or their authorized representatives. Purchaser shall notify EPA and DEQ not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and DEQ have the right to take any additional samples that EPA deems necessary. Upon request, EPA and DEQ will provide to Purchaser split or duplicate samples of any samples they take as part of EPA and DEQ’s oversight of Purchaser’s implementation of the Work.
- f. Purchaser shall submit to EPA and DEQ the results of all sampling and/or tests or other data obtained or generated by or on behalf of Purchaser with respect to the Site and/or the implementation of this Settlement.
- g. Purchaser waives any objections to any data gathered, generated, or evaluated by EPA, DEQ or Purchaser in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Purchaser objects to any other data relating to the



Work, Purchaser shall submit to EPA and DEQ a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA and DEQ within 15 days after the monthly progress report containing the data.

39. **Post-Removal Site Control.** In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Purchaser shall submit to DEQ and EPA for review and approval, in accordance with Paragraph 35, a proposal for Post-Removal Site Control, which may include, but not be limited to, intrusive and non-intrusive Site inspections. The proposal must also address implementation of the Revised Institutional Controls on a parcel-by-parcel basis for the Property. Upon EPA approval, Purchaser shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Purchaser shall provide EPA with documentation of all Post-Removal Site Control commitments.

40. **Progress Reports.** Purchaser shall submit a written progress report to EPA and DEQ concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the RPM. These reports must describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

41. **Final Report.** Within 60 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 117 (notice of completion), Purchaser shall submit for EPA review and approval, in accordance with Paragraph 35, a Final Report summarizing the actions taken to comply with this Settlement.

- a. The Final Report must conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP titled "OSC Reports."
- b. The Final Report must include:
  - (1) a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement,
  - (2) a listing of quantities and types of materials removed off-Site or handled on-Site,
  - (3) a discussion of removal and disposal options considered for those materials,
  - (4) a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and

accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

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

### VIII. PROPERTY REQUIREMENTS

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

43. **Filing of Revised Institutional Controls.** Purchaser shall, within 30 days of EPA's approval of the Final Report, record the Revised Institutional Controls. The form and content of the Revised Institutional Controls must be approved by EPA prior to Purchaser recording the instruments.

44. **Access, Appropriate Care, and Non-Interference.** Commencing on the Effective Date, Purchaser shall: (i) provide EPA, DEQ, and their representatives, including contractors, and subcontractors, with full cooperation, assistance, and access to the Property at all reasonable times to conduct any activity regarding the Settlement and to any other persons that are authorized by EPA or DEQ to conduct response actions or natural resource assessment or restoration at the Property, including those activities provided for in Paragraph 44.a (Access Requirements to Implement Revised Institutional Controls) and those activities listed in Paragraph 45.b (Access Requirements to Effectuate Settlement); (ii) exercise appropriate care with respect to hazardous substances found at the Property as described in Paragraph 44.c (Appropriate Care), and (iii) refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action, including the restrictions listed in Paragraph 44.d (Land, Water, or Other Resource Use Restrictions).

- a. **Access Requirements to Implement Revised Institutional Controls.** Purchaser shall comply with all access requirements identified in the Revised Institutional Controls relating to implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource

use restrictions and any institutional controls identified in the Revised Institutional Controls.

b. **Access Requirements to Effectuate Settlement.** The following is a non-exclusive list of activities for which access to the Property is required pursuant to this Settlement:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Obtaining samples;
- (4) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan as provided for in the Removal Work Plan;
- (5) Implementing the Work pursuant to the conditions set forth in Paragraph 91 (Work Takeover);
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Purchaser or its agents consistent with Section IX (Access to Information);
- (7) Assessing Purchaser's compliance with the Settlement; and
- (8) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement or an EPA decision document for the Site.

c. **Appropriate Care.** Purchaser shall take reasonable steps to stop any continuing releases; prevent any threatened future releases; and prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance.

d. **Land, Water, or Other Resource Use Restrictions.** Purchaser shall remain in compliance with any land use restrictions established in connection with any response action at the Property; implement, maintain, monitor, and report on institutional controls; and not impede the effectiveness or integrity of any institutional control employed at the Property in connection with a response action. This includes all restrictions contained in the Revised Institutional Controls and the Montana Department of Natural Resources and Conservation's Final Order in the Matter of Petition No. 41-H-114172 to the Department of Natural Resources and Conservation for Designation of a CGA in Gallatin County, dated November 2, 2001.

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

46. Upon sale or other conveyance of the Property or any part thereof, Purchaser shall require that each successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agree to comply with this Section and not contest EPA's authority to enforce any land use restrictions and institutional controls on any of the Property. After EPA's issuance of the Notice of Completion and Purchaser's written demonstration to EPA that a successor in title, grantee, transferee or other holder of an interest in the Property or any part thereof agrees to comply with the requirements of this Section, EPA will notify Purchaser that its obligations under the Settlement, except obligations under Record Retention (Section X) and Access to Information (Section IX), are terminated with respect to the Property or any part thereof.

47. Purchaser shall provide notice of this Settlement to any current lessee, sublessee, and other party with rights to use the Property or any part thereof as of the Effective Date, and make a copy of this Settlement available upon request.

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

## **IX. ACCESS TO INFORMATION**

49. Purchaser shall comply, as required by law, with any authorized request for information or administrative subpoena issued by EPA or the State.

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

**51. Privileged and Protected Claims**

- a. Purchaser may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Purchaser complies with Paragraph 51.b, and except as provided in Paragraph 51.c.
- b. If Purchaser asserts such a privilege or protection, it shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Purchaser shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Purchaser shall retain all Records that it claims to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Purchaser's favor.
- c. Purchaser may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Purchaser is required to create or generate pursuant to this Settlement.

**52. Business Confidential Claims.** Purchaser may assert that all or part of a Record provided to EPA and the State under this Section or Section X (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Purchaser shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Purchaser asserts business confidentiality claims. Records that Purchaser claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Purchaser that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Purchaser.

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

**X. RECORD RETENTION**

54. For a period of 10 years following completion of the Work, unless EPA agrees in writing to a shorter time period, Purchaser shall preserve all documents and information

relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Property. At the conclusion of the document retention period, Purchaser shall notify EPA at least 90 days prior to the destruction of any such records, and upon request by EPA, except as provided in Paragraph 51 (Privileged and Protected Claims), Purchaser shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

## **XI. COMPLIANCE WITH OTHER LAWS**

55. Nothing in this Settlement limits Purchaser's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Purchaser shall implement the Work applying the ARARs selected in the ROD.

56. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Purchaser shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Purchaser may seek relief under the provisions of Section XV (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

57. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Purchaser shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Purchaser shall also immediately notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 424-8802 of the incident or Property conditions. If Purchaser fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Purchaser shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIII (Payment of Response Costs).



58. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Purchaser is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (“EPCRA”), 42 U.S.C. § 11004, Purchaser shall immediately orally notify the RPM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 424-8802, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

59. For any event covered under this Section, Purchaser shall submit a written report to EPA and DEQ within seven days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

### **XIII. PAYMENT OF RESPONSE COSTS**

60. **Payments for Future Response Costs.** Purchaser shall pay to EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Purchaser a bill requiring payment that includes a certified cost summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Purchaser shall make all payments within 30 days of Purchaser’s receipt of each bill requiring payment in accordance with Paragraph 61, except as otherwise provided in Paragraph 64 (Contesting Future Response Costs).

61. **Payment Instructions.** Purchaser shall make all payments at <https://www.pay.gov> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payments Form - Cincinnati Finance Center. Complete the form including the Site Name, CERCLA docket number and Site/Spill ID Number 0862. Purchaser shall send to EPA in accordance with Paragraph 61, a notice of this payment including these references.

62. **Deposit of Payments.** The total amount to be paid by Purchaser pursuant to Paragraph 60 (Payments for Future Response Costs) may be deposited by EPA in the Idaho Pole Co. Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Idaho Pole Co. Superfund Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Purchaser pursuant to the dispute resolution provisions of this Settlement or in any other forum.

63. **Interest.** If any payment is not made by the date required, Purchaser shall pay Interest on the unpaid balance. The Interest on Future Response Costs under Paragraph 60 (Payments of Future Response Costs) shall begin to accrue on the date of the bill. The Interest



shall accrue through the date of Purchaser's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Purchaser's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties).

**64. Contesting Future Response Costs.** Purchaser may initiate the procedures of Section XIV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 60 (Payments of Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Purchaser shall submit a Notice of Dispute in writing to the RPM within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Purchaser submits a Notice of Dispute, Purchaser shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 60, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Purchaser shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA in the manner described in Paragraph 60. If Purchaser prevails concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 60. Purchaser shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes under Purchasers' obligation to reimburse EPA for its Future Response Costs.

#### **XIV. DISPUTE RESOLUTION**

65. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Purchaser shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally. If EPA contends that Purchaser is in violation of this Settlement, EPA will notify Purchaser in writing, setting forth the basis for its position. Purchaser may dispute EPA's position pursuant to Paragraph 66 (Informal Dispute Resolution).

**66. Informal Dispute Resolution.** If Purchaser objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, Purchaser shall send the RPM and EPA counsel a written Notice of Dispute describing the objection(s) within 20 days after such action in accordance with Paragraph 122. EPA and Purchaser shall have 30

days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Purchaser pursuant to this Paragraph shall be in writing and will, upon signature by EPA and Purchaser, be incorporated into and become an enforceable part of this Settlement. If the parties cannot resolve the dispute by informal negotiations, the position advanced by EPA is binding unless Purchaser initiates formal dispute resolution under Paragraph 67.

67. **Formal Dispute Resolution.** Purchaser may initiate formal dispute resolution by submitting, within 20 days after the conclusion of informal dispute resolution under Paragraph 66, an initial Statement of Position regarding the matter in dispute. EPA may, within 20 days thereafter, submit a responsive Statement of Position. Thereafter, an EPA management official at the Division Director level or higher will issue a formal decision resolving the dispute ("Formal Decision") based on the statements of position. The Formal Decision is binding on Purchaser and shall be incorporated into and become an enforceable part of this Settlement.

68. Except as provided in Paragraph 64 (Contesting Future Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Purchaser under this Settlement. Except as provided in Paragraph 78, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. If Purchaser does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

## **XV. FORCE MAJEURE**

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

70. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Purchaser intends or may intend to assert a claim of force majeure, Purchaser shall notify EPA's RPM orally or, in his or her absence, the alternate EPA RPM, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 8, within 7 days of when Purchaser first knew that the event might cause a delay. Within 7 days thereafter, Purchaser shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or

minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by Purchaser, or Purchaser's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 69 and whether Purchaser has exercised best efforts under Paragraph 69, EPA may, in its unreviewable discretion, excuse in writing Purchaser's failure to submit timely or complete notices under this Paragraph.

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

72. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than 20 days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 69 and 70. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement identified to EPA.

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

## **XVI. STIPULATED PENALTIES**

74. Purchaser shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 75 and 76 for failure to comply with the obligations specified in Paragraphs 75.b and 76, unless excused under Section XV (Force Majeure). "Comply" as used in the previous sentence include compliance by Purchaser with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

**75. Stipulated Penalty Amounts – Payments, Major Deliverables, Financial Assurance, and Other Milestones**

- a. The following stipulated penalties shall accrue per violation per day for failure to comply with any of the obligations identified in Paragraph 75.b:

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

**b. Obligations**

(1) Payment of any amount due under Section XIII(Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXV (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 64 (Contesting Future Response Costs).

(4) Carry out any affirmative duty under the Revised Institutional Controls.

**76. Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 75.b:

<b>Penalty per Violation per Day</b>	<b>Period of Noncompliance</b>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,500	31st day and beyond

77. If EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91 (Work Takeover), Purchaser shall be liable for a stipulated penalty in the amount of \$50,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 91 (Work Takeover) and 110 (Access to Financial Assurance).

78. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period and shall be paid within 15 days after the

agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a submission EPA subsequently determines is deficient under Paragraph 36 (Removal Work Plan), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Purchaser of any deficiency; and (b) with respect to a decision by the EPA management official at the Division Director level or higher, under Paragraph 67 (Formal Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

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

80. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Purchaser's receipt from EPA of a demand for payment of the penalties, unless Purchaser invokes the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. Purchaser shall make all payments and shall send notice of such payments in accordance with the procedures under Paragraph 61 (Payment Instructions). Purchaser should indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

81. If Purchaser fails to pay stipulated penalties when due, Purchaser shall pay Interest on the unpaid stipulated penalties as follows: (a) if Purchaser has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 78 until the date of payment; and (b) if Purchaser fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 79 until the date of payment. If Purchaser fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

83. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or State to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement or of the statutes and regulations upon which it is based including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that the United States shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XIX, (Reservations of Rights by United States and State of Montana), Paragraph 91.



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

## **XVII. CERTIFICATION**

85. By entering into this Settlement, Purchaser certifies under penalty of perjury that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and DEQ all information known to Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances, pollutants or contaminants at the Site.

## **XVIII. COVENANTS BY UNITED STATES AND STATE OF MONTANA**

86. Except as provided in Section XIX (Reservations of Rights by United States and State of Montana), the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and the State covenants not to sue or take administrative action against Purchaser pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and pursuant Mont. Code Ann. § 75-10-701, *et seq.*, for Existing Contamination, the Work, and payments under Section XIII (Payment of Response Costs). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA and DEQ by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 85. These covenants extend only to Purchaser and do not extend to any other person.

87. Nothing in this Settlement constitutes a covenant not to sue or not to take action or otherwise limits the ability of the United States, EPA, DEQ, or the State to seek or obtain further relief from Purchaser if the information provided to EPA and DEQ by Purchaser relating to Purchaser's involvement with the Site or the certification made by Purchaser in Paragraph 85 is false or in any material respect inaccurate.

## **XIX. RESERVATIONS OF RIGHTS BY UNITED STATES AND STATE OF MONTANA**

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

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

- a. liability for failure by Purchaser to meet a requirement of this Settlement;
- b. criminal liability;
- c. liability for violations of federal or state law that occur during or after implementation of the Work;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination;
- f. liability resulting from an act or omission that causes exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and
- g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Property, except as provided in clause c of the definition of Existing Contamination.

90. With respect to any claim or cause of action asserted by the United States or the State, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

**91. Work Takeover**

- a. If EPA determines that Purchaser: (1) has ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Purchaser. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Purchaser a period of 30 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.
- b. If, after expiration of the 30-day notice period specified in Paragraph 91.a, Purchaser has not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the



Work as EPA deems necessary (“Work Takeover”). EPA will notify Purchaser in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 91.b. Funding of Work Takeover costs is addressed under Paragraph 110 (Access to Financial Assurance).

- c. Purchaser may dispute EPA’s Work Takeover decision under Paragraph 91 solely through the procedures set forth in Paragraph 67 (Formal Dispute Resolution). However, notwithstanding Purchaser’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 91 until the earlier of (1) the date that Purchaser remedies, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 67 (Formal Dispute Resolution).
- d. Notwithstanding any other provision of this Settlement, EPA and DEQ retain all authority and reserve all rights to take any and all response actions authorized by law.

## **XX. COVENANTS BY PURCHASER**

92. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, the State, or their respective contractors or employees, with respect to Existing Contamination, the Work, payments under Section XIII (Payment of Response Costs), and this Settlement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any direct or indirect claim for reimbursement or funding under State law, including any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the Orphan Share Account (established pursuant to MCA 75-10-743), or any other provision of law;
- c. any claim arising out of response actions, including any claim under the United States Constitution, the Montana State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- d. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding Existing Contamination, the Work, payments under Section XIII (Payment of Response Costs), and this Settlement.

93. These covenants not to sue shall not apply to the United States or the State if the United States or the State, respectively brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by United States and State of Montana), other than in Paragraph 89.a (liability for failure to meet a requirement of the Settlement), or 89.b (criminal liability), or 89.c (violations of federal/state law during or after implementation of the Work), but only to the extent that Purchaser's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d), or Section 112 of CERCLA, 42 U.S.C. § 9612, or 40 C.F.R. Part 307.

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

## **XXI. OTHER CLAIMS**

96. By agreeing to this Settlement, the United States, EPA, DEQ, and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Purchaser. The United States, EPA, State, or DEQ shall not be deemed a party to any contract entered into by Purchaser or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

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

98. No action or decision by EPA pursuant to this Settlement gives rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXII. EFFECT OF SETTLEMENT/CONTRIBUTION**

99. Nothing in this Settlement creates any rights in, or grants any cause of action to, any person not a Party to this Settlement. Except as provided in Section XVIII (Covenants by Purchaser), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

100. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States and State within the meaning of Sections 113(f)(2) and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, payments under Section XIII (Payment of Response Costs), and all response actions taken or to be taken and all response costs incurred or to be incurred in connection with Existing Contamination by the United States or any other person. However, if the United States exercises rights under the reservations in Section XIX (Reservations of Rights by United States and State of Montana), other than in Paragraphs 89.a (liability for failure to meet a requirement of the Settlement), 89.b (criminal liability), or 89.c (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Settlement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

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

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

## **XXIII. INDEMNIFICATION**

103. The United States and State do not assume any liability by entering into this Settlement or by virtue of any designation of Purchaser as EPA’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Purchaser shall indemnify, save, and hold harmless the United States, the State, and their respective officials, agents, employees, contractors, subcontractors, and representatives for or

from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Purchaser's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Purchaser agrees to pay the United States and State all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or State based on negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States and State shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement. Neither Purchaser nor any such contractor shall be considered an agent of the United States or State.

104. The United States and State shall give Purchaser notice of any claim by any party for which the United States and/or State plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

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

#### **XXIV. INSURANCE**

106. No later than 30 days before commencing any on-site Work, Purchaser shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA and DEQ as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Purchaser pursuant to this Settlement. In addition, for the duration of the Settlement, Purchaser shall provide EPA and DEQ with certificates of such insurance and a copy of each insurance policy. Purchaser shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Purchaser shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Purchaser in furtherance of this Settlement. If Purchaser demonstrates by evidence satisfactory to EPA and DEQ, that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a

lesser amount, Purchaser need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Purchaser shall ensure that all submittals to EPA and DEQ under this Paragraph identify the Idaho Pole Co. Superfund Site, Bozeman, Montana and the CERCLA docket number for this action.

## XXV. FINANCIAL ASSURANCE

107. In order to ensure completion of the Work, Purchaser shall secure financial assurance, initially in the amount of \$6,525,441 (“Estimated Cost of the Work”), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the “Financial Assurance - Settlements” category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Purchaser may use multiple mechanisms if it is limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

- a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;
- b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;
- c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; or
- d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency.

108. Respondent has selected, and EPA has found satisfactory, an irrevocable letter of credit in the form attached hereto as Appendix 5 as an initial form of financial assurance. Within 30 days after City of Bozeman Site Plan Approval, Purchaser shall secure all executed or otherwise finalized mechanisms or other documents consistent with Paragraph 107 with the EPA-approved form of financial assurance and will submit such mechanisms and documents to EPA, the Regional Financial Management Office, and DOJ.

109. Purchaser shall diligently monitor the adequacy of the financial assurance. If Purchaser becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Purchaser shall notify EPA of such information within 30 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer

satisfies the requirements of this Section, EPA will notify Purchaser of such determination. Purchaser shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for Purchaser, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. Purchaser shall follow the procedures of Paragraph 111 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Purchaser's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

#### **110. Access to Financial Assurance**

- a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 91, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 110.d.
- b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Purchaser fails to provide an alternative financial assurance mechanism in accordance with this Section at least 45 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 110.d.
- c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 91, EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Purchaser shall, within seven days of such demand, pay the amount demanded as directed by EPA.
- d. Any amounts required to be paid under this Paragraph 110 must be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA, the State, or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Idaho Pole Co. Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.



- e. All EPA Work Takeover costs not paid under this Paragraph 110 must be reimbursed as Future Response Costs under Section XIII (Payment of Response Costs).

111. **Modification of Amount, Form, or Terms of Financial Assurance.** Purchaser may submit, on any anniversary of the Effective Date, upon completion of any component of the Removal Work Plan Scope, or at any other time agreed to by the EPA and Purchaser, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 107, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Purchaser of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Purchaser may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XIV (Dispute Resolution). Purchaser may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Purchaser may initiate dispute resolution under Section XIV regarding EPA's decision within 30 days after receipt of the decision. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Purchaser shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 107.

112. **Release, Cancellation, or Discontinuation of Financial Assurance.** Purchaser may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a notice of completion of work under Section XXVII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XIV (Dispute Resolution).

## XXVI. MODIFICATION

113. EPA's RPM, after a reasonable opportunity for DEQ review and comment, may make minor modifications to any plan or schedule or the Removal Work Plan in writing or by oral direction. EPA will promptly memorialize in writing any oral modification, but the modification has as its effective date the date of the RPM's oral direction, unless otherwise indicated. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties, unless otherwise specified in this Settlement.

114. If Purchaser seeks permission to deviate from any approved work plan or schedule or the Removal Work Plan, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with a requested deviation until receiving oral or written approval from EPA's RPM pursuant to Paragraph 113.



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

## **XXVII. NOTICE OF COMPLETION OF WORK**

116. When EPA determines, after EPA's review of the Final Report submitted by Purchaser pursuant to Paragraph 41, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement (e.g., compliance with the property requirements in Section VIII, including, but not limited to access, reasonable steps, post-removal site controls, institutional controls, and record retention), EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Removal Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Removal Work Plan is a violation of this Settlement.

## **XXVIII. INTEGRATION/APPENDICES**

117. This Settlement constitutes the entire agreement among the Parties regarding the subject matter of the Settlement and supersedes all prior representations, agreements and understandings, whether oral or written, regarding the subject matter of the Settlement embodied herein. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix 1 is a map of the Site.
- b. Appendix 2 is a map of the Property.
- c. Appendix 3 is a compilation of the legal descriptions for the Property.
- d. Appendix 4 is the Removal Work Plan Scope.
- e. Appendix 5 is the form of the Idaho Pole Site Letter of Credit in the amount of \$6,525,441.

## **XXIX. DISCLAIMER**

118. This Settlement is in no way a representation by EPA or DEQ that the Property or the Site is fit for any particular purpose.

### XXX. ENFORCEMENT

119. The Parties agree that the United States District Court for the District of Montana (“Court”) will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any judicial enforcement action brought with respect to this Settlement.

120. Notwithstanding Paragraph 86 of this Settlement, if Purchaser fails to comply with the terms of this Settlement, the United States may file a lawsuit for breach of this Settlement, or any provision thereof, in the Court. In any such action, Purchaser consents to and agrees not to contest the exercise of personal jurisdiction over it by the Court. Purchaser further acknowledges that venue in the Court is appropriate and agrees not to raise any challenge on this basis.

121. If the United States or State files a civil action as contemplated by Paragraph 120, above, to remedy breach of this Settlement, the United States may seek, and the Court may grant as relief, the following: a) an order mandating specific performance of any term or provision in this Settlement, without regard to whether monetary relief would be adequate; and b) any additional relief that may be authorized by law or equity.

### XXXI. NOTICES AND SUBMISSIONS

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

As to DOJ: *via email to:*  
[eescdcopy@usdoj.gov](mailto:eescdcopy@usdoj.gov)  
Re: DJ# 90-11-3-976/1

As to EPA: *via email to:*  
[smidinger.betsy@epa.gov](mailto:smidinger.betsy@epa.gov)  
[hoogerheide.roger@epa.gov](mailto:hoogerheide.roger@epa.gov)  
[nicholson.julie@epa.gov](mailto:nicholson.julie@epa.gov)  
[chalfant.mark@epa.gov](mailto:chalfant.mark@epa.gov)  
[castelli.kayleen@epa.gov](mailto:castelli.kayleen@epa.gov)  
Re: Site/Spill ID # # 0862

As to the Regional Financial Management Officer: *via email to:*  
[Johnson.Karren@epa.gov](mailto:Johnson.Karren@epa.gov)  
Re: Site/Spill ID # 0862

As to the State: Carolina Balliew  
Federal Superfund Section Supervisor  
Department of Environmental Quality  
1225 Cedar Street  
PO Box 200901  
Helena, MT 59620-0901  
[carolina.balliew@mt.gov](mailto:carolina.balliew@mt.gov)

Jessica Wilkerson, Esq.  
Special Assistant Attorney General  
Department of Environmental Quality  
1225 Cedar Street  
PO Box 200901  
Helena, MT 59620-0901  
[jessica.wilkerson@mt.gov](mailto:jessica.wilkerson@mt.gov)

As to Purchaser: *via email to:*  
Casey Tippens  
Scout DAC, LLC  
5148 US-89  
Livingston, MT 59047  
[ctippens@gmail.com](mailto:ctippens@gmail.com)

Lisa DeWitt  
Weston Solutions, Inc.  
805 N. Last Chance Gulch  
Helena, MT 59601  
[Lisa.DeWitt@westonsolutions.com](mailto:Lisa.DeWitt@westonsolutions.com)

Edward M. Callaway  
Waller Lansden Dortch & Davis, LLP  
511 Union Street, Suite 2700  
Nashville, TN 37219  
[Ed.Callway@wallerlaw.com](mailto:Ed.Callway@wallerlaw.com)

## **XXXII. PUBLIC COMMENT**

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

## **XXXIII. EFFECTIVE DATE**

124. The effective date of this Settlement is the date upon which the last of all of the following have occurred: (a) EPA issues written notice to Purchaser that the United States and


State have fully executed the Settlement after review of and response to any public comments received, and (b) Purchaser acquires the Property. Purchaser shall notify EPA and DEQ in writing within three days of acquiring the Property.

Signature Page for Administrative Settlement Agreement regarding the Idaho Pole Co.  
Superfund Site

IT IS SO AGREED:

SCOUT DAC, LLC

BY:

 April 19th, 2022  
Casey Tippens Date  
Scout DAC, LLC  
5148 US-89  
Livingston, MT 59047

Signature Page for Administrative Settlement Agreement regarding the Idaho Pole Co.  
Superfund Site

IT IS SO AGREED:

STATE OF MONTANA

BY:



4/21/2022

---

Christopher Dorrington  
Director  
Department of Environmental Quality

Date



Signature Page for Administrative Settlement Agreement regarding the Idaho Pole Co.  
Superfund Site

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

**CHRISTOPHER  
THOMPSON**

 Digitally signed by CHRISTOPHER  
THOMPSON  
Date: 2022.04.20 08:51:41 -06'00'

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Christopher A. Thompson  
Associate Regional Counsel for Enforcement  
Region 8

Date

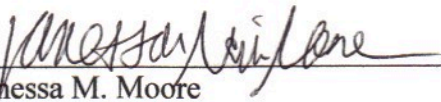
Signature Page for Administrative Settlement Agreement regarding the Idaho Pole Co.  
Superfund Site

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

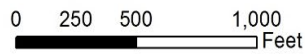
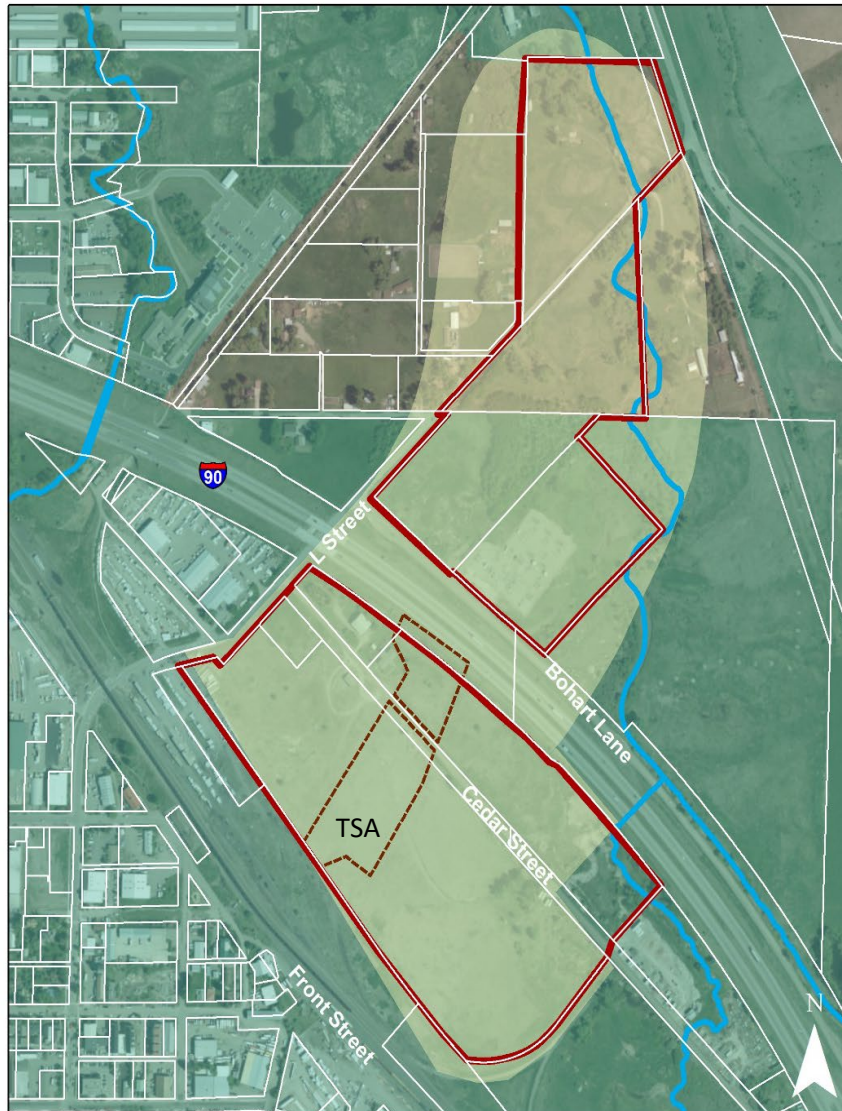
NATHANIEL DOUGLAS  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

  
\_\_\_\_\_  
Vanessa M. Moore  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

5/6/22  
\_\_\_\_\_  
Date

Appendix 1  
Site Map | Pre-PPA Site Repository

For Prospective Purchaser Agreement for Removal Action Idaho  
Pole Company Superfund Site  
Bozeman, Montana



Sources: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USGS, AeroGRID, IGN and the GIS User Community.

**Legend**

- Approximate Site Boundary
- Treated Soil Area
- CGA
- Parcels
- City of Bozeman
- Streams

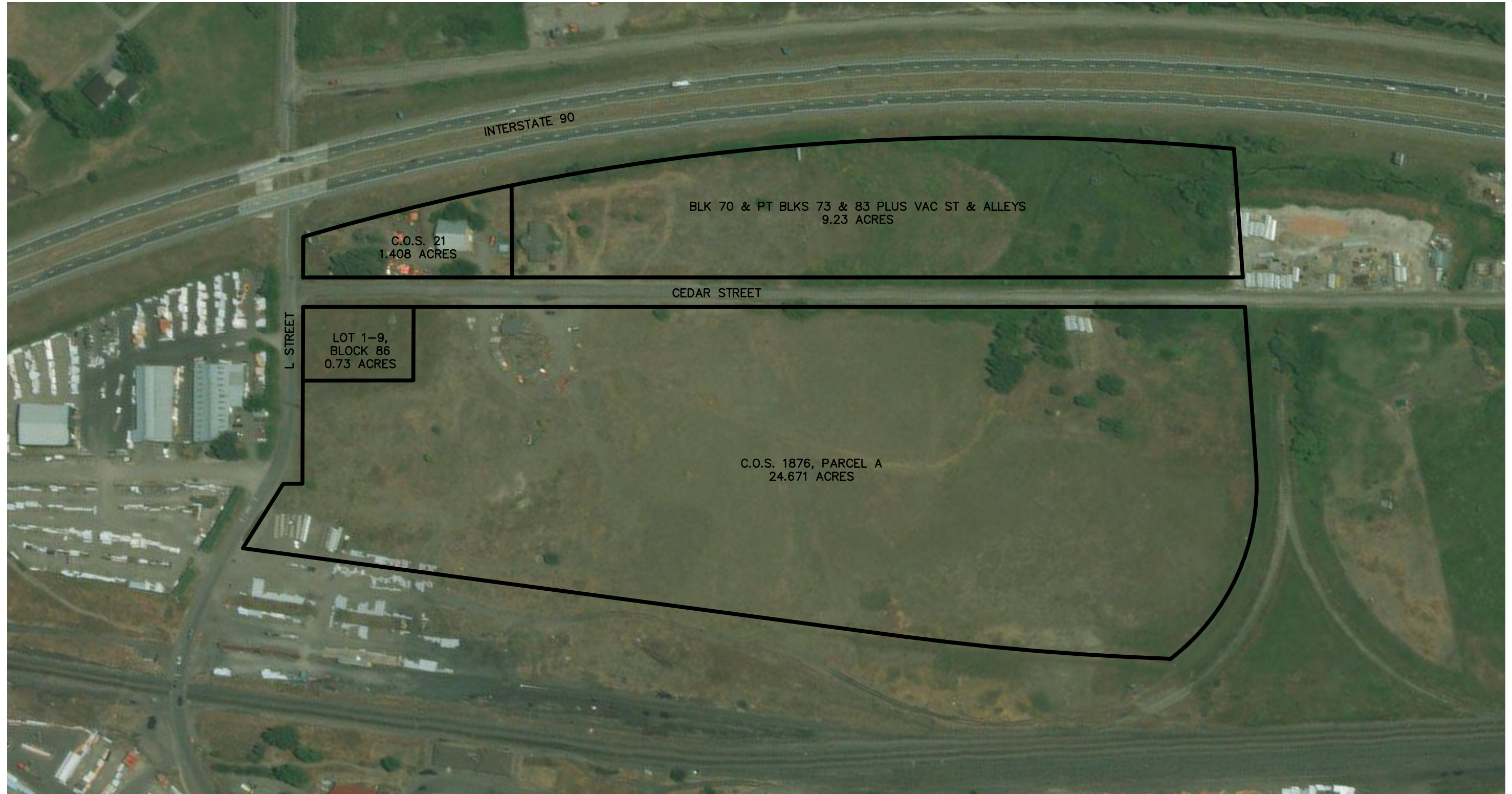
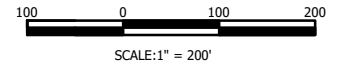


# PARCEL BOUNDARIES

For Prospective Purchaser Agreement for  
Removal Action  
Idaho Pole Company Superfund Site  
Bozeman, Montana

PREPARED BY : **SANDERSON STEWART**

APRIL, 2022  
BOZEMAN, MONTANA



Appendix 3  
Legal Descriptions

For Prospective Purchaser Agreement  
For Removal Action  
Idaho Pole Company Superfund Site  
Bozeman, Montana

**PARCEL I: Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, in Block 86, of the Northern Pacific Addition to Bozeman, Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana. Together with that portion of vacated alley which attached to said lots by operation of law pursuant to Ordinance No. 737, recorded November 29, 1945 in Book 13 of Miscellaneous, Page 28, records of Gallatin County, Montana.**

**PARCEL II: A tract of land lying in the Northern Pacific Subdivision, City of Bozeman, in the SE1/4 of Section 6, Township 2 South, Range 6 East, P.M.M., Gallatin County, Montana, which tract is more particularly described as follows: Beginning at the SW corner of Block 87 of said subdivision run South 45° 32'26" East along the Northerly line of Cedar Street for 430.00 feet to an iron pin at the centerline of vacated K Street; thence run North 44° 26'51" East, along said centerline for 189.99 feet to an iron pin and the Southerly right of way line of Interstate 90; thence run Northwesterly along the arc of a curve to the left (chord bearing and distance: North 58° 41'37" West, 441.02 feet) for 441.13 feet to an iron pin and the Easterly line of L Street; thence run South 44° 47'30" West along said Easterly line for 89.63 feet to an iron pin and the point of beginning, as shown on Certificate of Survey No. 21.**

**PARCEL III: Lots 1, 23 and 24 in Block 62 and all of Blocks 70, 73 and 83 of Northern Pacific Addition to Bozeman, Gallatin County, Montana. Together with those portions of vacated H Street, I Street, J Street and Spruce Street and vacated alleys which attached to said lots by operation of law pursuant to Ordinance No. 312, recorded December 22, 1905 in Book 7 of Miscellaneous, Page 581, records of Gallatin County, Montana. Together with that portion of vacated K Street which attached to said lots by operation of law pursuant to Ordinance No. 597, recorded May 19, 1930 in Book 11 of Miscellaneous, Page 67, records of Gallatin County, Montana. EXCEPTING THEREFROM that portion conveyed to the State of Montana for the benefit and use of its State Highway Commission in Bargain and Sale Deed, recorded June 16, 1966 in Book 151 of Deeds, Page 434, records of Gallatin County, Montana.**

**PARCEL IV: Tract A of Certificate of Survey No. 1876, situated in the SE1/4 of Section 6 and the SW1/4 of Section 5, Township 2 South, Range 6 East, P.M.M., City of Bozeman, Gallatin County, Montana, according to the official survey thereof on file and of record in the office of the County Clerk and Recorder, Gallatin County, Montana.**



## **Appendix 4 Removal Work Plan Scope**

### **For Prospective Purchaser Agreement For Removal Action Idaho Pole Company Superfund Site Bozeman, Montana**

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This Removal Work Plan Scope has been prepared for the Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser (PPA) for the Idaho Pole Company Superfund Site (Site), Bozeman, Montana.

In 2020, the United States Environmental Protection Agency (EPA), in consultation with Montana Department of Environmental Quality (MDEQ), partially deleted the Site surface soils and unsaturated soils outside of the 4.5-acre Treated Soils Area (TSA), as a result of the successful excavation and treatment of contaminated soils. The soils remedy is protective of human health and the environment given that no exposure pathways exist because: 1) the treated soils have been placed above historic groundwater levels and as a result do not come in contact with contaminated groundwater; 2) the treated soils have clean soil on top as a cover; and 3) Institutional Controls (ICs) are in place that restrict land use in the 4.5 acre Treated Soils Area.

To be further protective of human health and the environment, this provides the deliverables and schedule to implement TSA soils removal from the floodplain area located to the north of Cedar Street, consolidate the soils area to a Consolidated TSA with a smaller footprint entirely on the south of Cedar Street which reduces the overall TSA by approximately 2.4 acres, add an enhanced cover on the consolidated TSA area as part of the proposed development, implement stormwater management, realign the utility and access corridor, and monitor for continued effectiveness of the remedy.

Section 1 of this Removal Work Plan Scope introduces recent work activities. Section 2 describes the Work to be Performed. Section 3 describes the deliverables required to support the Work. Section 4 includes the Schedule of Deliverables required, and Section 5 contains references.

#### **I. Introduction**

In 1992, EPA selected a remedial alternative for the Site in a Record of Decision (ROD). The ROD identifies the following Contaminants of Concern: pentachlorophenol (PCP), polycyclic aromatic hydrocarbons (PAHs), and polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (dioxins/furans). EPA designated one Operable Unit (OU01) for the Site that included both soil and groundwater components.

Soil and sediment components of the remedy selected in the ROD include:

- Excavation and surface land biological treatment of contaminated soils and sediments from: 1) the Pasture Area north of I-90 including the substation ditch; 2) the area



between Cedar Street and I-90 including the Cedar Street ditch; and 3) the former roundhouse area;

- Hot water and steam flushing of soils underlying the facility and I-90 to recover hazardous substances;
- Separation and disposal of oily wood-treating fluid extracted from soils; and
- Closure of on-site treatment units in compliance with Resource Conservation and Recovery Act (RCRA) Subtitle C.

EPA has issued two Explanations of Significant Differences (ESD) amending the remedy selected in the 1992 ROD as it pertains to soils. The 1996 ESD includes the following elements:

- Removed the hot water steam flushing component of the soil remedy;
- Clarified the areas of soil contamination to be excavated;
- Clarified how the land-treatment unit (LTU) for soils would be dismantled (eliminating the need for the RCRA cap specified in the ROD); and
- Described how treated soils would be disposed of on-Site (including the isolation of any such soils containing dioxins/furans above ROD cleanup levels from groundwater and from direct contact).

Once wood treating operations were terminated in 1997, a second ESD was issued in 1998 to allow treatment of an additional 5,000 cubic yards (CY) of soil that were previously inaccessible. Soil excavation and cleanup at the Site was initiated in 1995. Contaminated soils were excavated from six areas at the Site and placed in the LTU for treatment. The six areas of the Site included: the Pressure Plant Area, south of Cedar Street, the Barkfill Area, the Roundhouse Area, the Cedar Street Ditch, and the Pasture Area. The treatment operations continued through October 2000. Because the treated soil achieved PAH and PCP concentrations below the ROD soil cleanup standards, the LTU was dismantled in 2002.

Treated soils from the LTU and filter sand were placed in the excavated areas south of Cedar Street and in two additional pits that were excavated on-Site near these excavated areas. In 1999, Pit 4 in the Barkfill area (to the north of Cedar Street) was filled with 3,195 cubic yards of treated soils and was covered with a minimum of 12-inches of clean material. Pits to the south of Cedar Street were also filled with treated soils from the LTU. However, these soils also contain dioxins and furans above the soil cleanup standards identified in the ROD. Therefore, the treated soil was placed above historic high groundwater levels and covered with 12 to 18 inches of clean soil to prevent direct human contact with treated soils.

In 2021, Flood Insurance Rate Maps (FIRMs) for Bozeman were completed by the Federal Emergency Management Agency (FEMA). FEMA redrew the floodway boundaries, and the floodway boundaries now include a portion of the Pit 4 area north of Cedar Street. To prevent contaminated soils from coming into contact with floodwater, the treated soils will be removed from Pit 4 and consolidated with other treated soils in the Treated Soil Area south of Cedar Street prior to application of the additional/enhanced cover planned for this area as described in Section II.

## II. Scope of the Work to be Performed

The following removal actions will be performed consistent with Section VII (Removal Action to be Performed) of the PPA.

### 1. Soils Relocation

**Excavation and stockpiling of clean fill material for use as backfill:** Prior to removing treated soils, approximately 8 inches of the cover (approximately 4,800 cubic yards) of the entire 4.5 acre TSA will be removed and stockpiled for use as backfill after the treated soils have been excavated. These soils will be sampled for contaminants of concern for the Idaho Pole Site, following an agency-approved sampling and analysis plan that is required to be submitted 30 days after the effective date of the PPA, prior to their use as backfill. The Removal Work Plan will describe this activity, and a revised sampling and analysis plan and quality assurance project plan (SAP/QAPP) will be included as an attachment if revisions to the original SAP/QAPP are necessary to reflect the actions to be taken.

**Excavation and consolidation of treated soils: Treated Soil Pit Area 4:** Approximately 3,300 CY of treated soils will be excavated from Treated Soil Pit Area 4, known as the Barkfill Area, located north of Cedar Street (Exhibit A). Excavation limits will be fully defined in the Removal Work Plan and will generally follow the surveyed boundary of Pit 4 (where treated soils are placed). This will move all treated soil from the north side of Cedar Street, thus moving any treated soil out of the newly designated FEMA floodway.

**Excavation and consolidation of treated soils: Rail Corridor:** In addition, approximately 624 CY of treated soils will be excavated from the southern extent of two Treated Soil Pit Areas adjacent to the Montana Rail Link Right-of-Way (Exhibit A). The purpose of moving 624 CY is to remove treated soils from the proposed utility corridor, and thus provide an unimpacted area where utilities can be laid and worked on.

In summary, the total of approximately 3,924 CY of excavated treated soils will be relocated within the TSA boundary south of Cedar Street, consolidating the treated soils in a single area which will reduce the overall TSA area by approximately 2.4 acres (Exhibit E). The excavated soils will be distributed evenly over an approximately 156,315 square foot portion of the TSA at an average depth of 8 inches. Upon completion, this area will be surveyed to establish the final boundary of the Consolidated Treated Soil Area. This information will be used to modify the Deed Restriction, which is an institutional control for the property, after which the agencies will be approached about a modification to the partial deletion for the Site.

## **2. Construction of Consolidated TSA Enhanced Cap**

Once the excavated treated soils have been distributed in the Consolidated TSA, a multi-layered impervious cap will be installed over the entire Consolidated TSA south of Cedar Street (Exhibit B). The end use of this area is a parking lot which is proposed to have a solar array as a vertical awning (contingent on feasibility). Helical piers are proposed for use as the foundation for the solar panel array. The helical piers would be installed prior to the installation of the geotextile liner so the geotextile can be sealed around each pier. Because it is anticipated that the helical piers may extend into the treated soils to some depth, a Soils Management Plan will be prepared for agency review and approval, addressing the management of any treated soils disturbed as well as the protection of workers. The Soils Management Plan will be an attachment to the Removal Work Plan.

A combination of imported clay and a geotextile liner will then be placed over the treated soils in the Consolidated TSA. This will meet or exceed the MDEQ standard of a permeability no greater than  $1 \times 10^{-5}$  centimeter/second as established in Montana Code Annotated 17.50.1403. The clay and geotextile layers will then be covered with 6 inches of 1 ½ inch base course gravel. The finished surface will be approximately 3 inches of asphalt pavement.

This enhanced impervious Consolidated TSA cap will prevent infiltration of water into the treated soils and eliminates the potential for direct exposure to the treated soils, providing a greater degree of protection than the current 12 inches of permeable cover soil over the original repository (Exhibit B.1).

## **3. Stormwater Management**

The proposed stormwater system will collect runoff from the impervious Consolidated TSA cap into a series of inlets, directing any stormwater away from the Consolidated TSA (Exhibit C). Stormwater pipes will connect the inlets to a subsurface advanced drainage system (ADS) storm chamber system. The location of any infiltration basin will be sampled for contaminants of concern or the soils in that area will be excavated and replaced with clean permeable fill. Both the subsurface chambers and the surface infiltration basin will be located cross-gradient from the Consolidated TSA and upgradient of the groundwater contaminant plume. As an additional layer of protectiveness, the existing Institutional Controls will be modified to specify the stormwater management needs for the property into the future.

Every stormwater system requires maintenance, although maintenance is usually infrequent and minor relative to other mechanical systems. As part of the drainage report with the City of Bozeman site plan submission, there will be an Operations and Maintenance (O&M) portion of the report. The Purchaser is responsible for maintenance and will sign that document to formalize the process. The stormwater system will not be located within the TSA boundary; therefore, maintenance activities should not impact the TSA.

#### 4. Utility and Access Corridor Realignment

The traditional utility corridor for this development would be along Cedar Street, which crosses both the known extent of groundwater contamination and the footprint of the original TSA. The proposed utility and access corridor will be established by a combination of 60 and 30 foot easements along the southern property boundary (Exhibit D). This alignment eliminates the overlap with the Consolidated TSA and will not intersect any treated soil pit areas once the treated soil relocation work is completed (see description of soil removal, above). A Soils Management Plan will be developed to address the eventuality of encountering groundwater while placing utilities. This plan will be included as an attachment to the Removal Work Plan.

The proposed corridor alignment will mitigate potential treated soil disturbance and associated public health and safety risks during future utility construction.

### III. Site-Specific Plans/Deliverables

Purchaser will review, prepare, update as appropriate, and/or maintain relevant or required Site-specific plans in accordance with applicable guidance. Additional deliverables may be required should they become necessary. Site-specific plans contemplated under this Removal Work Plan Scope include:

A. Quality Management Plan (QMP)<sup>1</sup>: The Purchaser will submit a copy of the Quality Management Plan (QMP) of the proposed contractor that will be performing the Work under this Removal Work Plan Scope. The QMP will be prepared in accordance with QA/R-2 (<https://www.epa.gov/quality/epa-qar-2-epa-requirements-quality-management-plans>) or equivalent documentation as determined by EPA. The qualifications of the persons performing the Work are subject to EPA's review that they have adequate experience, capacity, and technical expertise. The Purchaser will provide a copy of the primary contractor's EPA-approved QMP to any subcontractors that will be performing the Work under the Removal Work Plan; the primary contractor's QMP will be submitted 30 days after approval of the site plan by the City of Bozeman.

B. Combined QAPP<sup>2</sup>/SAP: The Purchaser will prepare a QAPP/SAP to be provided to EPA for approval. The QAPP/SAP is intended to provide a set of tools and techniques that may be selected for the upcoming field soil removal and soil replacement activities and will provide the basis for selecting appropriate construction oversight strategies for ensuring technical activities meet data quality objectives (DQOs) for the construction activities since the DQOs will be the determinative factor for assessing the success or failure of the phased activities.

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<sup>1</sup> ASQ/ANSI E4:2-14 "Quality Management Systems for Environmental Information and Technology Programs..."

<sup>2</sup> Refer to EPA-505-B-04-900A, *Uniform Federal Policy for Quality Assurance Project Plans*, Version 1, March 2005

The prepared QAPP/SAP must follow G5 and R5 (<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5> to <https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>). Purchaser will submit a completed Region 8 QA Crosswalk with each QAPP submission. The form may be found at EPA Region 8's QA website: <http://www.epa.gov/region8/qa/reference.html>.

The QAPP/SAP will also include the Site Management Plan (SMP) as an appendix. The SMP outlines the processes, procedures, and safeguards that will be used to ensure contaminants or pollutants are not released off-site during the implementation of the Removal Work Plan and how solid and aqueous investigative derived wastes that are encountered during activities will be managed and disposed, as appropriate.

*C.* Health and Safety Plan (HASP)<sup>3</sup>: The Purchaser will prepare a HASP to be provided to EPA. The HASP ensures the protection of workers and public health and safety during performance of on-site work under this Settlement. The HASP should also have provisions for COVID-19 and social distancing during upcoming activities anticipated under this that follow appropriate guidance by the Center for Disease Control and Protection (CDC). EPA will review the HASP to ensure it identifies the potential hazards associated with the Site, plans for ensuring that workers understand those potential hazards, and information and procedures for mitigating those risks. EPA will accept the HASP if it addresses EPA's requirement for this deliverable to support the work to be performed.

*D.* Removal Work Plan: Purchaser will prepare a Removal Work Plan to be provided to EPA for approval. The Removal Work Plan will describe the removal actions, consistent with the requirements of the PPA. Upon approval of the Removal Work Plan, Purchaser will implement the Removal Action(s) to be Performed.

*E.* Progress Reports: Purchaser will submit written progress reports to EPA, consistent with the requirements of the PPA.

*F.* Final Report: After completion of all Work specified in the Removal Work Plan, Purchaser will submit for EPA review and approval a draft and final report regarding the Work, consistent with the requirements of the PPA.

*G.* Post-Removal Site Control Plan: Purchaser will submit a Post-Removal Site Control Plan that addresses the following elements: 1) a schedule for periodic evaluation of the integrity of the Consolidated TSA enhanced cap, 2) a schedule for periodic evaluation of the effectiveness of the stormwater management controls, 3) a schedule for periodic evaluation of the implementation of the Revised Institutional Controls, and 4) a general summary of the process for addressing any deficiencies identified during the periodic evaluations. This plan is intended to ensure the effectiveness and integrity of the removal action.

#### **IV. Schedule of Deliverables**

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<sup>3</sup> Refer to 29 CFR 1910.120(l)(1) and (l)(2).

Purchaser will deliver documents and perform activities described in this Removal Work Plan Scope in accordance with the following schedule:

REFERENCE	DOCUMENT OR ACTIVITY	DELIVERY DATE
Section III	HASP	30 days after City of Bozeman Site Plan Approval or before any Work
Section III	Draft QAPP/SAP	30 days after City of Bozeman Site Plan Approval or before any Work
Section III	Final QAPP/SAP	15 days after receiving EPA comments on draft final QAPP/SAP
Section III	Draft Removal Work Plan	30 days after approval of the Site Plan by the City of Bozeman
Section III	Contractor(s) QMP(s)	30 days after approval of the Site Plan by the City of Bozeman
Section III	Final Removal Work Plan	15 days after receiving EPA comments on draft final Removal Work Plan
Section III	Progress Reports	30-days after approval of Final Removal Work Plan, and monthly after that
Section III	Draft Final Report	Within 60 days after completion of all work associated with the Removal Work Plan
Section III	Final Report	15 days after receiving EPA comments on draft Final Report
Section III	Draft Post Removal Site Control Plan	Within 60 days after Final Report has been submitted
Section III	Final Post Removal Site Control Plan	15 days after receiving EPA comments on draft Post Removal Site Control Plan



## V. References

EPA. September 1992. *Record of Decision, Idaho Pole National Priorities List Site*, Bozeman, MT. Montana Department of Health & Environmental Sciences Solid & Hazardous Waste Bureau and EPA Region VIII.

EPA. May 1996. *Explanation of Significant Differences for the Idaho Pole Company Site*.

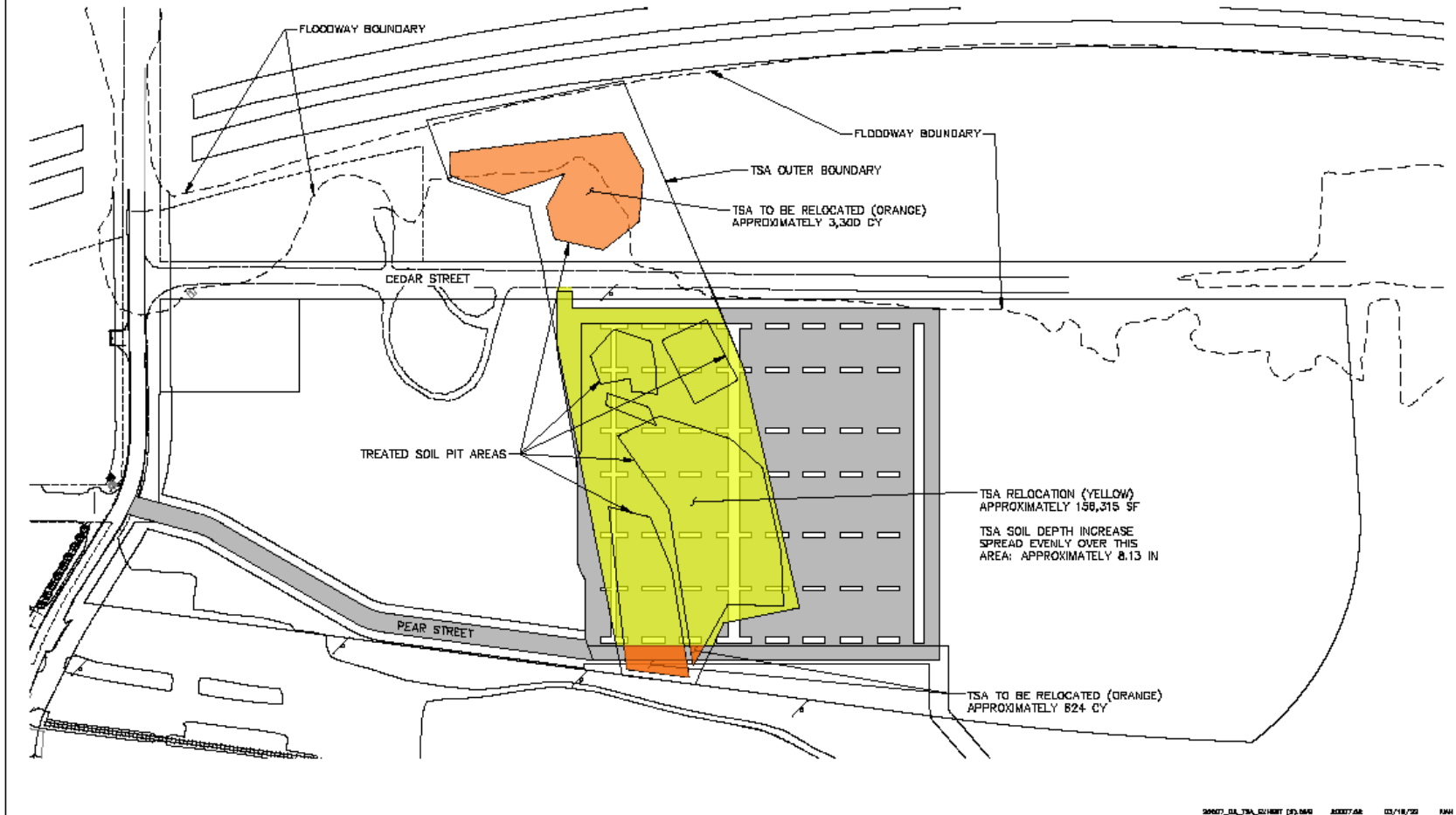
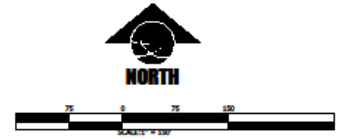
EPA. November 1998. *Explanation of Significant Differences for the Idaho Pole Company Site*.

EPA. July 19, 2019. National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Idaho Pole Company Superfund Site, Proposed Rule by EPA.

# EXHIBIT A TSA RELOCATION

PREPARED FOR : SCOUT DAC LLC  
PREPARED BY : SANDERSON STEWART

MARCH, 2022  
BOZEMAN, MONTANA



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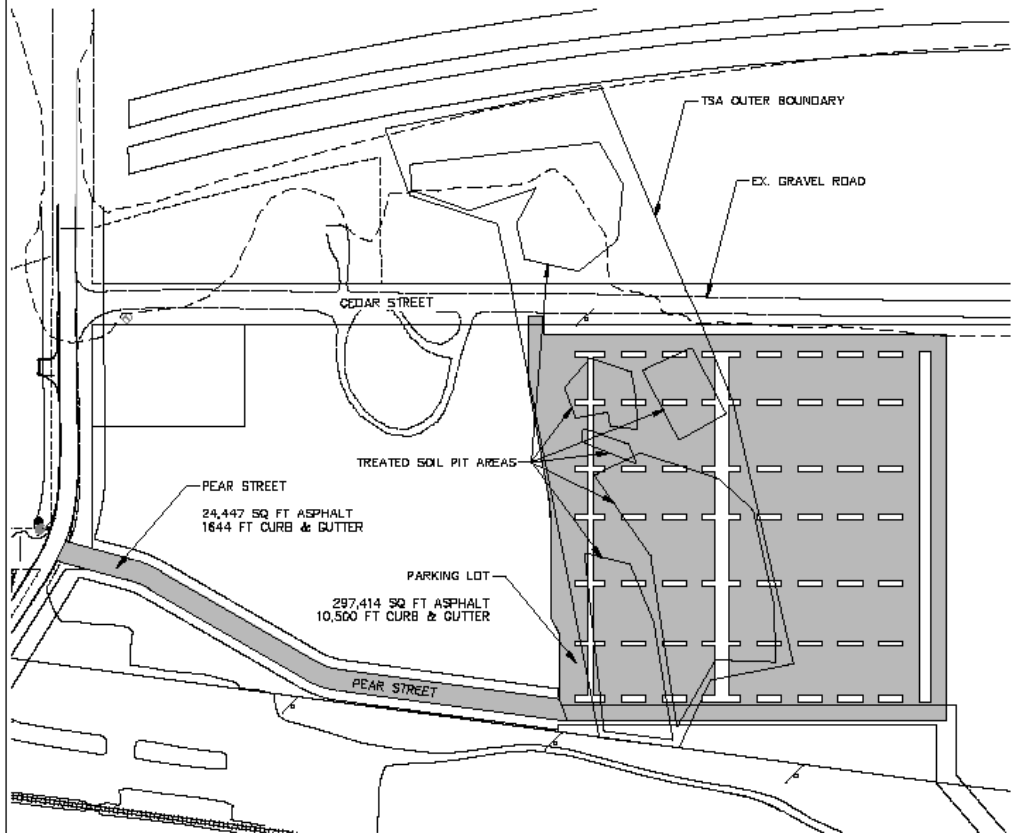
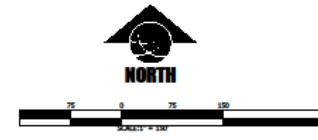
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### EXHIBIT B TSA IMPERVIOUS CAP

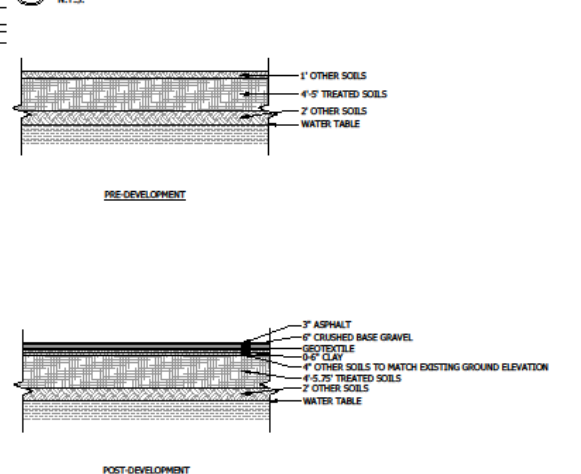
PREPARED FOR : SCOUT DAC LLC

PREPARED BY : **SANDERSON STEWART**

MARCH, 2022  
BOZEMAN, MONTANA



**PARKING LOT SECTION**



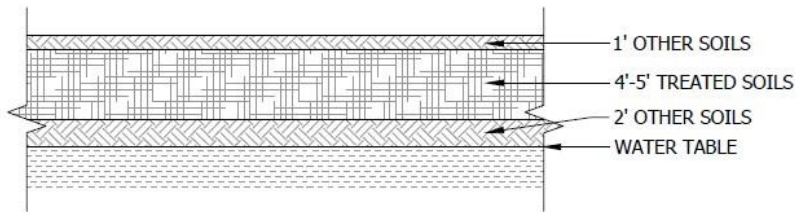
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# EXHIBIT B.1. PARKING LOT SECTION

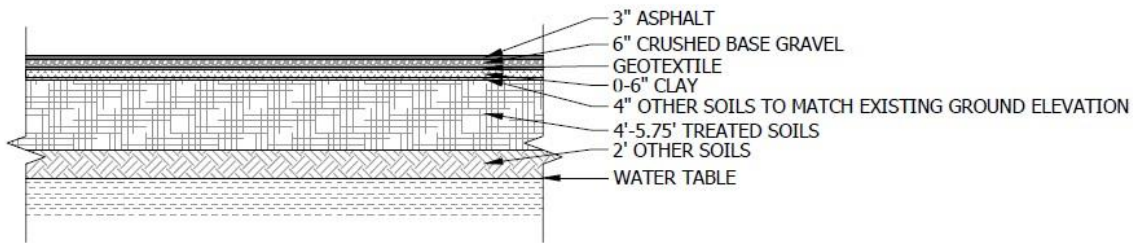


## PARKING LOT SECTION

N.T.S.



PRE-DEVELOPMENT



POST-DEVELOPMENT

**EXHIBIT C**  
STORMWATER PLAN

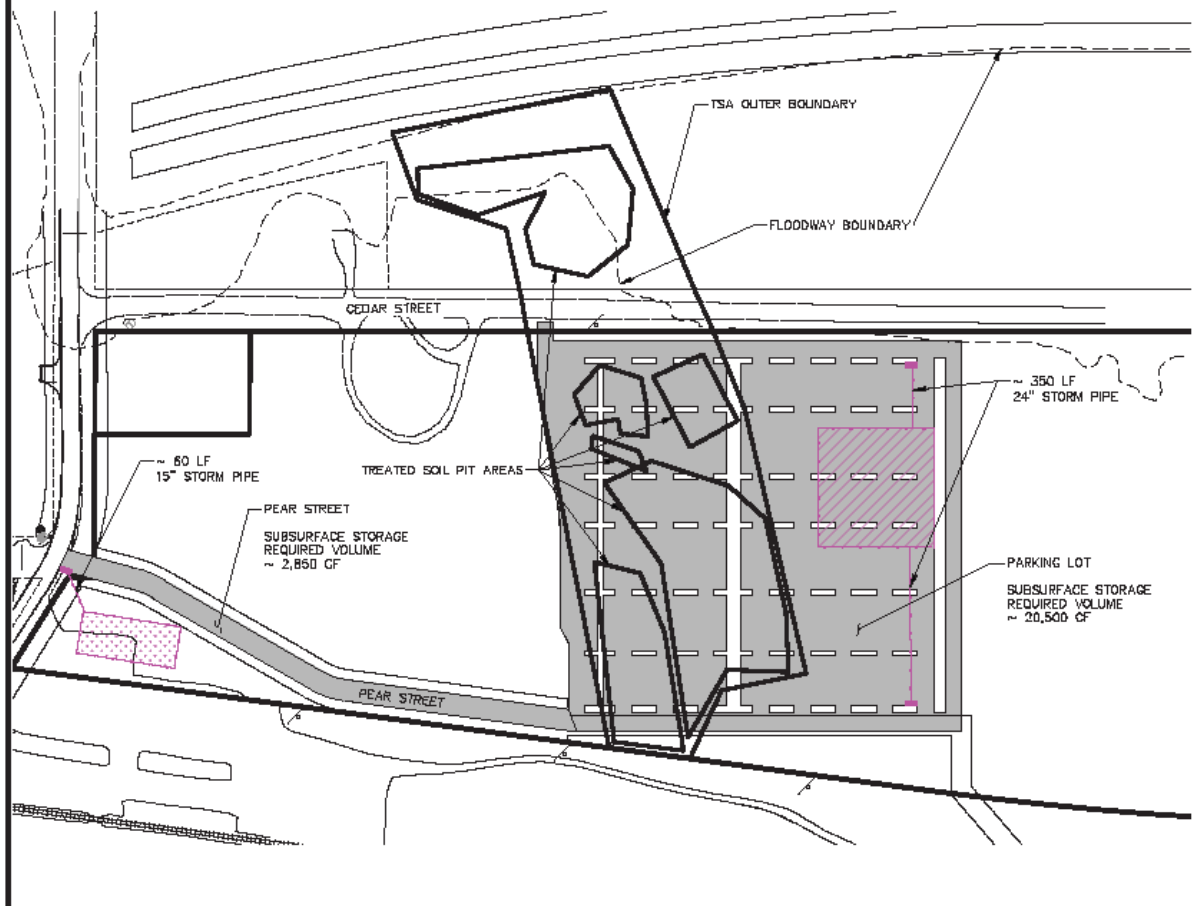
PREPARED FOR : SCOUT DAC LLC  
 PREPARED BY : **SANDERSON STEWART**

MARCH, 2022  
 BOZEMAN, MONTANA



LEGEND

- SURFACE POND 
- SUBSURFACE POND 
- STORMWATER PIPE 
- STORMWATER INLET 



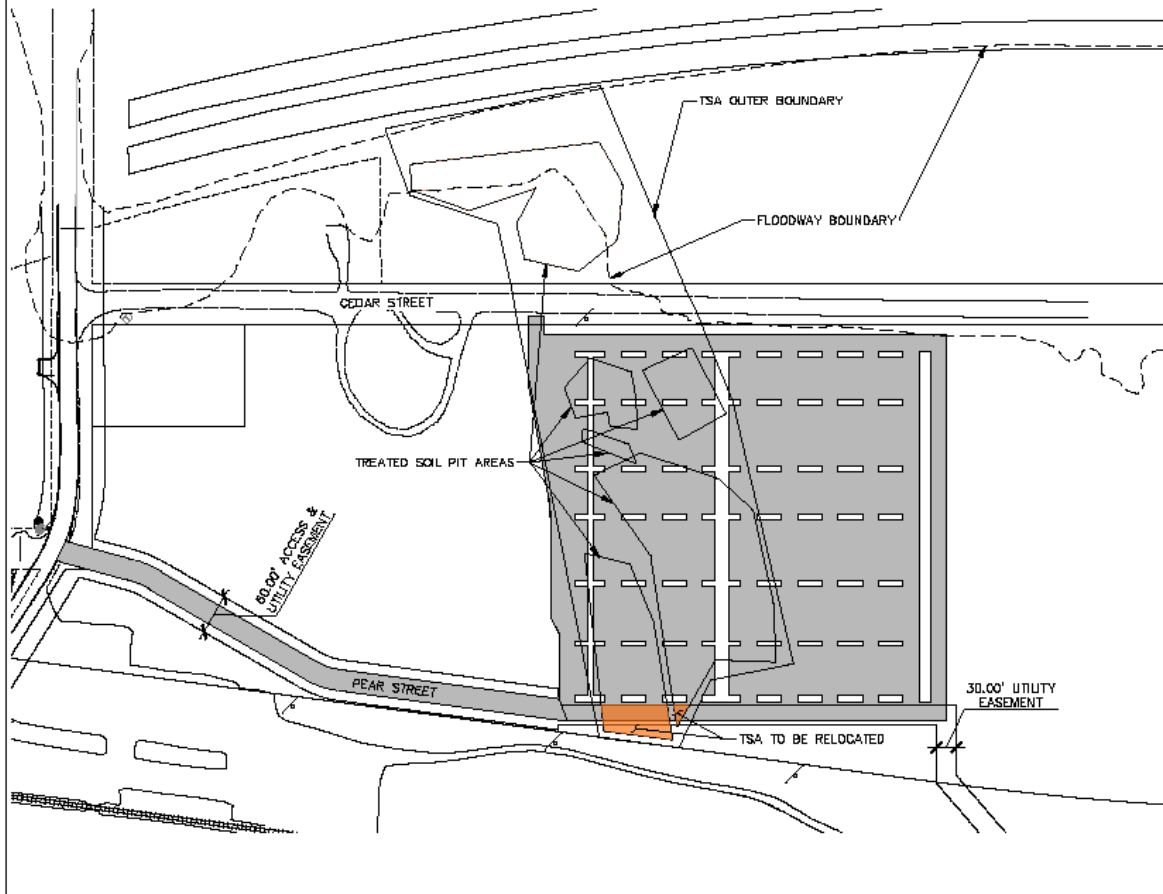
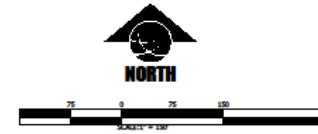
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00007\_03\_TSA\_EXHIBIT (2).DWG 03/20/22 03/18/22 1:04

# EXHIBIT D FUTURE UTILITY EASEMENTS

PREPARED FOR : SCOUT DAC LLC  
PREPARED BY : SANDERSON STEWART

MARCH, 2022  
BOZEMAN, MONTANA



P:\2022\02\_The\_Yard\_Site\_Development\Documents\DWG\EXHIBIT D\EXHIBIT D - FUTURE UTILITY EASEMENTS.dwg, 3/23/22 3:37:35 PM, RWSW, 1:1

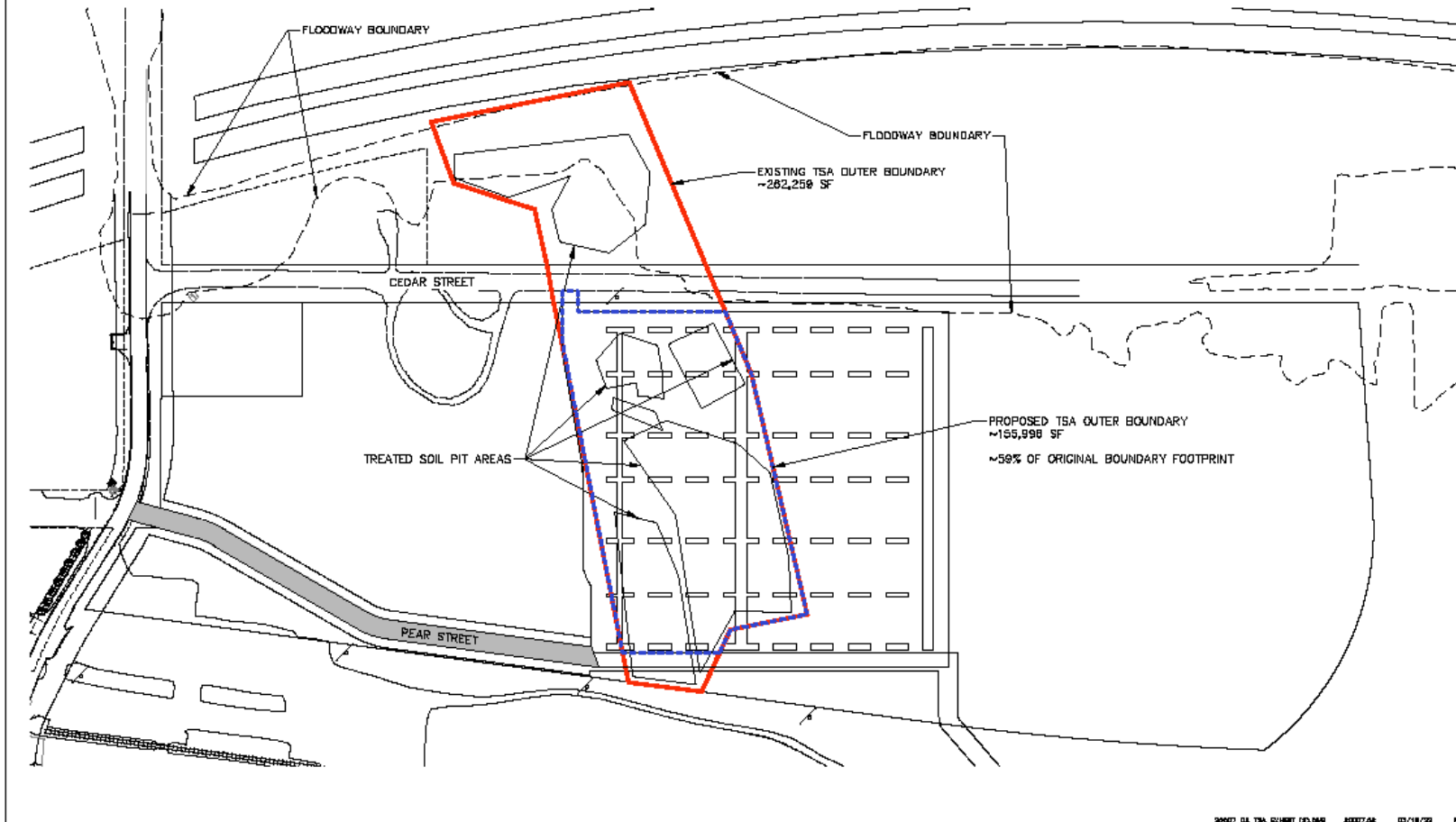
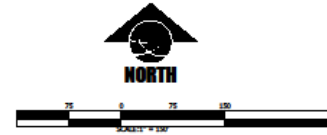
202203\_01\_TSA\_EXHIBIT (2).DWG 20220304 03/18/22 RWS



# EXHIBIT E TSA BOUNDARY MODIFICATION

PREPARED FOR : SCOUT DAC LLC  
PREPARED BY : SANDERSON STEWART

MARCH, 2022  
BOZEMAN, MONTANA



P:\2007\_02\_The\_Vent\_Units\_01\_04\_Development\_Summer2007\20070202\DWG\EXHIBIT E\TSA\_Boundary Modification.dwg, 4/22/2022 10:20:03 AM, rhw@stj.com

2007\_02\_TSA\_EXHIBIT (P) 000 0007.02 03/18/22 KAW

April 2022

Appendix 5  
Form of the Letter of Credit

For Prospective Purchaser Agreement for Removal Action  
Idaho Pole Company Superfund Site  
Bozeman, Montana

**[Letterhead of Issuing Institution]**

**IRREVOCABLE STANDBY LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: **[insert number]**

ISSUANCE DATE: **[insert date]**

MAXIMUM AMOUNT: **\$6,525,441**

APPLICANT:

Scout DAC, LLC  
Casey Tippens, Manager  
5148 US-89  
Livingston, MT 59047  
[ctippens@gmail.com](mailto:ctippens@gmail.com)

BENEFICIARY:

U.S. Environmental Protection Agency Region 8  
c/o **[insert appropriate Regional official such as “Super fund Division Director”]**  
**[Insert contact information (address, phone, email, etc.)]**

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. **[insert number]** in your favor, at the request and for the account of Scout DAC, LLC (the “Applicant”), in the amount of **\$6,525,441** (the “Maximum Amount”). We hereby authorize you, the United States Environmental Protection Agency (the “Beneficiary”), to draw at sight on us, **[insert name of issuing institution]**, an aggregate amount equal to the Maximum Amount upon presentation of:

- (1) Your sight draft, bearing reference to this Letter of Credit No. **[insert number]** (which may, without limitation, be presented in the form attached hereto as Exhibit A); and
- (2) Your signed statement reading as follows: “I certify that the amount of the draft is payable pursuant to that certain Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser dated **[insert date]**, **[CERCLA Docket No. \_\_\_\_\_]**. between the United States and Scout DAC, LLC, entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental

Response, Compensation, and Liability Act, 42 U.S.C. § § 9601-9675, relating to the Idaho Pole Co. Superfund Site.”

This letter of credit is effective as of **[insert issuance date]** and shall expire on **[insert date that is at least 1 year later]**, but such expiration date shall be automatically extended for a period of **[insert period of at least 1 year]** on **[insert date that is at least 1 year later]** and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and the Applicant by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall immediately thereupon be available to you upon presentation of your sight draft for a period of at least 120 days after the date of receipt by both you and the Applicant of such notification, as shown on signed return receipts.

All notifications, requests, and demands required or permitted hereunder shall be given in writing, identify the site, and provide a contact person (and contact information).

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this letter of credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in immediately available funds directly in to such account or accounts as may be specified in accordance with your instructions.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce.

Very Truly Yours,

Date: \_\_\_\_\_

By[signature]: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Contact information: \_\_\_\_\_

**Exhibit A – Form of Sight Draft  
[EPA LETTERHEAD]**

**SIGHT DRAFT**

TO:                   **[Insert name of issuing institution]  
[Insert name and title of contact person(s)]  
[Insert address]**

RE:                   Letter of Credit No.**[insert number]**

DATE:               **[Insert date on which draw is made]**

TIME:               **[Insert time of day at which draw is made]**

This draft is drawn under your Irrevocable Standby Letter of Credit No.**[insert number]**. I certify that the amount of the draft is payable pursuant to that certain Administrative Settlement Agreement for Removal Action and Payment of Response Costs by Prospective Purchaser dated **[insert date]**, **[CERCLA Docket No. \_\_\_\_\_]** between the United States and Scout DAC, LLC, entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § § 9601-9675, relating to the Idaho Pole Co. Superfund Site.” Pay to the order of the United States Environmental Protection Agency, in immediately available funds, the amount of \$ **[insert dollar amount of draw]** or, if no amount certain is specified, the total balance remaining available under such Irrevocable Standby Letter of Credit.

Pay such amount as is specified in the immediately preceding paragraph by **[insert payment instructions as appropriate, such as: “Fedwire EFT, referencing Site/Spill ID Number [insert number][and DJ Number[insert number]]**. The Fedwire EFT payment must be sent as follows:

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

The total amount paid shall be deposited by EPA in the Idaho Pole Co. Superfund Special Account 0862, to be retained and used to conduct or finance response actions at or in connection with the site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of the United States Environmental Protection Agency, whose signature here upon constitutes an endorsement.

By**[signature]**: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Contact information: \_\_\_\_\_