RESOLUTION

WHEREAS, the Fort Hall Business Council is responsible to protecting the health and welfare of the Tribal membership and the Fort Hall Reservation environment and the Tribes' off-Reservation natural resources and treaty rights; and

WHEREAS, on October 24, 2003, the United States Environmental Protection Agency ("EPA"), the Idaho Department of Environmental Quality ("IDEQ"), the United States Department of Agriculture, Forest Service ("Forest Service"), and P4 Production, L.L.C ("P4") voluntarily entered into an Administrative Order on Consent/Consent Order ("2003 CO/AOC"). The 2003 CO/AOC provided for the performance by P4 of a Site Investigation ("SI") and an Engineering Evaluation/Cost Analysis ("EE/CA") for the Enoch Valley Mine, the Ballard Mine, and the Henry Mine; and

WHEREAS, the attached Administrative Settlement Agreement and Order on Consent/Consent Order for Remedial Investigation/Feasibility Study ("Settlement Agreement") is entered into voluntarily by the EPA, IDEQ, Forest Service, the U.S. Department of the Interior ("DOI"), Bureau of Land Management ("BLM"), the Shoshone-Bannock Tribes ("Tribes"), and P4, (collectively, the "Parties" or alone a "Party"). The mine sites addressed in this Settlement Agreement are the Henry Mine, Ballard Mine, and Enoch Valley Mine; and

WHEREAS, the attached Settlement Agreement supersedes the 2003 CO/AOC and provides for the performance by P4 of a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Sites; and

WHEREAS, the objectives of the Settlement Agreement are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Sites, by conducting a remedial investigation; (b) to determine and evaluate alternatives for remedial action, if any, to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Sites, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by the IDEQ, EPA, the Forest Service, DOI, and Tribes, with respect to this Settlement Agreement; and

WHEREAS, the Fort Hall Business Council believes it is in the best interest of the Tribes to approve the attached Settlement Agreement that provides in part for recovery of Tribal costs ($50,000/year) and Tribal participation in the work under the agreement,

NOW,THEREFORE, BE IT RESOLVED BY THE FORT HALL BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that the attached P4 Settlement Agreement is hereby approved and authorized the Chairman to sign the document on behalf of the Fort Hall Business Council and Shoshone-Bannock Tribes.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended and under Article VI, Section 1 (a, g, h, I, k, l, r, s) and the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Indian Reservation.

LGMT-09-0962

Dated this 29th day of September, 2009

Alonzo A. Coby, Chairman
Fort Hall Business Council

S E A L

CERTIFICATION

I HEREBY CERTIFY, that the forgoing resolution was passed while a quorum of the Business Council was present by a vote of 5 in favor, 1 absent (EAL), and 1 not voting (AAC) on the date this bears.

(For)

Elizabeth A. Lindroth, Tribal Secretary
Fort Hall Business Council

LGMT-09-0962

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
U.S. EPA REGION 10
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE REGION 4
UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF LAND MANAGEMENT
SHOSHONE-BANNOCK TRIBES

IN THE MATTER OF:	)
	)
	)
Enoch Valley Mine	)
Henry Mine	)
Ballard Mine	)
	)
	)
P4 Production, L.L.C.	)
Respondent.	)

ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT/CONSENT ORDER
FOR PERFORMANCE OF
REMEDIAL INVESTIGATION AND
FEASIBILITY STUDY
AT THE ENOCH, HENRY, AND BALLARD MINE SITES
IN SOUTHEASTERN IDAHO

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I. INTRODUCTION

1.1 Effective October 24, 2003, the United States Environmental Protection Agency ("EPA"), the Idaho Department of Environmental Quality ("IDEQ"), the United States Department of Agriculture, Forest Service ("Forest Service"), and P4 Production, L.L.C ("P4"), the latter as Respondent, voluntarily entered into an Administrative Order on Consent/Consent Order ("2003 CO/AOC"). The 2003 CO/AOC provided for the performance by P4 of a Site Investigation ("SI") and an Engineering Evaluation/Cost Analysis ("EE/CA") for the Enoch Valley Mine, the Ballard Mine, and the Henry Mine.

1.2 This Administrative Settlement Agreement and Order on Consent/Consent Order for Remedial Investigation/Feasibility Study ("Settlement Agreement") supersedes the 2003 CO/AOC. Notwithstanding the foregoing, the continuing obligations provided in Paragraph 31.1, as well as the obligations and reservations provided in Paragraphs 13.1, 18.2, 18.3, 18.4, 18.5 (with respect to record inspection), Sections XXIV (until such costs are paid in full), XXV (until such costs are paid in full), XXVII, and XXIX (to the extent Section XXIX is reserving rights under the 2003 CO/AOC only) of the 2003 CO/AOC, remain in full force and effect. In addition, work that is under development pursuant to the 2003 CO/AOC, including, but not limited to site characterization and data analysis, shall be continuing obligations until the RI/FS Work Plan has been approved pursuant to the Settlement Agreement.

1.3 This Settlement Agreement is entered into voluntarily by the EPA, IDEQ, Forest Service, the U.S. Department of the Interior ("DOI"), Bureau of Land Management ("BLM"), the Shoshone-Bannock Tribes ("Tribes"), and P4, (collectively, the "Parties" or alone a "Party"). The mine sites addressed in this Settlement Agreement

are the Henry Mine, Ballard Mine, and Enoch Valley Mine (collectively, the "Sites") located partly on public land and/or private lands that are subject to the jurisdiction, custody or control of the Forest Service and/or BLM; and/or the CERCLA jurisdiction of EPA; and the jurisdiction of IDEQ under state law.

1.4 As provided for in the July 17, 2000, Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho ("MOU"), EPA has been designated as the "Lead Agency" for these Sites by agreement of the Agencies. The Forest Service, IDEQ, BLM, FWS, and the Tribes have elected to participate at the Sites as Support Agencies. BLM will exercise its CERCLA authority on the portions of the Henry Mine Site that are subject to BLM's jurisdiction, custody, or control. The Forest Service will exercise its CERCLA authority on the portions of the Enoch Valley Mine Site that are subject to its jurisdiction, custody, or control. Throughout this Settlement Agreement, the Parties understand and agree that EPA, BLM, and the Forest Service will coordinate the exercise of their respective CERCLA authorities. IDEQ shall fulfill its responsibilities under CERCLA at the Sites on behalf of the State of Idaho, and by this Settlement Agreement is independently exercising its authority as set forth in Paragraph 2.1 of this Settlement Agreement.

1.5 This Settlement Agreement provides for the performance by P4 of a Remedial Investigation ("RI") and Feasibility Study ("FS") for the Sites. In entering into this Settlement Agreement, the objectives of the Parties are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Sites, by conducting a remedial investigation;

and (b) to determine and evaluate alternatives for remedial action, if any, to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Sites, by conducting a feasibility study; and (c) to recover response and oversight costs incurred by the IDEQ, EPA, the Forest Service, DOI, and Tribes, with respect to this Settlement Agreement. The Work required for performance of the RI and FS is specified in the Statement of Work ("SOW") attached, and incorporated by reference, as Appendix 1 to this Settlement Agreement, and is governed by Section IX of this Settlement Agreement ("Work to be Performed"). Data relevant to the RI/FS is available from work undertaken by P4 pursuant to the 2003 CO/AOC and/or is available from work generated as part of the Area-Wide Investigation contemplated by the MOU and the Area-Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), as well as from other sources. The EPA will determine whether data is relevant to the RI/FS, subject to the right of P4 to invoke Dispute Resolution (Section XXI) pursuant to this Settlement Agreement. This Settlement Agreement is intended to be implemented consistent with the MOU. However, this Settlement Agreement does not create any rights in P4 under the MOU.

1.6 The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice has approved of and concurred in this Settlement Agreement, in accordance with the requirements of Section 4 of Executive Order 12580 (52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R., 1987 Compilation, p. 193).

II. JURISDICTION AND GENERAL PROVISIONS

2.1 This Settlement Agreement is entered into by the EPA, BLM, and the Forest Service under the authority vested in the President of the United States by Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, 9622(a), and 9622(d)(3). This Settlement Agreement is entered into by IDEQ pursuant to Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130, the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432, Idaho's Water Quality Act, Idaho Code §§ 39-3601 et seq., and the rules and standards promulgated pursuant thereto. This Settlement Agreement is entered into by the Tribes pursuant to Section 107(a) of CERCLA, § 42 U.S.C. 9607(a).

2.2 In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), the EPA has notified the natural resources trustees of negotiations with P4 regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and State trusteeship.

2.3 The Parties recognize that this Settlement Agreement has been negotiated in good faith and that the actions taken by P4 in accordance with this Settlement Agreement do not constitute an admission of liability. Without admitting any liability, P4 agrees to the terms and conditions of this Settlement Agreement without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.

2.4 In any action to enforce the terms of this Settlement Agreement, P4 agrees not to contest its validity or the authority and jurisdiction of the United States to issue and enforce this Settlement Agreement, and P4 agrees to comply with and be bound by the

terms and conditions of this Settlement Agreement. In addition, P4 agrees not to contest the authority and jurisdiction of the IDEQ, EPA, the Forest Service, DOI, and the Tribes to enforce the provisions in Section XXIII ("Reimbursement of Federal Agency Response Costs"), Section XXIV ("Reimbursement of State Response Costs"), and Section XXV ("Reimbursement of Tribal Response Costs") of this Settlement Agreement. By signing this Settlement Agreement, however, P4 does not concede or waive its right to object to any authority the United States, Tribes, or IDEQ may have to issue, take, or enforce any other order or action relating to these Sites.

III. PARTIES BOUND

3.1 This Settlement Agreement shall apply to, and be binding upon IDEQ, EPA, BLM, the Forest Service, Tribes, and upon P4 and its officers, employees, agents, successors and assigns. Any change in ownership or corporate status of P4 including, but not limited to, any transfer of assets or real or personal property shall not alter P4's obligation to comply with the requirements of this Settlement Agreement or to ensure compliance by any successor or assign of P4, regardless of whether P4 continues to exist following such transaction. The signatories to the Settlement Agreement certify that they are authorized to execute and legally bind the Parties they represent to this Settlement Agreement.

3.2 P4 shall provide a copy of this Settlement Agreement and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the Settlement Agreement within fourteen (14) days after the effective date of this Settlement Agreement or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon

performance of the Work in conformity with the terms of this Settlement Agreement and its Appendices. Notwithstanding the provisions of any such contract, however, P4 is, and shall remain, responsible for compliance with this Settlement Agreement.

IV. DEFINITIONS

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

"Agency" shall mean EPA and any Support Agency.

"BLM" shall mean the United States Department of the Interior, Bureau of Land Management.

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

"Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, or a federal holiday. In computing any period of time under this Settlement Agreement, when the last day falls on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Working Day.

"Deliverables" shall mean the documents P4 is required to submit pursuant to this Settlement Agreement, the SOW, or any approved work plans, and any additional documents identified in writing by EPA and determined to be Additional Work in accordance with Section XX ("Additional Investigation and Analysis") of this Settlement

Agreement. All Deliverables under this Settlement Agreement are subject to review, comment, modification, and approval as described in Paragraph 9.7 of this Settlement Agreement.

"DOI" shall mean the United States Department of the Interior.

"Effective Date of this Settlement Agreement" shall mean the later of the dates on which the Settlement Agreement has been signed by all Parties and concurred in by the United States Department of Justice.

"EPA" shall mean the United States Environmental Protection Agency.

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

"Federal Agency" shall mean the United States Department of Agriculture (the Forest Service), EPA, and DOI (the BLM and FWS).

"Forest Service" shall mean the United States Department of Agriculture, Forest Service.

"Future Response Costs" shall mean all direct and indirect costs incurred by IDEQ, EPA, the Forest Service, DOI, or the Tribes, after June 29, 2009, in connection with this Settlement Agreement including, but not limited to, oversight, review and performance of the Work performed hereunder; time and travel costs; contractor costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this Settlement Agreement, review, modification, and approval or disapproval of reports; the costs incurred pursuant to Paragraph 30.7 ("Work Takeover"); the costs to prepare the remedial action proposed plan(s) and record(s) of decision; and any other costs incurred in overseeing this

Settlement Agreement.

"FWS" shall mean the United States Department of the Interior, Fish and Wildlife Service.

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

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

"Idaho's Water Quality Act" shall mean Idaho Code §§ 39-3601 et seq.

"IDEQ" shall mean the State of Idaho Department of Environmental Quality.

"MOU" shall mean the July 2000 "Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho" between several federal agencies (Forest Service, EPA, BLM, Bureau of Indian Affairs and FWS), IDEQ and the Tribes.

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

"Natural Resource Damages" or "NRD" shall mean damages for harm to natural resources within the United States pursuant to common law, State statutory law, or

federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. §§ 1251 et seq.

"Settlement Agreement Preparation and Negotiation Costs" shall mean all Lead Agency and Support Agency attorney costs related to the preparation and negotiation of this Settlement Agreement through June 29, 2009.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent/Consent Order for the performance of a Remedial Investigation and Feasibility Study at the Sites, the Statement of Work ("SOW"), and all attached Appendices and all documents incorporated by reference into this document pursuant to Paragraph 9.7 of this Settlement Agreement including, without limitation, approved submissions. Approved submissions (other than progress reports) are incorporated into and become part of the Settlement Agreement upon approval by EPA. In the event of a conflict between this Settlement Agreement and any Appendix, this Settlement Agreement shall control.

"Site" shall mean the Enoch Valley, or the Henry, or the Ballard Phosphate Mine approximately 20 miles northeast of Soda Springs, Idaho. Each site shall include the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action, implementation, and materials handling. For the purposes of this Settlement Agreement, the Sites shall not include the approximately twenty mile long paved haul road extending from the Enoch Valley shop area to the processing plant in Soda Springs, Idaho. The Parties agree that the investigation of potential contamination on that haul road will be the subject of future negotiations. The Sites occur primarily on State and private lands although the Enoch

Valley Mine is partially located on National Forest System land in the Caribou/Targhee National Forest leased to P4 by the United States, and the southern tip of the Henry Mine is located on BLM-administered lands. The Sites are further described on the maps attached to this Settlement Agreement as Appendix 2 and are incorporated by reference into this Settlement Agreement. The term "Sites" shall refer to each of the three Sites collectively.

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

"Statement of Work" or "SOW" shall mean the documents that outline the Work to be performed by P4 to implement the RI and FS and to satisfy the requirements of this Settlement Agreement, as set forth in Appendix 1 of this Settlement Agreement. The SOW is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with Sections XIX ("Emergency Response and Notification"), XX ("Additional Investigation and Analysis") and XXXVI ("Modification").

"Support Agency" means an agency that provides a support agency coordinator or project manager to furnish necessary data to EPA, or that reviews response data and documents, and/or provides other assistance requested by the Remedial Project Manager. The Forest Service has declined Support Agency status for Henry and Ballard Mine Sites, but will retain Support Agency status for the Enoch Valley Mine Site. The BLM has declined Support Agency status for the Ballard Mine Site, but will retain Support Agency status for the Henry Mine Site and the Enoch Valley Mine Site. FWS, IDEQ and the Tribes have retained Support Agency status for all three Sites.

"Tribes" shall mean the Shoshone-Bannock Tribes residing on the Fort Hall Reservation near Pocatello, Idaho.

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

"Work" shall mean all tasks that P4 is required to perform pursuant to this Settlement Agreement, and its attached Appendices, and all Deliverables produced pursuant to this Settlement Agreement.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW BY IDEQ, EPA, THE FOREST SERVICE, DOI, AND THE TRIBES

5.1 EPA, BLM, the Forest Service, IDEQ, and the Tribes make the following Findings of Fact:

5.1.1 The Sites are located in Caribou County, Idaho on State, public, and private lands.

5.1.2 Ballard Mine is located in Township 7 South, Range 42-43 East approximately 12 miles north of Soda Springs. Monsanto began production at the Ballard Mine in 1951 under Lease BL-055875 initially issued to J.R. Simplot in December 1948 and reassigned to Monsanto in May 1951. The West Ballard Lease, I-05723, was issued to Monsanto in July 1955. Mining continued under both leases until 1969. The applicable Federal leases were relinquished to the BLM in July 1984. The Ballard Mine Site was used for experimental plantings and reclamation research dating back to approximately 1958.

5.1.3 Henry Mine is located in Township 6 South, Range 42-43 East, approximately 4 miles southeast of Henry, Idaho. Monsanto began initial production at

Henry Mine in Pits I & II in 1969 under BLM leases I-011451 issued in September 1960, and I-013814 issued in December 1965. The South Henry Continuation (Pit III) was mined from 1976-1980. Center Henry Continuation (Pit IV) from 1981-1985, and the North Henry Continuation (Pit V) from 1986-1989. The applicable Federal leases were relinquished to BLM in December 1993.

5.1.4 Enoch Valley Mine is located in Township 6 South Range 43 East approximately 19 miles northeast of Soda Springs. Mining began in 1989 and is conducted under two State leases and three Federal leases. BLM Lease I-011683 was initially issued to Ruby Company (later Simplot) in May 1963 and was reassigned to Monsanto in June 1990. BLM Leases I-015033 and I-015122 were issued to FMC Corporation in September 1968 and 1964, respectively, and were both reassigned to Monsanto in April 1981. State Leases E-07957 and E-08379 were issued to Monsanto in May 1978 and April 1981, respectively. All assigned leases were reassigned to P4 Production, L.L.C. in September 1997, and mining activities are still occurring at the Enoch Valley Site.

5.1.5 Historic mining activities at all three Sites have included the construction of waste rock and overburden piles comprised of middle waste shales which include selenium, as well as metals that are designated as hazardous substances, pollutants or deleterious materials. Sampling results from the Area Wide Investigation performed since 1996 indicate elevated levels of these constituents in waste rock soils, vegetation, surface water units and other various abiotic/biotic media at the Sites.

5.1.6 Selenium and other hazardous substances have been detected above background concentrations in monitoring and sampling conducted at the Sites by

P4. Sampling conducted by the Forest Service, BLM, and their contractors, and the University of Idaho indicate that selenium and other hazardous substances are being leached from waste rock at the Sites into the environment, and may be impacting vegetation and surface water.

5.2 Conclusions of Law. Subject to Paragraph 6.1, and based on the Findings of Fact set forth above in Paragraphs 5.1.1.–5.1.6, EPA, the Forest Service, BLM, IDEQ, and the Shoshone Bannock Tribes make the determinations in Paragraphs 5.2.1 through 5.2.9.

5.2.1 The Sites are each a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.2.2 The contaminants found at the Sites, including selenium and other hazardous substances, are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are "hazardous materials" and/or "deleterious materials" subject to the provisions of IDAPA 58.01.02.800, or are otherwise "pollutants" as defined by IDAPA 58.01.02.010.71.

5.2.3 There has been an actual or threatened "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility and/or facilities.

5.2.4 There has been an actual discharge, as defined in IDAPA 58.01.02.003.25, of one or more pollutants or hazardous or deleterious materials from the facility and/or facilities to waters of the State of Idaho.

5.2.5 P4 is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.003.83.

5.2.6 P4 is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past and/or current owner and/or operator of the Sites and/or as a person who arranged for the disposal of hazardous substances at the Sites.

5.2.7 P4 is liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollutants and/or hazardous and deleterious materials.

5.2.8 The release of pollutants, hazardous substances and/or deleterious materials from the each of the Sites may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.

5.2.9 The Work approved under this Settlement Agreement is necessary to protect public health, welfare or the environment, will be consistent with CERCLA, the NCP, EPHA and HWMA, will expedite effective response actions, and is in the public interest.

VI. COLLATERAL USE OF THIS SETTLEMENT AGREEMENT

6.1 Except as set forth in Paragraphs 2.4 and 14.2, nothing in this Settlement Agreement shall constitute or be construed as an admission of jurisdiction, liability, or fact by any of the Parties.

6.2 None of the provisions of this Settlement Agreement shall be admissible, with the exception of Paragraph 14.2, in evidence in any proceeding, other than in a proceeding to enforce this Settlement Agreement or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this Settlement

Agreement with the NCP and CERCLA, and/or any applicable provisions of the EPHA, HWMA, or Idaho's Water Quality Act.

VII. SETTLEMENT AGREEMENT AND ORDER

7.1 Based upon the foregoing provisions of this Settlement Agreement, it is hereby ordered and agreed that P4 shall comply with the provisions of this Settlement Agreement, including but not limited to all Appendices to this Settlement Agreement and documents incorporated by reference into this Settlement Agreement, and perform the actions required in this Settlement Agreement.

VIII. REMEDIAL PROJECT MANAGER/COORDINATOR

8.1 EPA has been designated as the Lead Agency for the Sites as set forth in Paragraph 1.4. EPA will coordinate with the Support Agencies pursuant to the MOU. EPA has designated a CERCLA Remedial Project Manager ("RPM") for the Sites.

EPA's initial RPM is:

Dave Tomten
U.S. Environmental Protection Agency
1435 N. Orchard St.
Boise, Idaho 83706
Phone: (208) 378-5763
Fax: (208) 378-5744
Email: tomten.dave@epa.gov

P4 has designated as the Project Coordinator for the Sites:

Barry Koch
Special Projects Lead - Mining
Monsanto Company
P.O. Box 816
Soda Springs, Idaho 83276
Phone: (208) 547-1439
Fax: (208) 547-1139
Email: barry.s.koch@monsanto.com

8.2 The RPM and the Project Coordinator shall be responsible for overseeing

implementation of the Work and/or activities required at the Sites under this Settlement Agreement. EPA and P4 may change their Remedial Project Manager and Project Coordinator, and shall notify each other in writing at least five (5) days prior to any such change.

8.3 Copies of Deliverables shall be sent to each of the following persons in the manner described in Paragraph 9.9 of this Settlement Agreement:

For IDEQ:

Michael Rowe
Idaho Department of Environmental Quality
444 Hospital Way, #300
Pocatello, Idaho 83201
Phone: (208) 236-6160
Fax: (208) 236-6168
Email: Michael.Rowe@deq.idaho.gov

For EPA: to the RPM designated in Paragraph 8.1.

For the Forest Service (Enoch Valley only):

Mary Kauffman
USDA, U.S. Forest Service
Caribou/Targhee National Forest
1405 Hollipark Dr.
Falls, Idaho 83401
Phone: (208) 557-5779
Fax: (208) 557-5826
Email: mkauffman@fs.fed.us

Caribou National Forest
Soda Springs District Office
Attn: Enoch Valley Site Record
410 E. Hooper St.
Soda Springs, ID 83204

James Alexander
USDA Office of the General Counsel
1220 SW Third Avenue, Suite 1734
Portland, OR 97204
Phone: (503) 326-7264

Fax: (503) 326-3807
Email: james.alexander@usda.gov

For the BLM:

Jeff Cundick
Minerals Branch Chief
U.S. Bureau of Land Management
Pocatello Field Office (ID-320)
4350 Cliffs Drive
Pocatello, ID 83204
Phone: (208) 478-6340
Fax: (208) 478-6376
Email: jeffrey_cundick@blm.gov

For FWS:

Sandi Arena
US Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, Idaho 83202
Phone: (208) 237-6975 Ext 34
Fax: (208) 237-8213
Email: sandi_arena@fws.gov

For the Tribes:

Kelly Wright
Environmental Waste Management Program
Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203
Phone: (208) 478-3903
Fax: (208) 478-3909
Email: kwright@shoshonebannocktribes.com

Susan Hanson
11458 Philbin Road
Pocatello, Idaho 83202
Email: susanh@ida.net

For P4: to the Project Coordinator designated in Paragraph 8.1.

8.4 EPA's Remedial Project Manager shall have the authority vested in the RPM and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's RPM shall

have the authority consistent with the NCP, to halt any Work required by this Order, and to take any necessary response action when he determines that conditions at any of the Sites may present an immediate endangerment to public health or welfare or the environment. Absence of the RPM from any of the Sites shall not be cause for stoppage of Work unless specifically directed by the RPM.

IX. WORK TO BE PERFORMED

9.1 P4 agrees to perform an RI/FS for each of the Sites, consistent with this Settlement Agreement and attached SOW. Investigation and related activities have already been performed that may be relevant in completing the Work under this Settlement Agreement and the SOW, including but not limited to those activities performed in connection with the 2003 CO/AOC, the AWAOC, and other activities performed by P4 and various other public and private entities. Portions of the Sites remain or may become operating facilities subject to other regulatory programs. The Parties agree to use reasonable efforts to coordinate activities under this Settlement Agreement with existing and future operations to minimize interference between Settlement Agreement activities and operations activities.

9.2 The general objective of the RIs for each of the Sites is to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from each of the Sites, and to assess risk to human health and the environment. The general objective of each of the FSs is to identify and evaluate (based on treatability testing, where appropriate) alternatives for remedial action designed to prevent, mitigate, or otherwise respond to or remedy any release or

threatened release of hazardous substances from each of the Sites. The alternatives evaluated shall include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, P4 shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e). The FS report as amended, and the administrative record shall provide the basis for the proposed plan under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a).

9.3 P4 shall conduct activities and submit Deliverables as provided by this Settlement Agreement and the SOW for the development of the RI/FS, and in accordance with the standards, specifications, and other requirements of the Work Plan and Sampling and Analysis Plan ("SAP"), as initially approved or modified, and as may be amended by the RPM. All such Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance, including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive #9355.3-01, October 1988), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-09A, April 1992) guidance referenced therein, and guidance referenced in the SOW, as may be amended or modified by EPA.

9.4 Selection of Contractors, Personnel. Work to be performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel of P4 or its consultants with experience in CERCLA investigations and response actions. P4 shall notify the RPM of its qualifications or the name and qualifications of any

contractors or subcontractors retained to perform the Work under this Settlement Agreement at least fifteen (15) days prior to commencement of such Work. EPA retains the right to disapprove of any of the contractors and/or subcontractors retained by P4, or of P4's choice of itself to do the Work. The RPM shall provide a single notification from all Agencies regarding approval or disapproval of contractors or subcontractors selected by P4. If the RPM issues a notification of disapproval of a selected contractor or P4's choice of itself, P4 shall retain a different contractor or notify the RPM that P4 will perform the Work in place of the disapproved contractor, within thirty (30) days following the RPM's notification of disapproval. P4 shall notify the RPM of that contractor's name and the qualifications of the contractor or P4 within that same time. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement, conduct a complete RI/FS, and seek reimbursement for costs and penalties from P4. During the course of the RI/FS, P4 shall notify the RPM in writing of any changes or additions in the contractors, subcontractors, or personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to contractors, subcontractors, and personnel as it had regarding the initial notification.

9.5 All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance and Quality Control ("QA/QC") program equivalent to that specified in the guidance documents listed in the SOW.

9.6 The documents required under this Settlement Agreement to be prepared, submitted for approval, and implemented by P4 shall be known as "Deliverables." For the purposes of this Settlement Agreement, Deliverables shall include, but are not limited

to, the Draft and Final RI/FS Work Plan, the Draft and Final SAP, the Draft RI Report, the Final RI Report, the Draft FS Report, the Final FS Report for the Sites, and all other documents required by this Settlement Agreement and the SOW. These Deliverables are described more fully below:

9.6.1 RI/FS Work Plan. P4 shall submit and implement a complete RI/FS Work Plan that satisfies the SOW.

9.6.2 Sampling and Analysis Plan ("SAP"). P4 shall submit and implement a SAP for the each of the Sites that includes a Site Health and Safety Plan ("HASP"), Quality Assurance Project Plan ("QAPP") and field sampling plan ("FSP") covering all Work under this Settlement Agreement. These plans shall be developed in accordance with the NCP and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the HASP shall comply with all applicable occupational safety and health regulations. Also, the FSP and QAPP for each of the Sites will include procedures for collecting, transporting and analyzing all samples collected at each of the Sites, as well as procedures for QA/QC. These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii) and "EPA Guidance for Quality Assurance Project Plans QA/G-5" (EPA/600/R-02/009, December 2002 or subsequently issued guidance), and "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA 240/B-01/003, March 2001 or subsequently issued guidance). The SAP shall identify laboratories to be used during performance of the Work of this Settlement Agreement.

9.6.3 RI Report. P4 shall submit for review and approval an RI Report for each of the Sites consistent with the SOW, RI/FS Work Plan, and the SAP.

9.6.4 Baseline Human Health Risk Assessment and Ecological Risk Assessment. P4 shall perform the Baseline Human Health Risk Assessment and Ecological Risk Assessment ("Risk Assessments") for each of the Sites in accordance with the SOW, RI/FS Work Plan, and applicable EPA guidance.

9.6.5 FS Report. P4 shall submit an FS Report for review and approval for each of the Sites. The FS Reports shall be in accordance with the SOW and the RI/FS Work Plan. The FS Reports and the administrative record files, shall provide the basis for the Proposed Plans by the EPA under CERCLA Sections 113(k) and 117(a), 42 U.S.C. §§ 9613(k) and 9617(a), and shall document the development and analysis of alternatives. The Proposed Plans for the Enoch Valley Mine Site and the Henry Mine Site will be co-signed by the Forest Service and BLM, respectively.

9.7. Approval of Plans and Other Submissions.

9.7.1 All Deliverables shall be submitted initially by P4 in draft form, in accordance with the schedule provided in the SOW, or as otherwise established by the RPM, and are subject to review, comment, and written approval or disapproval. The RPM shall consolidate any comments received from EPA and the Support Agencies and provide a single set of comments to P4. Approved Deliverables shall be enforceable as a part of this Settlement Agreement. All Work performed pursuant to this Settlement Agreement shall be in accordance with approved Deliverables, unless otherwise authorized in writing. Failure to comply materially with any provision of an approved Deliverable shall be considered a violation of this Settlement Agreement.

9.7.2 A Deliverable may also be approved with modifications, consistent with the SOW and the Settlement Agreement, and subject to the dispute resolution

provision of this Settlement Agreement. The modified and approved deliverable shall be enforceable as part of this Settlement Agreement. In the event P4 disagrees with a modification, as inconsistent with the SOW or Settlement Agreement, such disagreement shall be resolved under the provisions of Section XXI ("Dispute Resolution") of this Settlement Agreement. Upon completion of Dispute Resolution, the Deliverable, as modified and approved through the Dispute Resolution process, shall be incorporated herein and shall be enforceable as part of this Settlement Agreement.

9.7.3 Resubmission. Subsequent to the procedure described in paragraph 9.7.1, P4 shall amend and submit a revised document to the RPM in accordance with the schedule in the SOW. The revised document shall incorporate all comments and correct all deficiencies identified by the RPM, unless such comments have been revised or withdrawn in writing, or are subject to a pending dispute resolution. Any stipulated penalties applicable to the submission shall accrue during the period specified in the SOW for resubmission by P4, but P4 shall not be liable for payment of such penalties for a timely resubmission unless the resubmission is disapproved or modified due to a material defect.

9.7.3.1 Notwithstanding the receipt of a notice of disapproval, P4 shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by the RPM. Implementation of any non-deficient portion of the submission shall not relieve P4 of any liability for Stipulated Penalties.

9.7.3.2 Except as provided in Paragraph 1.2 regarding continuing obligations under the 2003 CO/AOC, P4 shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of

the following Deliverables: RI/FS Work Plan and SAP, Draft RI Report and Treatability Testing Work Plan and SAP, and Draft FS Report. While awaiting EPA approval, approval on condition, or modification of these Deliverables, P4 shall proceed with all other tasks and activities which may be conducted independently of these Deliverables, in accordance with the schedule set forth under this Settlement Agreement.

9.7.3.3 For all remaining Deliverables, not listed in subparagraph 9.7.3.2, P4 shall proceed with all subsequent tasks, activities, and Deliverables without awaiting EPA approval on the submitted Deliverable. EPA reserves the right to stop P4 from proceeding further, either temporarily or permanently, on any task, activity or Deliverable at any point during the RI/FS.

9.7.3.4 If EPA disapproves a resubmitted plan, report, or other Deliverable, or portion thereof, the RPM may again direct P4 to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other Deliverable consistent with the SOW and the Settlement Agreement. P4 shall implement any such plan, report or other Deliverable as corrected, modified, or developed by EPA, subject only to P4's right to invoke Dispute Resolution.

9.8 The absence of written comments in response to the submission of any Deliverable by P4 pursuant to the schedules set out under the SOW shall not be construed as approval of the Deliverable under this Settlement Agreement.

9.9 Unless the RPM authorizes a smaller number in writing, P4 shall provide to the RPM three electronic copies and three (3) paper copies of each draft and final Deliverable, including one unbound copy, and shall provide one electronic copy and one paper copy to each Support Agency. Such copies shall be sent to the contacts listed in

Paragraph 8.3 of this Settlement Agreement. All reports, maps and supporting information shall be provided in readily reproducible form. Electronic copies shall be in a form that can be electronically modified and that are formatted in a manner consistent with specifications provided by the RPM. Paper copies of Deliverables shall be sent by regular or overnight mail or facsimile.

9.10 EPA will prepare a Community Relations Plan for the Sites in accordance with applicable EPA guidance and the NCP. P4 shall provide information and otherwise cooperate in support of the implementation and any EPA modification of the Community Relations Plan.

9.11 Upon request by the RPM, P4 shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this Settlement Agreement to EPA, or a Support Agency.

X. ADMINISTRATIVE RECORD

10.1. In accordance with 40 C.F.R. §§ 300.800-825, EPA shall determine the contents and location of the administrative records for the Sites and shall provide reasonable notice to P4 of these contents and this location. P4 and the Support Agencies may submit to the RPM for consideration for inclusion in the administrative record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with P4's performance of Work under this Settlement Agreement. However, nothing in this Paragraph shall be deemed to limit or affect the lawful discretion of EPA to determine the

contents of the administrative records. EPA will coordinate with the Forest Service at the Enoch Valley Site, and BLM at the Henry Mine Site on the administrative records for those Sites.

10.2. EPA retains the responsibility for the release to the public of the RI/FS reports, the Proposed Plans, and Record of Decisions in accordance with CERCLA and the NCP. The EPA and Forest Service at the Enoch Valley Mine Site, and the EPA and BLM at the Henry Mine Site, will jointly release to the public the RI/FS report, Proposed Plan, and Record of Decisions. The RPM shall provide P4 with the final RI/FS reports, Proposed Plans and Record of Decisions.

XI. OTHER APPLICABLE LAWS

11.1 All actions required to be taken pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations, except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, or local permit shall be required for the portion of the Work conducted entirely on-Site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621, and the NCP. Where any portion of the Work performed off-Site requires a federal or state permit or approval, P4 shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by P4 with the terms of this Settlement Agreement shall not relieve P4 of its obligation to comply with CERCLA, the Clean Water Act, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

XII. RECORD PRESERVATION

12.1 The original or one copy of all records and documents in the possession, custody or control of P4, excluding internal drafts of Deliverables, that are generated or collected pursuant to this Settlement Agreement shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this Settlement Agreement, unless the RPM notifies P4 in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, P4 shall notify EPA at least sixty (60) days before the documents are scheduled to be destroyed and shall provide EPA with the opportunity to take possession of or copy non-privileged material. Such notice is only required for five (5) years following expiration of the ten-year post-completion period, unless extended by request of EPA in writing.

XIII. CLAIMS AGAINST THIRD PARTIES

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

operation of the Sites or any portion thereof. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2) – (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XIV. THREATENED/ENDANGERED SPECIES/NATURAL RESOURCE DAMAGES

14.1 P4 shall immediately notify the RPM of any and all threatened or endangered species encountered on the Sites in the course of performing activities under this Settlement Agreement.

14.2 For the purposes of Section 113(g)(1) of CERCLA, 42 U.S.C. § 9613(g)(1), the Parties agree that, upon issuance of this Settlement Agreement for performance of an RI/FS at each of the Sites, remedial action under CERCLA shall be deemed to be scheduled and an action for damages (as defined in 42 U.S.C. § 9601(6)) must be commenced within three (3) years after completion of the remedial action.

XV. COUNTERPARTS AND EFFECTIVE DATE

15.1 This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This Settlement Agreement shall be effective on the date it has been signed by all Parties and approved/concurred with by the United States Attorney General or his/her designee.

XVI. ACCESS

16.1 Beginning on the Effective Date of this Settlement Agreement, the Forest

Service shall permit access to the portions of the Sites located on National Forest System land, and the BLM shall permit access to the portions of the Sites located on federally managed public lands, to P4 and its authorized representatives, as necessary to perform the Work required under this Settlement Agreement. P4 shall provide access for EPA, the Forest Service at Enoch Valley Mine, BLM at the Henry Mine, and for other Support Agency personnel accompanied or authorized by the RPM, to the Sites and to off-Site areas under the ownership and/or control of P4 as may be needed to implement this Settlement Agreement. P4 shall provide access to EPA, the Forest Service for Enoch Valley Mine, BLM for the Henry Mine, and to Support Agency personnel accompanied or authorized by the RPM to all records and documentation related to the conditions at the Sites and the actions conducted pursuant to this Settlement Agreement, subject to the procedures described in Paragraphs 17.4 and 17.5 for documents which P4 claims are privileged.

16.2 P4 shall use its best efforts to obtain such access as may be needed, if any, to private lands not under its ownership and/or control that are necessary to perform the Work required under this Settlement Agreement. P4 will use its best efforts to have any access agreement that it obtains include such access by EPA and the Support Agencies as may be necessary for EPA and its authorized representatives, and for Support Agency personnel accompanied or authorized by the RPM, to implement the terms of this Settlement Agreement, and shall specify that P4 is not the representative of any governmental agencies for purposes of liability associated with Site activities. P4 shall provide the RPM with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that P4 is unable to

obtain consensual access to any private lands, EPA may exercise its authority to obtain necessary access. All persons with access to the Sites under this Paragraph shall be required to comply with the approved health and safety plans of the Sites, as well as any other health and safety requirements of the Mine Safety and Health Act, 30 U.S.C. §§ 801-962, applicable to the Sites; provided that the Federal Agencies and Tribes may elect, at their discretion, to adopt their own health and safety plan applicable to federal or Tribal employees and their contractors. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of an access agreement, and/or access easement.

XVII. SAMPLING/QUALITY ASSURANCE/ DATA AVAILABILITY/ACCESS TO INFORMATION

17.1 P4 shall notify the RPM at least five (5) Working Days prior to conducting field events, including construction, excavation, drilling and sampling events. The five-day notice period may be shortened if the RPM agrees that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of another Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this Settlement Agreement.

17.2 P4 waives any objection to the validity and admissibility of any data generated in the course of performance of Work under this Settlement Agreement, if such data has been collected or generated in compliance with this Settlement Agreement, and validated in accordance with the approved QA/QC procedures set forth in the SAP. The Parties do not waive their rights to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data. Respondent shall assure that Work

performed, samples taken, and analyses conducted conform to the requirements of the Settlement Agreement, SOW, the QAPP and guidances identified therein.

17.3 All results of sampling, tests, modeling or other data (including raw data) generated by P4, or on P4's behalf, during implementation of this Settlement Agreement, shall be submitted to the RPM, upon request, in the subsequent progress report as described in the SOW. The RPM will make available to P4 validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation. P4 shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Sites or to the implementation of this Settlement Agreement subject to the remaining provisions of Section XVII.

17.4 P4 agrees not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this Settlement Agreement, or with respect to observations of conditions at or resulting from releases at the Sites made or generated in the course of the performance of the Work pursuant to this Settlement Agreement. P4 may assert a claim of business confidentiality or other privilege covering any other type of information generated pursuant to the requirements of this Settlement Agreement, provided, in the case of a business confidentiality claim only, that such claim is consistent with the language of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of confidentiality or other privilege accompanies the information when it is received by the RPM, it may be made available to the public without further notice.

Disclosure of such information to and by IDEQ shall be governed by the provisions of Paragraphs 17.4 - 17.5 and the Idaho Public Records Act, Idaho Code § 9-342.

17.5 P4 may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If P4 asserts such a privilege, it shall inform the RPM of that decision and provide the RPM with the date, author, recipient(s), title, and description of the document or information withheld. P4 shall also identify which privilege(s) it asserts applies to the document or information withheld and explain the basis for its assertion. Based on the information supplied by P4, EPA shall determine whether to accept P4's claim of privilege. In the event EPA disagrees with P4's claim of privilege, P4 shall promptly disclose the document or information previously withheld, unless P4 disputes the determination by invoking the dispute resolution provisions of Section XXI of this Settlement Agreement. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged. P4's interim working drafts, internal comments, internal notes, and internal analysis, may be subject to a claim of privilege but facts, data, and other information included therein and generated pursuant to the requirements of the Settlement Agreement may not be withheld on the grounds that they are privileged.

17.6 EPA and its authorized representatives, the Forest Service at the Enoch Valley Mine, BLM at the Henry Mine, and other Support Agency personnel accompanied or authorized by the RPM, shall have the authority at all reasonable times to inspect activities at the Sites and conduct such tests on the Sites as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data

submitted or monitor activities undertaken by P4. Nothing in this Paragraph shall affect the authority of DOI under the Federal Land Policy and Management Act, the Mineral Leasing Act, or other applicable laws to inspect lands within its jurisdiction at the Sites or conduct such tests on such lands as are deemed necessary. P4 may request split or duplicate samples under Paragraph 17.1 of this Settlement Agreement and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, or other non-privileged information or materials generated during or as a result of the inspection conducted by EPA. Subject to the provisions in Paragraph 17.4 or 17.5 of this Settlement Agreement, EPA and its authorized representatives, BLM at the Henry Mine, the Forest Service at the Enoch Valley Mine, and the Support Agencies and their authorized representatives accompanied or authorized by the RPM, shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents related to the Work required under this Settlement Agreement. Any claim that such materials may be privileged shall be governed by Paragraphs 17.4 and 17.5 of this Settlement Agreement. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of the EPA or the Support Agencies under CERCLA or any other applicable legal authority.

XVIII. WORK STOPPAGE

18.1 The RPM will communicate EPA's determination to stop Work from proceeding, either temporarily or permanently, on any task, activity or Deliverable at any point during performance of the Work required under this Settlement Agreement if P4 materially fails to comply with the terms of this Settlement Agreement; provided,

however, that the RPM must provide P4 with written notice to stop Work and its reasons for doing so, unless the RPM communicates that an imminent and substantial endangerment to human health, welfare or the environment exists at any of the Sites, such that written notice is impracticable.

XIX. EMERGENCY RESPONSE AND NOTIFICATION

19.1 If any incident, or change in Site conditions, during the Work conducted by P4 pursuant to this Settlement Agreement on any of the Sites, causes or threatens to cause an endangerment to the public health, welfare, or the environment, P4 shall immediately notify the RPM of the incident or Site conditions. If the RPM is unavailable, P4 shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263.

19.2 If any act or omission of P4 or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out the Work causes or threatens a release of Hazardous Substances or oil of any kind or form that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, P4 shall immediately take all appropriate action. P4 shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. In the event that P4 fails to take appropriate response actions as required by this Paragraph, and EPA takes such action instead, P4 shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XXIII ("Reimbursement of Federal Agency Response Costs").

19.3 If EPA determines there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at any of the Sites, which P4 is not otherwise required to address under Paragraph 19.2 of this Settlement Agreement, the RPM shall notify P4 in writing of modifications to the Work Plan, and/or the Deliverables that EPA deems necessary to address the immediate threat. Within five (5) working days of the receipt of such notification, P4 shall notify the RPM in writing whether it agrees to perform the work required under the proposed modifications. If EPA and P4 agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and/or the new Deliverables shall become an attachment to this Settlement Agreement and incorporated herein. In the event of an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at any of the Sites, modifications to the work plans may also be made orally by the RPM and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the RPM's oral direction.

19.4 If P4 does not agree to perform the Work required by the modifications proposed pursuant to Paragraph 19.3, EPA, or the Forest Service on National Forest Service land, or BLM on federally managed public land, may perform the proposed Work or take any action deemed necessary and may seek recovery of any costs it incurs performing such proposed Work pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or other applicable law. The Parties agree that any determination by EPA, or the Forest Service, or BLM, that an immediate response at any of the Sites is required shall not be subject to the dispute resolution provisions in Section XXI of this Settlement

Agreement.

XX. ADDITIONAL INVESTIGATION AND ANALYSIS

20.1 If at any time during the RI/FS process, P4 identifies a need for additional data, P4 shall submit a memorandum documenting the need for additional data to the RPM within 10 days of identification. EPA, in its discretion, will determine whether the additional data will be collected by P4 and whether it will be incorporated into plans, reports, and other deliverables.

20.2 If EPA determines that additional Work on any of the Sites is required to meet the objectives of this Settlement Agreement and that Work is not covered by Section IX above, the RPM may notify P4 in writing of such determination and specify any proposed changes to the SOW and any Deliverable to reflect the additional Work. Subject to its rights pursuant to Section XXI to invoke Dispute Resolution, P4 agrees to conduct this additional Work pursuant to this Settlement Agreement. Within ten (10) working days of receipt of the written determination that additional Work is required, P4 shall confirm its willingness to perform the additional Work by providing notification to the RPM or invoke Dispute Resolution. The SOW and/or RI/FS Work Plan shall be modified to incorporate the additional Work, or in accordance with the final resolution of the dispute. EPA reserves the right to seek any appropriate relief, including the right to conduct the Work itself at any point, and to require reimbursement from P4, as provided by Section XXIII ("Reimbursement of Federal Agency Response Costs") and Paragraph 30.7 ("Work Takeover").

20.3 If prior to the completion of Work required by a Work Plan, EPA determines that sufficient data has been collected with respect to a particular portion of

any of the Sites or an issue pertaining to one of the Sites, then the RPM may communicate a decision to accelerate the RI Report and FS process or undertake a removal or remedial action with respect to that particular portion or issue. EPA's election to undertake this approach may result in one or more EE/CAs and one or more FSs at a Site, the combination of which will address all pathways for the release or threatened release of hazardous substances at the particular Site. P4 will complete the initial FS on the schedule provided in the SOW. P4 will complete the EE/CAs or subsequent FSs described in this Paragraph 20.3 on a schedule proposed by P4 in a revised FS or draft EE/CA Work Plan and approved by EPA.

XXI. DISPUTE RESOLUTION

21.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this Settlement Agreement. A dispute shall be considered to have arisen when P4 serves the RPM with a written Notice of Dispute, or P4 sends the Agency billing the disputed costs a written Notice of Dispute that indicates it disputes costs the Agency has billed. A Notice of Dispute shall be served by facsimile, overnight mail, or some equivalent service.

21.2 For purposes of this Section XXI, the term "reviewing Agency" shall mean the EPA for all disputes other than disputes of non-EPA costs, and in the case of non-EPA costs, it shall mean the Agency whose costs are disputed. In the first instance, the reviewing Agency and P4 shall attempt to resolve any dispute arising under this Settlement Agreement by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless the reviewing Agency and P4 agree in writing to modify the period for informal

negotiations. If the Parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following Paragraphs shall apply.

21.3 In the event the reviewing Agency and P4 cannot resolve the dispute through informal negotiations, then the position of the reviewing Agency shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, P4 invokes the formal dispute resolution procedures of this Section by serving on the reviewing Agency a written Statement of Position on the matter in dispute. P4's written Statement of Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the dispute and state the basis of P4's objections to the position of the reviewing Agency.

21.4 Following receipt of P4's Statement of Position, the reviewing Agency shall send its written Statement of Position to P4 by facsimile, overnight mail or some equivalent service.

21.5 Following this exchange of Statements of Position, the appropriate supervisory office of the reviewing Agency, which shall be EPA for all disputes other than disputes over non-EPA costs, shall make a final determination resolving the matter in dispute. The appropriate supervisory offices are: Forest Service, Regional Forester; EPA, Director of Region 10 Environmental Cleanup Office; FWS, Supervisor, Eastern Idaho Field Office; BLM, Idaho State Director; Tribes, Tribal Attorney's Office; and IDEQ, Director of the Department of Environmental Quality.

21.6 Any determination by a Federal Agency pursuant to this Section is governed by Sections 113(h) and (j) of CERCLA, 42 U.S.C. § 9613(h) and (j), and shall not constitute a final agency action subject to judicial review unless and until the United

States commences a judicial action to enforce this Settlement Agreement, in which case the determination shall only be reviewable in Federal Court. Any decision made by IDEQ pursuant to this Section shall not constitute a final agency action subject to judicial review unless and until IDEQ commences a judicial action to enforce this Settlement Agreement, in which case any challenge to a final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273.

21.7 Nothing in this Settlement Agreement precludes the Parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in Paragraphs 21.3 – 21.5.

21.8 Upon completion of all dispute resolution procedures under this Section, P4 shall proceed in accordance with the final determination regarding the matter in dispute. If P4 does not perform any required Work in accordance with the final determination, EPA may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this Settlement Agreement pursuant to CERCLA.

21.9 The invocation of the dispute resolution provisions of this Settlement Agreement shall not extend, postpone or affect in any way any unrelated obligation of P4 under this Settlement Agreement not directly in dispute, unless the Parties agree in writing otherwise. Stipulated penalties with respect to any disputed matter shall accrue from the first day of noncompliance with any applicable provision of the Settlement Agreement and shall continue to accrue for the duration of the dispute resolution process, but payment of the penalties shall be stayed pending resolution of the dispute. In the event P4 does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXVI of this Settlement Agreement ("Stipulated

Penalties"), unless otherwise agreed by the Parties in writing.

XXII. FORCE MAJEURE

22.1 Delays or inability to perform any of the requirements of the Settlement Agreement within the time limits prescribed shall not be a violation of the Settlement Agreement where performance is prevented or delayed by a *force majeure* event. *Force majeure* is defined as any event arising from causes beyond the control of P4, of any entity controlled by P4, or of P4's contractors that delays or prevents performance of any obligation under this Settlement Agreement, despite P4's best efforts to fulfill the obligation. *Force majeure* does not include the financial inability of P4 to complete performance of the obligation or increased cost of performance. P4 shall have the burden of proving *force majeure* by a preponderance of the evidence.

22.2 If any event occurs that may materially delay performance of any obligation under this Settlement Agreement or submittal of any Deliverable past the applicable deadline, P4 shall notify the RPM within twenty-four (24) hours of the time P4 knew or should have known that the event would delay such performance or submittal. Within five (5) business days thereafter, P4 shall notify the RPM in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of *force majeure* by P4.

22.3 The RPM shall notify P4 in writing of the determination by EPA as to whether *force majeure* applies to the event or circumstances within seven (7) days, or upon notice, such additional time EPA reasonably needs to respond, after receipt of written notice from P4. If EPA determines that the delay has been or will be caused by

circumstances constituting a *force majeure*, the due date for each uncompleted task in this Settlement Agreement shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the *force majeure* circumstance. If EPA disagrees with P4's *force majeure* claim, or there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXI of this Settlement Agreement or the stipulated penalties provisions of Section XXVI, as appropriate.

XXIII. REIMBURSEMENT OF FEDERAL AGENCY RESPONSE COSTS

23.1 EPA Costs. P4 shall pay the bill for Settlement Agreement Preparation and Negotiation Costs $7,031.55 within 30 days of the Effective Date. Within 30 days of the Effective Date of this Settlement Agreement, P4 shall pay to EPA $100,000 in prepayment of EPA's Future Response Costs. The amounts paid to EPA under this Paragraph shall be deposited by EPA in the SE Idaho Selenium P4 Mine Site Special Account, within the EPA Hazardous Substance Superfund. These funds shall be retained and used by EPA to reimburse Future Response Costs. Payment shall be made by Electronic Funds Transfer ("EFT"), in accordance with EFT instructions provided by EPA, or by submitting a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, and the EPA Site/Spill ID Number 109P. P4 shall send the check to:

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

23.2 At the time of payment, P4 shall send notice that payment has been made to the EPA contacts listed in paragraph 8.3 of this Settlement Agreement and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

23.3 P4 shall reimburse EPA for all Future Response Costs associated with the Sites not inconsistent with the NCP. On a periodic basis EPA will send P4 a bill requiring payment that includes a SCORPIOS cost summary. P4 shall make all payments within thirty (30) days of P4's receipt of each bill requiring payment. P4 shall make all payments required by this Paragraph in the manner required by Subparagraph 23.1, with notice as required by Subparagraph 23.2. The total amount paid will be deposited by EPA in the SE Idaho Selenium P4 Mine Site Special Account within the EPA Hazardous Substance Superfund. These funds will be retained and used by EPA to pay Future Response Costs.

23.4 After EPA issues a written notification of completion of Work pursuant to Section XXXV and EPA has performed a final accounting of all direct and indirect costs relating to Future Response Costs, EPA shall apply any unused amount paid by P4 pursuant to Subparagraph 23.1 to any other unreimbursed response costs or response actions remaining at the Sites. Any surplus or unused monies paid by P4 in prepayment of Future Response Costs pursuant to Paragraph 23.1 will be remitted to P4.

23.5 Payment of EPA Other Response Costs. Notwithstanding any other provision of this Settlement Agreement, P4 remains obligated to pay the EPA response costs provided in the 2003 CO/AOC, including interest and penalties, to the extent not reimbursed under this Settlement Agreement.

23.6 USDA and Forest Service Costs.

23.6.1 P4 shall pay $1,879.54 for Settlement Agreement Preparation and Negotiation Costs within 30 days of the Effective Date. Payment shall be made by certified or cashier's check payable to USDA Office of General Counsel and shall be sent to:

Office of General Counsel
USDA
1400 Independence Avenue, S.W.
Room 2038
Washington, D.C. 20250
Attn: Shirley Pate

This payment should be identified as payment for "costs incurred by the Office of General Counsel for the Enoch Valley Mine Site," and shall include Respondent's tax identification number. At the time of payment, P4 shall send notice that payment has been made to:

James Alexander
USDA
1400 Independence Ave., SW
Room 2038
Washington, D.C. 20250
Attn: Shirley Pate
Email: james.alexander@usda.gov

23.6.2 P4 agrees to pay up to fifty thousand dollars ($50,000) per year to pay USDA/Forest Service Future Response Costs. On a periodic basis the Forest Service will send P4 a bill requiring payment that includes a cost summary. P4 shall make all payments within thirty (30) days of P4's receipt of each bill requiring payment. Payment shall be made by submitting a certified or cashier's check or checks made payable to "USDA Forest Service," referencing the name, address and tax identification number of the Party making the payment, P4 Enoch Valley, and the bill numbers.

Payment shall be sent to the address provided on the bill. At the time of payment, P4 shall send notice that payment has been made to the Forest Service to:

Tina F. Robison
Caribou-Targhee National Forest
Soda Springs Ranger District
410 E. Hooper Avenue
Soda Springs, ID 83276

23.7 Payment of DOI Costs.

23.7.1 P4 shall pay $2,166.73 for Settlement Agreement Preparation and Negotiation Costs within 30 days of the Effective Date. P4 hereby agrees to pay up to thirty thousand dollars ($30,000) per year to pay DOI's Future Response Costs. Within 30 days of the Effective Date of this Settlement Agreement, P4 shall pay to DOI $30,000 in prepayment of Future Response Costs. Within 365 days after the Effective Date, and annually thereafter, DOI shall submit to P4 an estimated annual cost budget. Within thirty (30) days of receipt of the estimated annual cost budget, P4 shall deposit with the DOI an amount equal to the estimated annual cost budget or $30,000, whichever is less. The amount of P4's annual payment will be reduced by any carryover remaining from the previous year or years.

23.7.2 DOI shall use such monies to establish an account fund dedicated solely to its activities associated with this Settlement Agreement, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. Within 180 days of the execution of this Settlement Agreement, and every 180 days thereafter, the DOI shall provide P4 an accounting of its costs, including supporting cost summaries.

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

Receiver Name:	DOI Central Hazardous Materials Funds ALC 14010001
Receiver Tax ID Number:	53-0196949
Receiver Address:	7401 West Mansfield Avenue Mailstop D-2770 Lakewood, CO 80235
Receiver Bank:	Federal Reserve Bank New York, NY ABA #051036706
Receiver ACH Account No.:	312024

Each check shall reference: Site Name: Southeast Idaho Phosphate Mining – P4 Enoch, Henry and Ballard Mines Settlement Agreement. In addition, DOI requests that at the time of payment, P4 send notification of payment referencing the amount of payment and the Site name to the following individuals:

William Lodder, Fund Manager
United States Department of the Interior
Central Hazardous Materials Fund
1849 C Street, N.W., Mail Stop 2342
Washington, D.C. 20240

Jeff Cundick
Minerals Branch Chief
U.S. Bureau of Land Management
Pocatello Field Office (ID-320)
4350 Cliffs Drive
Pocatello, ID 83204

Sandi Arena
US Fish and Wildlife Service
4425 Burley Drive, Suite A
Chubbuck, Idaho 83202

23.7.4. Within 120 days after completion of DOI support activities under this Settlement Agreement, DOI shall provide P4 with a final cost accounting. In the event that the monies remain in the Fund, the DOI shall reimburse P4 within 30 days of submission of the final cost accounting.

23.8 P4 may dispute payment of any portion of the Forest Service's, EPA's, and/or DOI's Future Response Costs, but only on the basis of accounting errors, the inclusion of costs inconsistent with the NCP, or the inclusion of costs outside the scope of this Settlement Agreement. Disputes regarding the Forest Service's, EPA's, or DOI's Response Costs will be resolved using the dispute resolution procedures described in Section XXI of this Settlement Agreement. Any objection by P4 shall be made in writing to the appropriate Federal Agency within thirty (30) days of receipt of the billing statement (or, in the case of DOI, within 30 days of the biannual accounting required in Paragraph 23.7.2 or in the final cost accounting required in Paragraph 23.7.4) and shall specifically identify the disputed costs and the basis of the dispute. For disputed Forest Service and EPA costs, such costs shall be paid by P4 into an interest-bearing escrow account while the dispute is pending. For such costs, P4 shall send to EPA's Remedial Project Manager or the appropriate Federal Agency at the address provided in Paragraphs 8.1, or 8.3, respectively, a copy of the transmittal letter, a copy of the check paying the uncontested portion of 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. All undisputed Forest Service and EPA costs shall be remitted by P4 in accordance with

the provisions in the preceding Paragraphs of this Section. In any dispute resolution proceeding, P4 shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, or the inclusion of costs for work outside the scope of this Settlement Agreement. If the Forest Service, EPA, or DOI prevails in the dispute resolution proceeding, P4 shall remit the amount(s) in question to EPA or the Forest Service, including any applicable interest, within 30 days after receipt of the final determination, or, in the case of DOI, DOI shall retain the amount in question. If P4 prevails concerning any aspect of the contested costs, P4 shall pay the Forest Service or EPA that portion of the costs for which it did not prevail in the manner described in the preceding sentence. In the case of DOI, DOI shall retain the portion of costs for which P4 did not prevail. P4 shall be disbursed any balance of the escrow account with respect to Forest Service or EPA costs. In the case of DOI's costs, the amount of P4's annual payment will be reduced by the portion of costs for which P4 prevailed.

23.9 Payment of Stipulated Penalties and Interest to EPA, DOI, USDA, and the Forest Service. For purposes of this Section, interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year and is compounded. In the event that payment for Settlement Agreement Preparation and Negotiation Costs or Future Response Costs to EPA, DOI, USDA, and the Forest Service is not made by the due dates specified in this Settlement Agreement, P4 shall be liable to pay stipulated penalties, as provided in this Settlement Agreement, and shall pay interest on the unpaid balance. Interest on Settlement Agreement Preparation and Negotiation Costs and Future Response Costs

paid in accordance with this Section shall begin to accrue on the Effective Date or the date of receipt of the bill, depending on the payment instructions, and shall continue to accrue until the date of payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States under this Settlement Agreement by virtue of P4's failure to make timely payments under this Section.

XXIV. REIMBURSEMENT OF STATE COSTS

24.1 Reasonable Costs incurred by IDEQ with respect to the Sites under this Settlement Agreement will be reimbursed in the following manner:

24.1.1 As an initial deposit, P4 will pay the sum of five thousand Dollars ($5,000) to be deposited to an account established for these Sites.

24.1.2 Thereafter, IDEQ shall provide a quarterly accounting and invoice to P4 of Costs incurred by IDEQ in relation to this Settlement Agreement. "Costs" subject to reimbursement under this Paragraph shall mean all direct or indirect costs incurred by IDEQ, other than those reimbursed in accordance with the 2003 CO/AOC, in connection with IDEQ's support of Work performed by or on behalf of IDEQ under this Settlement Agreement, as set forth and described in the SOW, or for Work performed prior to this Settlement Agreement but used in support thereof, including but not limited to: reasonable time and travel costs associated with oversight of the Work performed under the SOW; IDEQ's contractor costs; compliance monitoring, including the collection and analysis of split samples; Site visits; review and approval or disapproval of reports; reasonable overhead charges and any other costs directly or indirectly incurred in overseeing this Settlement Agreement.

24.1.3 Within thirty (30) days of P4's receipt of IDEQ's quarterly accounting invoice, P4 shall reimburse the State for all costs reflected in the accounting invoice.

24.1.4 The initial deposit will be returned to P4 within sixty (60) days of the date IDEQ incurs final response costs.

24.2 All payments to IDEQ shall be made to:

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

P4 may dispute payment of any portion of IDEQ's submitted costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this Settlement Agreement, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using the dispute resolution procedures described in Section XXI. Any objection by P4 shall be made in writing within forty-five (45) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by P4 in accordance with the provisions in the preceding paragraphs of this Section. In any dispute resolution proceeding, P4 shall bear the burden of establishing its contentions as to inappropriate costs. If IDEQ prevails in the dispute resolution proceeding, P4 shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination.

XXV. REIMBURSEMENT OF TRIBAL RESPONSE COSTS

25.1. Payment of Tribal Settlement Agreement Preparation and Negotiation

Costs and Future Response Costs.

25.1.1. P4 shall pay $3,100 for Settlement Agreement Preparation and Negotiation Costs within 30 days of the Effective Date. P4 hereby agrees to pay the sum of up to fifty thousand dollars $50,000 per year to pay the Tribes' Future Response Costs. Within 30 days of the Effective Date of this Settlement Agreement P4 shall pay to the Tribes $50,000 in prepayment of Future Response Costs. Within 365 days after the Effective Date, and annually thereafter, the Tribes shall submit to P4 an estimated annual cost budget. Within thirty (30) days of receipt of the estimated annual cost budget, P4 shall deposit with the Tribes an amount equal to the estimated annual cost budget or $50,000, whichever is less. The amount of P4's annual payment shall be reduced by the amount of any carryover remaining from the previous year or years.

25.1.2. The Tribes shall use such monies to establish an account fund dedicated solely to its activities associated with this Settlement Agreement, in accordance with applicable statutes, regulations, and guidance. Within 180 days of the execution of this Settlement Agreement, and every 180 days thereafter, the Tribes shall provide P4 an accounting of its costs, including supporting cost summaries.

25.1.3. Payments to the Tribes shall be made by certified or cashier's check made payable to the Shoshone-Bannock Tribes and mailed to:

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

Each check shall reference: Site Name: Southeast Idaho Phosphate Mining - P4 Mine Sites Settlement Agreement.

25.1.4 Within 120 days after completion of Tribal support activities

under this Settlement Agreement, the Tribes shall provide P4 with a final cost accounting. In the event that the monies remain in the Fund, the Tribes shall reimburse P4 within thirty (30) days of submission of the final cost accounting.

25.2 P4 may dispute payment of any portion of the Tribes' Settlement Agreement Preparation and Negotiation Costs and Future Response Costs, but only on the basis of accounting errors, the inclusion of costs inconsistent with the NCP, or the inclusion of costs outside the scope of this Settlement Agreement. Disputes regarding the Tribes' Response Costs will be resolved using the dispute resolution procedures described in Section XXI of this Settlement Agreement. Any objection by P4 shall be made in writing to the Tribes within thirty (30) days of receipt of either the biannual accounting required under Paragraph 25.1.2 or the final cost accounting required in Paragraph 25.1.4 and shall specifically identify the disputed costs and the basis of the dispute. In any dispute resolution proceeding, P4 shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, or the inclusion of costs for work outside the scope of this Settlement Agreement. If the Tribes prevail in the dispute resolution proceeding, the Tribes shall retain the amount(s) in question. If P4 prevails concerning any aspect of the contested costs, the Tribes shall retain that portion of the costs for which P4 did not prevail in the manner described in the preceding sentence. The amount of P4's annual payment will be reduced by the portion of costs for which P4 prevailed.

25.3 Payment of Stipulated Penalties and Interest to the Tribes. For purposes of this Section, interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607. The applicable rate of interest shall be the rate in effect at

the time the interest accrues. The rate of interest is subject to change on October 1 of each year and is compounded. In the event that payment for Settlement Agreement Preparation and Negotiation Costs or Future Response Costs to the Tribes is not made by the due dates specified in this Settlement Agreement, P4 shall be liable to pay stipulated penalties, as provided in this Settlement Agreement, and shall pay Interest on the unpaid balance. Interest on Settlement Agreement Preparation and Negotiation Costs and Future Response Costs paid in accordance with this Section shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the Tribes under this Settlement Agreement by virtue of P4's failure to make timely payments under this Section.

XXVI. STIPULATED PENALTIES

26.1 Unless there has been a written modification of a compliance date or other requirement of this Settlement Agreement by the RPM, or a *force majeure* event as defined herein, in the event P4 fails to meet any requirement of this Settlement Agreement, P4 shall pay stipulated penalties in the amount of $1,000 per day, per violation for the 1st through 14th days of noncompliance; $3,000 per day, per violation for the 15th through 30th day of noncompliance; and $7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by P4 shall include complete and timely performance of each activity required under this Settlement Agreement including, but not limited to, reimbursement of response costs pursuant to Sections XXIII, XXIV, and XXV or complete and timely performance of all Work or any activities described in any plan, statement or Deliverable approved under this Settlement

Agreement.

26.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the 31st day after the RPM's receipt of such submission until the date that the RPM notifies P4 of any deficiency, and (2) with respect to a matter subject to Dispute Resolution (Section XXI), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the reviewing agency issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of the Settlement Agreement.

26.3 The RPM will advise P4 in writing of any stipulated penalties owed by P4 pursuant to this Section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless P4 has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by the RPM.

26.4 Nothing in this Settlement Agreement shall be considered as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of P4's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to

Section 122(l) of CERCLA, 42 U.S.C. § 9622(l). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XXX ("Reservation of Rights"), Paragraph 30.7. Notwithstanding any other provision of this Section, the United States may at any time, and in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. With respect to penalties assessed by the United States on behalf of the State or Tribes for P4's nonpayment of the State's or Tribes' Settlement Negotiation and Preparation Costs and Future Response Costs, the State or Tribes may, in their unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement.

XXVII. OTHER CLAIMS

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

XXVIII. COVENANT NOT TO SUE BY THE UNITED STATES AND THE STATE OF IDAHO

28.1 In consideration of the actions that will be performed and the payments that will be made by P4 under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States and the

State of Idaho covenant not to sue or take administrative action against P4 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the Work performed under this Settlement Agreement and for recovery of Settlement Agreement Preparation and Negotiation Costs and Future Response Costs that are reimbursed by P4 pursuant to this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by P4 of its obligations under this Settlement Agreement, including, but not limited to, payment of Settlement Agreement Preparation and Negotiation Costs and Future Response Costs. This covenant not to sue extends only to P4 and does not extend to any other person.

28.2 This Settlement Agreement requires the performance of an RI/FS but does not itself require P4 to undertake actions to remediate or clean up contamination. As such this Settlement Agreement does not constitute a final remedy for contamination or pollution, if any, resulting from the matters addressed herein. IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this Settlement Agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) or Idaho Code § 39-4413(1)(d) to preclude the IDEQ from seeking additional relief.

XXIX. COVENANT NOT TO SUE BY P4

29.1 P4 covenants not to sue and agrees not to assert any claims or causes of action against the State of Idaho and EPA, or their contractors or employees, with respect to the Work, Settlement Agreement Preparation and Negotiation Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

29.1.1 any direct or indirect claim for reimbursement from the Hazardous

Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

29.1.2 any claim against EPA or the State of Idaho arising out of the Work or for Settlement Agreement Preparation and Negotiation Costs or Future Response Costs that have or will be incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or;

29.1.3 P4 further covenants not to sue and agrees not to assert any claim against EPA or the State of Idaho pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, relating to the Work, Settlement Agreement Preparation and Negotiation Costs, or Future Response Costs.

XXX. RESERVATION OF RIGHTS

30.1 Except as expressly provided in this Settlement Agreement, nothing in this Settlement Agreement shall be construed to limit the power and authority of the EPA, the United States, the Tribes, or the State of Idaho, if any, to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste at or from the Sites. Further, except as provided in Paragraph 26.4 ("Stipulated Penalties"), nothing in this Settlement Agreement shall prevent the United States from seeking legal or equitable relief to enforce any terms of this Settlement Agreement. Nothing in this Settlement Agreement shall prevent the Tribes or the State of Idaho from seeking to enforce the terms of this

Settlement Agreement solely with respect to recovery of its costs. Nothing in this Settlement Agreement, except as provided in Section XXVIII ("Covenant Not to Sue by the United States and the State of Idaho"), shall prevent the United States, the Tribes, or the State of Idaho from taking other legal or equitable action as it deems appropriate and necessary, or from requiring P4 in the future to perform additional activities pursuant to CERCLA or any other applicable law.

30.2 The covenant not to sue set forth in Section XXVIII does not pertain to any matters other than those expressly identified therein. Except as provided in Section XXVIII ("Covenant not to Sue by the United States and the State of Idaho"), the United States, the Tribes, and the State of Idaho reserve, and this Settlement Agreement is without prejudice to, all rights, claims, and defenses the United States, the Tribes, and the State of Idaho may have including, but not limited to: a. the right to bring an action against P4 under CERCLA or other applicable law, for recovery of any unreimbursed response costs incurred in connection with the Sites; b. claims based on a failure by P4 to meet a requirement of this Settlement Agreement; c. liability for performance of response action other than the Work and for response costs other than those to be reimbursed by P4 pursuant to this Settlement Agreement; d. criminal liability; e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; f. liability arising from the past, present, or future disposal, release or threat of release of Hazardous Substances outside of the Sites; and g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Sites. The United States, the Tribes, and IDEQ expressly reserve the right to seek further relief to address contamination or pollution resulting from the

matters addressed herein. Nothing herein shall be deemed to bar such further relief and this Settlement Agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) or Idaho Code 39-4413(1)(d) to preclude the IDEQ from seeking additional relief.

30.3 Except as provided in Section XXIX ("Covenant Not to Sue by P4") nothing in this Settlement Agreement shall be construed as releasing the United States, the State of Idaho or any of their agencies or departments from any liability for any of their actions.

30.4 P4 reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, 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 while acting within the scope of his 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, any such claim shall not include a claim for damages caused, in whole or in part by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. 2671; nor shall such claim include a claim based on the selection of response actions, or the oversight or approval of P4's plans or activities. The foregoing applies only to claims brought pursuant to a statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

30.5 Except as expressly provided in this Settlement Agreement, P4 reserves all rights, claims and defenses it may have, including the right to bring an action against the

United States, the State of Idaho and/or their agencies and departments under CERCLA for recovery of any response costs incurred in connection with the Sites under CERCLA. Nothing in this Settlement Agreement shall be deemed to obligate P4 to perform or take any action pertaining to the selected remedial action. P4 also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to the United States' or IDEQ's reservation of rights in this Section. P4 also reserves its defenses with respect to actions by the Tribes to recover their costs under this Settlement Agreement.

30.6 P4 reserves, and this Settlement Agreement is without prejudice to, claims against IDEQ, subject to the provisions of the Idaho Code, respectively, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of IDEQ while acting within the scope of his/her office or employment under circumstances where IDEQ, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a state employee; nor shall any such claim include a claim based on IDEQ's selection of response actions, or the oversight or approval of P4's plans or activities.

30.7 Work Takeover. In the event EPA determines that P4 has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance

of all or of any portion of the Work as EPA determines necessary. P4 may invoke the dispute resolution procedures set forth in Section XXI of this Settlement Agreement to dispute EPA's determination that takeover of the Work is warranted. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that P4 shall pay pursuant to Section XXIII ("Reimbursement of Federal Agency Response Costs"), subject to the dispute resolution procedures set forth in Section XXI of this Settlement Agreement. Except as provided in Section XXIX ("P4 Covenant Not to Sue"), P4 reserves all rights, claims, and defenses it may have, including the right to bring an action against the United States (except EPA), the State of Idaho, and/or their agencies and departments under CERCLA for recovery of any response costs incurred under CERCLA in connection with EPA's Work takeover of the Sites. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXXI. CONTRIBUTION PROTECTION

31.1 The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. § 9613(f) and 9622(h)(4), and that P4 is entitled, as of the Effective Date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, and Settlement Agreement Preparation and Negotiation Costs and Future Response Costs paid by P4 pursuant to this Settlement Agreement. Nothing in this Settlement Agreement precludes the Parties from asserting

any claims, causes of action, or demands against any person not parties to this Settlement Agreement for indemnification, contribution, or cost recovery.

XXXII. INDEMNIFICATION

32.1 P4 agrees to indemnify and hold the United States, Tribes, and the State of Idaho and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of P4 or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this Settlement Agreement.

32.2 Subject to the limitations and procedures of the Idaho Tort Claims Act, Idaho Code § 6-901–29, IDEQ agrees to indemnify P4 and its agents and employees from all claims of third parties arising from acts or omissions of the IDEQ or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this Settlement Agreement to the extent that such a claim could be made against IDEQ under the Idaho Tort Claims Act, Idaho Code § 6-901-29.

32.3 In performing any of the Work required by this Settlement Agreement, P4 has an affirmative duty to protect from injury and damage lands of the United States. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with P4's implementation of this Settlement Agreement. P4 shall be liable for damage to all roads and trails of the United States caused by the use of P4, or those acting on its behalf, in performing any of the Work required by this Settlement Agreement, except that damage shall not include reasonable and ordinary wear and tear.

XXXIII. FINANCIAL ASSURANCE AND INSURANCE

33.1 Within thirty (30) days of the Effective Date of this Settlement Agreement, P4 shall establish and maintain financial security in the amount of $4.5 million in one or more of the following forms:

33.1.1 A surety bond guaranteeing performance of the Work;

33.1.2 One or more irrevocable letters of credit equaling the total estimated cost of the Work;

33.1.3 A trust agreement establishing a trust fund containing the estimated cost of the Work with terms and conditions acceptable to EPA;

33.1.4 A written guarantee to perform the Work executed in favor of the the EPA by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with P4, provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of the the EPA that it satisfies the financial test requirement of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work and must also comply with the requirements of the following Paragraph 33.2; or

33.1.5 A demonstration that P4 satisfies the requirements of 40 C.F.R. § 264.143(f).

33.2 If P4 seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to the preceding Paragraph 33.1.4 of this Settlement Agreement/CO, P4 shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If P4 seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to the preceding Paragraph

33.1.5 it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f), to be due 365 days following submittal of the first guarantee and annually thereafter.

33.3 In the event that EPA, after a reasonable opportunity for review and comment, determines at any time that the financial assurances provided pursuant to this Section are inadequate, P4 shall, within thirty (30) days of receipt of notice of the EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in the preceding Paragraph 33.1 of this Settlement Agreement. P4's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

33.4 If P4 can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 33.1 above, P4 may, on any anniversary date of the Effective Date of this Settlement Agreement, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. P4 shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security only upon approval by EPA. In the event of a dispute, P4 may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

33.5 P4 may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, P4 may

change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

33.6 No later than fifteen (15) days before commencing any on-site Work, P4 shall secure, and shall maintain until the first anniversary of completion of all activities required under this Settlement Agreement, comprehensive general liability insurance with limits of $1,000,000, combined single limit, and automobile liability insurance with limits of $1,000,000, combined single limit, naming the United States, Tribes, and the State as additional insured parties. In addition, for the duration of this Settlement Agreement, P4 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 P4 in furtherance of this Settlement Agreement. Prior to commencement of the Work under this Settlement Agreement, P4 shall provide to EPA certificates of such insurance and a copy of each insurance policy. P4 shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If P4 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, P4 need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXXIV. INTEGRATION/APPENDICES

34.1 This Settlement Agreement and its appendices and any Deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and

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

Appendix 1	SOW
Appendix 2	Site Map
Appendix 3	Site Vicinity Map

XXXV. NOTICE OF COMPLETION

35.1 Upon completion of all requirements under this Settlement Agreement, P4 shall certify in writing to the RPM that all requirements under this Settlement Agreement, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of P4 with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If EPA agrees with P4's certification, the RPM will so notify P4 in writing and this Settlement Agreement, with the exception of any continuing obligations, shall be terminated, with respect to all or a portion of the Sites that has been certified. For the purposes of this Section, continuing obligations shall include, but not be limited to, the following obligations contained in this Settlement Agreement: Section XII ("Record Preservation"), Section XXX ("Reservation of Rights") and Section XXXII ("Indemnification"). If EPA determines that any requirements of this Settlement Agreement have not been completed by P4, the RPM will notify P4 in writing and specify the deficiencies. P4 shall correct

such deficiencies in accordance with the notice from the RPM. Failure by P4 to correct such deficiencies shall be a violation of this Settlement Agreement.

XXXVI. MODIFICATION

36.1 Minor field modifications may be made orally by the RPM and shall be memorialized in writing within ten (10) days; provided, however, that the modification effective date shall be the date of the RPM's oral direction. Minor modifications to any plan or schedule may be made, in writing, by the RPM or at the RPM's direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties. In the event P4 disagrees with any modification proposed under this Paragraph, such disagreement shall be resolved in accordance with the provisions of Section XXI ("Dispute Resolution").

XXXVII. MISCELLANEOUS

37.1 During the performance of this Settlement Agreement, P4 agrees that in connection with the performance of Work under this Settlement Agreement, P4 shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. P4 shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this Settlement Agreement. EPA shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

37.2 If, while implementing the terms of this Settlement Agreement, P4 discovers any objects of historical or scientific interest, it shall notify the RPM and leave such discoveries intact until and unless otherwise instructed by the RPM. For the

purposes of this Paragraph, objects of historic or scientific interest include, but are not limited to, historic, cultural, Tribal, or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the RPM shall be P4's responsibility.

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

United States Department of Agriculture, Forest Service Region 4

By: _____

Name: Harv Forsgren

Title: Regional Forester

Date: _____

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

United States Environmental Protection Agency
Region 10.

By: _____

Name: Cami Grandinetti

Title: _____

Date: _____

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By:_____

Name: Toni Hardesty
Title: Director, Idaho Department of Environmental Quality

Date:_____

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

United States Department of the Interior, Office of the Solicitor

By: _____

Name:

Title: Solicitor

Date: _____

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

Shoshone-Bannock Tribes

By: _____

Name: Alonzo Coby
Title: Chairman, Fort Hall Business Council

Date: 9/30/09

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

P4 Production, L.L.C.

By: _____

Name:

Title:

Date:_____

P4 Phosphate Mine Sites
Administrative Settlement Agreement and
Order on Consent

United States Department of the Interior
Bureau of Land Management

By: _____

Name: Thomas Dyer

Title: State Director, BLM Idaho State Office

Date: _____