

PHASE 2 EXPANDED TRUST AGREEMENT

BY AND AMONG

**THE UNITED STATES OF AMERICA,
as Settlor, and as Beneficiary on behalf of the
United States Environmental Protection Agency,**

**Derrith Watchman Moore,
not individually but solely in her representative capacity
as Trustee,**

AND

**THE NAVAJO NATION,
as Beneficiary.**

TABLE OF CONTENTS

ARTICLE I DEFINITIONS2

 1.1 Definitions.....2

ARTICLE II THE TRUST7

 2.1 Creation of and Transfer of Funding to the Trust.....7

 2.2 Objectives and Purposes10

 2.3 Beneficiaries10

 2.4 Investment and Safekeeping of Trust Assets10

 2.5 Accounting.....11

 2.6 Termination.....11

 2.7 Final Disposition of Trust Assets.....11

 2.8 Document Retention, Access, Submission, and Disposition12

ARTICLE III THE TRUSTEE.....14

 3.1 Appointment14

 3.2 Generally.....15

 3.3 Powers.....15

 3.4 Other Professionals16

 3.5 Limitation of the Trustee’s Authority16

 3.6 Compensation of the Trustee16

 3.7 Termination, Replacement, and Removal of the Trustee16

 3.8 Appointment of Successor Trustees.....17

 3.9 No Bond.....17

 3.10 Limitation of Trustee’s Personal Liability17

ARTICLE IV BUDGET APPROVALS AND DISTRIBUTIONS FROM THE TRUST	18
4.1 Trust Account.....	18
4.2 Budget Approval Process and Payments by the Trust	18
4.3 Reimbursement of or Advance Payment For Future Oversight Costs to NNEPA	18
4.4 Reimbursement of or Advance Payment for Future Oversight Costs to USEPA	19
4.5 Manner of Payment.....	20
ARTICLE V WORK TO BE PERFORMED	20
5.1 In General.....	20
5.2 Oversight.....	21
5.3 Site Access	21
5.4 Emergency Response and Notification of Release or Threatened Release	21
5.5 Public Participation.....	23
ARTICLE VI FINANCIAL REPORTING AND TAXES	23
6.1 Financial Reports	23
6.2 Taxes and Other Disclosures	23
ARTICLE VII MISCELLANEOUS PROVISIONS	24
7.1 Amendments and Waivers	24
7.2 Governing Law	24
7.3 Headings	24
7.4 Actions Taken on Other Than Business Day	24
7.5 Consistency of Agreements and Construction.....	24
7.6 Compliance with Laws	24
7.7 No Recourse to Beneficiaries.....	25

7.8	Status of Beneficiaries	25
7.9	Uniform Custodial Trust Act Not Applicable.....	25
7.10	Counterparts.....	25
ARTICLE VIII NOTIFICATIONS		25
8.1	Copies.	25
8.2	Notices	27
8.3	Form of Submittal.....	28

PHASE 2 EXPANDED TRUST AGREEMENT

This Phase 2 Expanded Trust Agreement (the “Trust Agreement”) is made by and among the United States of America (“United States”), as Settlor, and as Beneficiary on behalf of the United States Environmental Protection Agency (“USEPA”); Derrith Watchman Moore, not individually but solely in her representative capacity as Trustee of the environmental response trust established hereby; and the Navajo Nation, a federally recognized Indian Tribe, as Beneficiary (collectively, “the Parties”).

RECITALS:

WHEREAS, the Navajo Nation contends that it has claims against the United States under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-75, in connection with approximately 523 abandoned uranium mines (“AUMs”) located on Navajo Lands, as set forth in a letter from the Navajo Nation Attorney General to the United States Department of Justice, dated November 21, 2013;

WHEREAS, the United States and the Navajo Nation entered into a settlement agreement on April 8, 2015 (“Phase 1 Settlement Agreement”), which provided for Removal Site Evaluations (“RSEs”) to be conducted at each of sixteen (16) AUMs, listed on Appendix A to the Phase 1 Settlement Agreement, for which viable non-federal potentially responsible parties have not been identified (“Orphan AUMs”) and which the Parties determined were a high priority for clean-up (“Phase 1 AUMs”);

WHEREAS, in addition, the United States and the Navajo Nation entered into a trust agreement on April 30, 2015 (“Phase 1 Trust Agreement”), which provided for a trustee, Sadie Hoskie, to conduct RSEs at those Phase 1 AUMs;

WHEREAS, on July 13, 2016, the United States and the Navajo Nation entered into a settlement agreement (“Phase 2 Settlement Agreement”) which provides, among other things, for: (i) RSEs to be conducted at an additional thirty (30) Orphan AUMs, as they are identified by the United States pursuant to the terms of Article 4 of the Phase 2 Settlement Agreement (“Phase 2 AUMs”); (ii) two (2) Water Studies to be conducted at two (2) Orphan AUMs, as specified in Sections 6.1 and 6.2 of the Phase 2 Settlement Agreement; and (iii) Engineering Evaluations and Cost Analyses (“EE/CAs”) to be prepared and Removal Actions to be conducted, as appropriate, at the Phase 1 AUMs, pursuant to the terms of Article 5 of the Phase 2 Settlement Agreement;

WHEREAS, the Phase 2 Settlement Agreement provides for the creation of the Phase 2 RSE Trust to perform the thirty (30) additional RSEs and the two (2) Water Studies and for the transfer of Funding to the Trust, pursuant to Sections 3.2 and 3.4 of the Phase 2 Settlement Agreement, to be administered by a trustee pursuant to a Phase 2 RSE Trust Agreement and the Phase 2 Settlement Agreement;

WHEREAS, the Phase 2 Settlement Agreement provides for the subsequent creation of a Phase 2 Priority Orphan Trust to prepare EE/CAs and conduct Removal Actions at the Phase 1 AUMs, as appropriate, and for the transfer of Funding to the Phase 2 Priority Orphan Trust, pursuant to Section 3.3 of the Phase 2 Settlement Agreement;

WHEREAS, the Phase 2 Settlement Agreement provides in addition in Subsection 2.1(b)(ii) that the Phase 2 Priority Orphan Trust may be created as an expansion of the Phase 2 RSE Trust;

WHEREAS, on September 12, 2017, the United States, the Navajo Nation, and Derrith Watchman Moore entered into a trust agreement (“Phase 2 RSE Trust Agreement”), which provides for a trustee, Derrith Watchman Moore, to conduct the thirty (30) RSEs and two (2) Water Studies required by the Phase 2 Settlement Agreement;

WHEREAS, Addendum 1 (dated September 12, 2017) to the Phase 2 Settlement Agreement listed the first thirteen (13) Phase 2 AUMs where RSEs were to be conducted and also provided the estimated cost for the first Water Study to be conducted; Addendum 2 (dated February 14, 2020) to the Phase 2 Settlement Agreement listed seventeen (17) additional Phase 2 AUMs where RSEs were to be conducted and also identified the Orphan AUM where the second Water Study was to be conducted; and Addendum 3 (signed in February 2022) to the Phase 2 Settlement Agreement corrects Addendum 1’s list of Phase 2 AUMs, with the result of reducing the number of sites listed in Addendum 1 to eleven (11), and lists two (2) additional Phase 2 AUMs to bring the total number of Phase 2 AUMs to thirty (30);

WHEREAS, in accordance with Section 2.2 of the Phase 2 Settlement Agreement, the Navajo Nation, with the approval and concurrence of the United States, selected Derrith Watchman Moore to be the trustee for the Phase 2 Priority Orphan Trust;

WHEREAS, in accordance with Subsection 2.1(b) of the Phase 2 Settlement Agreement, the United States and the Navajo Nation agreed to expand the scope of the Phase 2 RSE Trust to include the Phase 2 Priority Orphan Trust, with this expanded trust to be called the Phase 2 Expanded Trust, for the purposes of managing, administering, funding and performing the Work associated with the thirty (30) RSEs, two (2) Water Studies, and EE/CAs and Removal Actions at the Phase I AUMs, as appropriate, and reimbursing Future Oversight Costs and Administrative Costs, as more fully defined and described below and in the Phase 2 Settlement Agreement, in compliance with all applicable laws, regulations, and guidance, including but not limited to the National Contingency Plan (“NCP”);

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein and in the Phase 2 Settlement Agreement, the Parties hereby, as of the Effective Date, amend the Phase 2 RSE Trust Agreement by replacing it with this Phase 2 Expanded Trust Agreement (“Trust Agreement”), which covers the Work of both the Phase 2 RSE Trust and the Phase 2 Priority Orphan Trust and incorporates them into one Phase 2 Expanded Trust (“Trust”), and agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions

The following terms when used in capitalized form in this Trust Agreement shall have the definitions given below:

1.1.1 “Administrative Costs” shall mean costs incurred in administering the Trust.

1.1.2 “Agency” shall mean either USEPA or NNEPA. “Agencies” shall mean both USEPA and NNEPA.

1.1.3 “ARAR” shall mean an applicable or relevant and appropriate requirement, as defined in the NCP (see 40 C.F.R. § 300.5), and includes those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under Navajo law that specifically address a hazardous substance, pollutant, contaminant, remedial action, or other circumstance found at a CERCLA site.

1.1.4 “AUMs” shall mean abandoned uranium mines located on Navajo Lands. The term includes the mine site and the geographically proximate areas where Waste Material associated with the mine has been deposited, stored, disposed of, placed, or otherwise come to be located.

1.1.5 “AUM Future Oversight Costs Special Account(s)” shall mean one or more special accounts, referenced in Section 4.5 of this Trust Agreement, within the USEPA Hazardous Substance Superfund, established pursuant to Subsection 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3). for the Phase 1 AUMs, Phase 2 AUMs, and AUMs where a Water Study is conducted.

1.1.6 “Beneficiaries” shall mean the Navajo Nation and the United States, on behalf of USEPA.

1.1.7 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-75.

1.1.8 “Consultant” shall mean one or more environmental consultants, as the context requires, hired by the Trustee, pursuant to Article III of this Trust Agreement, to assist in performance of the Work.

1.1.9 “Covered Matters” shall mean any and all claims that were, that could have been, that could now be, or that could hereafter be asserted by the Navajo Nation and the United States that arise out of or in connection with: (a) the Work; (b) Future Oversight Costs incurred by NNEPA and USEPA with respect to the Work; (c) Administrative Costs; and (d) any claims for cost recovery or reimbursement of NNEPA Future Response Costs made pursuant to Sections 3.2, 3.3, and 3.4 of the Phase 2 Settlement Agreement.

1.1.10 “Effective Date” shall mean the date on which the last of the Parties signs this Trust Agreement.

1.1.11 Engineering Evaluation/Cost Analysis” or “EE/CA” shall mean an analysis of removal alternatives for a site consistent with 40 C.F.R. § 300.415(b)(4)(i) and, to the extent applicable and as guidance only, USEPA’s “Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA,” USEPA Office of Solid Waste and Emergency Response (Aug. 1993), available at <http://nepis.epa.gov/Exe/ZyPDF.cgi/91>

00SN02.PDF?Dockey=91 00SN02.PDF. The Phase 1 AUM EE/CAs will include a Risk Assessment.

1.1.12 “Estimated Costs” shall mean an estimate of the amount of funds required to perform a particular subset of the Work, as context provides, including Administrative Costs and Future Oversight Costs, which estimate shall rely primarily upon actual costs incurred to perform similar work at AUMs or, if similar work has not been performed at any AUMs, then at similar sites elsewhere.

1.1.13 “Funding” shall mean the payments already made and to be made by the United States to the Trust Account, pursuant to Section 2.1.5 of this Trust Agreement and Sections 3.2, 3.3 and 3.4 of the Phase 2 Settlement Agreement, and the payments made by NNEPA to the Trust Account pursuant to Section 2.1.6 of this Trust Agreement and Sections 3.2(d), 3.3(d) and 3.4(d) of the Phase 2 Settlement Agreement, that are subject to reimbursement by the United States pursuant to Subsections 3.2(e) and (g), 3.3(e) and 3.4(d) of the Phase 2 Settlement Agreement, or the relevant portion thereof, as the context requires.

1.1.14 “Future Oversight Costs” shall mean all costs of response, as defined in 42 U.S.C. § 9601(25), other than NNEPA Future Response Costs, that are not inconsistent with the NCP and arise out of or in connection with Covered Matters, and that are incurred by USEPA or NNEPA, including, but not limited to, direct and indirect costs that USEPA or NNEPA incurs in reviewing or developing plans, reports and other items pursuant to the Phase 2 Settlement Agreement (as it pertains to this Trust), verifying the Work, or otherwise implementing or overseeing the Phase 2 Settlement Agreement, including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

1.1.15 “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, codified at 40 C.F.R. Part 300, and any amendments thereto.

1.1.16 “Navajo Lands” shall mean all lands of the Navajo Nation as described in 7 N.N.C. § 254(A).

1.1.17 “Navajo Nation” shall mean, as used in this Trust Agreement, the Navajo Nation as a governmental entity, including all of its departments, agencies, and instrumentalities.

1.1.18 “NNCERCLA” shall mean the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, 4 N.N.C. § 2101 *et seq.*

1.1.19 “NNEPA” shall mean the Navajo Nation Environmental Protection Agency and any successor departments or agencies of the Navajo Nation.

1.1.20 “NNEPA Future Response Costs” shall mean any funds provided by NNEPA to the Trust pursuant to Sections 3.2, 3.3, and 3.4 of the Phase 2 Settlement Agreement and Section 2.1.6 of this Trust Agreement, less any reimbursement to the Navajo Nation from the United States pursuant to those same sections of the Phase 2 Settlement Agreement or

from the Trust pursuant to Sections 3.2(f) or 3.3(f) of the Phase 2 Settlement Agreement and Section 2.7 of this Trust Agreement.

1.1.21 “Orphan AUM” shall mean an AUM for which no viable non-federal potentially responsible party has been identified.

1.1.22 “Parties” shall mean the Settlor, the Trustee and the Beneficiaries, and “Party” shall mean any one of those Parties.

1.1.23 “Person” shall mean any individual, corporation, limited-liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, tribal enterprise, government or any agency or political subdivision thereof or any other entity.

1.1.24 “Phase 1 AUM” shall mean any of the sixteen (16) AUMs listed on Appendix A to the Phase 1 Settlement Agreement (defined in the recitals). Phase 1 AUM has the same meaning as the term Priority Orphan Site as it is defined and used in the Phase 2 Settlement Agreement (as clarified and amended).

1.1.25 “Phase 2 AUM” shall mean any of the thirty (30) AUMs listed on the following Addenda to the Phase 2 Settlement Agreement: Addendum 1, dated September 12, 2017, with the list of AUMs therein revised as provided in Addendum 3; Addendum 2, dated February 14, 2020; and Addendum 3, signed in February 2022. Phase 2 AUM has the same meaning as the term RSE Site as it is defined and used in the Phase 2 Settlement Agreement (as clarified and amended).

1.1.26 “Phase 2 Expanded Trust” or “Trust” shall mean the environmental response trust established pursuant to Section 2.1 of this Trust Agreement and Subsection 2.1(b)(ii) of the Phase 2 Settlement Agreement by expanding the Phase 2 RSE Trust to include the Phase 2 Priority Orphan Trust.

1.1.27 “Phase 2 RSE Trust” shall have the meaning given in the recitals to this Trust Agreement.

1.1.28 “Phase 2 RSE Trust Agreement” shall have the meaning given in the recitals to this Trust Agreement.

1.1.29 “Phase 2 Settlement Agreement” shall have the meaning given in the recitals to this Trust Agreement.

1.1.30 “Removal Action” shall have the same meaning as set forth at 40 C.F.R. § 300.5 and Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

1.1.31 “Removal Site Evaluation” or “RSE” shall mean a removal preliminary site assessment and, if warranted, a removal site inspection and shall, for purposes of this Trust Agreement, include, but not necessarily be limited to, the following activities: conducting background studies and gamma scans of surface soils, sampling surface and subsurface

soils and sediments related to historic mining operations, sampling existing and accessible wells (if present), mitigating physical hazards and performing other interim Response Actions, performing a Risk Assessment, and preparing a final written report documenting the work performed and information obtained for each of the Phase 2 AUMs, such as indicated in the exemplar scopes of work identified in Section 4.3 of the Phase 2 Settlement Agreement except that the Phase 2 AUM RSEs will include a Risk Assessment.

1.1.32 “Response Action” shall have the same definition as given for the term “response” under Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

1.1.33 “Risk Assessment” shall mean both a Human Health Risk Assessment and an Ecological Risk Assessment and shall comply with the requirements in Section 6 of the attached Statement of Work. A Human Health Risk Assessment is the process to estimate the nature and probability of adverse health effects in humans who may be exposed to chemicals in contaminated environmental media, now or in the future. An Ecological Risk Assessment is the process for evaluating how likely it is that the environment may be impacted as a result of exposure to one or more environmental stressors such as chemicals, land change, disease, invasive species and climate change. Both shall take into account Navajo-specific risk factors as identified by the Agencies.

1.1.34 “Settlor” shall mean the United States.

1.1.35 “Statement of Work” shall mean the attached Appendix A.

1.1.36 “Trust Account” shall mean the account described in Section 2.1.3 of this Trust Agreement, including any trust subaccounts thereof described in Section 2.1.4 of this Trust Agreement.

1.1.37 “Trust Agreement” shall mean this Phase 2 Expanded Trust Agreement.

1.1.38 “Trust Assets” shall mean the Funding and such other monetary assets as may be acquired, earned, or held by the Trust prior to its termination.

1.1.39 “Trustee” shall mean Derrith Watchman Moore, or a successor trustee appointed pursuant to Section 3.8 of this Trust Agreement in the event of the resignation, replacement, or removal of the existing Trustee, as provided in Article III of this Trust Agreement.

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

1.1.41 “USEPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

1.1.42 “USEPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

1.1.43 “Waste Material” shall mean: (a) any “hazardous substance” as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant as defined under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” as defined under Section 1004(27) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, 42 U.S.C. § 6903(27).

1.1.44 “Water Study” shall mean either of the two studies required in Section 6.1 of the Phase 2 Settlement Agreement at the Orphan AUMs and identified in Subsection 6.1(a) of that Agreement and Addendum 2 to that Agreement. Surface and groundwater will be investigated as appropriate, as determined jointly by USEPA and NNEPA. The purpose of the Water Study is to determine if the groundwater or surface waters have been affected by the AUM and, if so, whether the affected waters pose an unacceptable risk to human health or the environment. The Phase 2 RSE Trustee shall, as appropriate, conduct field investigations, collect data, and conduct a baseline risk assessment. The field investigations shall determine the nature and extent of mine-waste-related contamination in surface water and groundwater, potential and current pathways for human or ecological exposure, including through soils and sediments, and potential for future migration. Results of the Water Study may be used to support the development and evaluation of effective response alternatives if it is determined that further response action is needed. “Water Studies” shall mean both such studies.

1.1.45 “Work” shall mean all actions necessary to perform any one or more of the following, depending upon the context: (a) Removal Site Evaluations at the thirty (30) Phase 2 AUMs and associated public participation, pursuant to Sections 4.3 and 4.6 of the Phase 2 Settlement Agreement; (b) the two (2) Water Studies pursuant to Section 6.1 of the Phase 2 Settlement Agreement; and (c) EE/CAs and Removal Actions at the Phase 1 AUMs, as appropriate, and associated public participation, pursuant to Sections 5.1 and 5.7 of the Phase 2 Settlement Agreement.

ARTICLE II **THE TRUST**

2.1 Creation of and Transfer of Funding to the Trust

2.1.1 Pursuant to Subsection 2.1(b)(ii) of the Phase 2 Settlement Agreement, and on behalf of the Beneficiaries named herein, the Settlor hereby establishes this Trust as an expansion of the Phase 2 RSE Trust. The Trustee hereby accepts and agrees to hold the Trust Assets for the benefit of the Beneficiaries for the purposes described in Section 2.2 below, subject to the terms of this Trust Agreement and the Phase 2 Settlement Agreement.

2.1.2 On the Effective Date, Derrith Watchman Moore, not individually but solely in the representative capacity of trustee, shall be appointed as the Trustee to administer the Trust in accordance with this Trust Agreement and the Phase 2 Settlement Agreement.

2.1.3 The Trust Account. Pursuant to the Phase 2 RSE Trust Agreement, the Trustee established a Trust Account to receive the Funding described in Sections 3.2 and 3.4(a) of the Phase 2 Settlement Agreement and other Trust Assets. That Trust Account shall

continue under this Trust Agreement and shall receive in addition the Funding described in Sections 2.1.5 and 2.1.6 below and any other Trust Assets. The sole purpose of the Trust Account shall be to fund the Work, the Future Oversight Costs and the Administrative Costs in accordance with the Phase 2 Settlement Agreement and this Trust Agreement. The income and gains from any investment of Trust Assets shall be allocated, paid, and credited to such Trust Account.

2.1.4 The Trust Account may be divided into such number of Trust subaccounts dedicated for specific AUMs or groups of AUMs or specific uses as may be deemed necessary in the sole discretion of the Trustee to comply with the terms of, and implement, the Phase 2 Settlement Agreement and this Trust Agreement.

2.1.5 The Funding

(a) Pursuant to Subsections 3.2(a) and 3.4(a) of the Phase 2 Settlement Agreement, the United States caused to be transferred for deposit into the Trust Account and the Trustee received 100% of the Estimated Costs for the following: conducting RSEs at the Phase 2 AUMs listed in Addendum 1 to the Phase 2 Settlement Agreement; conducting the Water Study referenced in Subsection 6.1(a) of the Phase 2 Settlement Agreement (Claim 28); and associated Future Oversight Costs and Administrative Costs. The Trustee confirmed the Trust's receipt from the United States of this payment of Funding on October 11, 2017.

(b) Pursuant to Subsections 3.2(b) and 3.4(b) of the Phase 2 Settlement Agreement, the United States caused to be transferred for deposit into the Trust Account and the Trustee received 75% of the Estimated Costs for conducting RSEs at the Phase 2 AUMs listed in Addendum 2 to the Phase 2 Settlement Agreement, including Future Oversight Costs and Administrative Costs; and 100% of the Estimated Costs for the Water Study listed in Addendum 2, including Future Oversight Costs and Administrative Costs. The Trustee confirmed the Trust's receipt from the United States of this payment of Funding on April 27, 2020.

(c) As soon as reasonably practicable following the execution of Addendum 3 to the Phase 2 Settlement Agreement reflecting the Parties' agreement as to the Estimated Costs to perform RSEs at the two (2) additional Phase 2 AUMs listed in that Addendum and to include a soils and sediments exposure pathway as part of the baseline risk assessment required for each of the two (2) Water Studies conducted under the Phase 2 Settlement Agreement, and as soon as reasonably practicable after receiving payment instructions from the Trustee, the United States shall cause to be transferred for deposit into the Trust Account 75% of the Estimated Costs (including Future Oversight Costs and Administrative Costs) for the RSE Work and 100% of the Estimated Costs (including Future Oversight Costs and Administrative Costs) for adding a soils and sediments exposure pathway to the baseline risk assessments for the Water Studies.

(d) As soon as reasonably practicable following the execution of Addendum 4 to the Phase 2 Settlement Agreement reflecting the Parties' agreement as to the Estimated Costs to perform EE/CAs at the Phase 1 AUMs, and as soon as reasonably practicable after receiving payment instructions from the Trustee, the United States shall cause to be transferred for deposit into the Trust Account 100% of the Estimated Costs, including

Future Oversight Costs and Administrative Costs, for the EE/CAs listed in Addendum 4; provided, however, that the Funding paid to the Trust Account for the EE/CAs shall be reduced by \$411,594.09 (which represents the funds transferred to NNEPA from the Phase 1 RSE Trust upon its dissolution), to be transferred to the Trust Account prior to deposit of the Funding pursuant to Subsection 3.3(a) of the Phase 2 Settlement Agreement and Section 2.7 of the Phase 1 Trust Agreement. In addition, the Funding paid to the Trust Account for the EE/CAs shall be reduced by \$160,796.28 (which represents the leftover NNEPA future oversight cost funds from the Phase 1 RSE Trust), to be transferred to the Trust Account by NNEPA prior to deposit of the Funding pursuant to Paragraph 4 of the Fourth Letter Agreement Amending the Phase 1 Trust Agreement, dated May 6, 2019 (amending Section 4.4.6 of the Phase 1 Trust Agreement).

(e) Pursuant to Subsection 3.3(b) of the Phase 2 Settlement Agreement, any Funding for the EE/CAs that remains in the Trust Account after completion of the EE/CAs shall be used for subsequent Removal Actions at the Phase 1 AUMs.

(f) As soon as reasonably practicable following the execution of each addendum specifying the Estimated Costs for Removal Actions selected pursuant to Section 5.3 of the Phase 2 Settlement Agreement, the United States shall cause to be transferred for deposit into the Trust Account 75% of the Estimated Costs to perform such Removal Actions, including Future Oversight Costs and Administrative Costs.

2.1.6 Requests for Additional Funds from NNEPA. When the balance of the Trust Account for an element of the Work, as described in Section 2.1.5(a)-(d) (Addendum 1 RSEs and Claim 28 water study; Addendum 2 RSEs and SGS water study; and Phase 1 EE/CAs and Removal Actions), decreases to a level of funding that the Trustee believes would cover only the next twelve (12) months of Administrative Costs, Future Oversight Costs and costs of the Work, the Trustee shall notify NNEPA. No sooner than six (6) months thereafter, the Trustee shall send a request for additional funds to NNEPA. This request shall be supported by sufficient documentation to allow for review of the Trust's current funds and projected expenditures during the relevant period and to ensure that the costs will be incurred in a manner consistent with the NCP. Such funds shall be requested if needed to complete any of the Work, together with associated Administrative Costs and Future Oversight Costs. NNEPA shall have ninety (90) days to review a funding request and shall raise any objections within that period. As soon as reasonably practicable following the close of the ninety (90)-day period or the resolution of any objections, NNEPA shall provide the requested funds to the Trust. NNEPA may subsequently seek reimbursement of such funds (as NNEPA Future Response Costs) from the United States pursuant to Sections 3.2, 3.3, and 3.6 of the Phase 2 Settlement Agreement.

2.1.7 All of the sums listed in Sections 2.1.5 and 2.1.6 above shall constitute the "Funding," except for funds paid by the United States to the Navajo Nation to reimburse NNEPA Future Response Costs.

2.1.8 The grantee for the Funding shall be the Trust; however, if the law of the state in which the Trust is situated prohibits a trust entity from holding title to the Funding, the grantee for the Funding shall be the Trustee.

2.2 Objectives and Purposes

The exclusive purposes and functions of the Trust are to manage, administer, fund and perform the Work and to pay Future Oversight Costs and Administrative Costs, as more fully defined and described in this Trust Agreement and in the Phase 2 Settlement Agreement, in compliance with all applicable laws, regulations, and guidance, including but not limited to the NCP, and to receive, hold and use the Trust Assets for the above purposes.

2.3 Beneficiaries

Beneficial interests in the Trust shall be held by each of the Beneficiaries, which are the Navajo Nation and the United States on behalf of USEPA.

2.4 Investment and Safekeeping of Trust Assets

2.4.1 The Trust Assets shall be held in trust and segregated from the assets of any other entity. All interest earned in the Trust Account shall be retained in the Trust Account and used only for the same purposes as the principal. Pursuant to Subsections 3.2(d), 3.3(d) and 3.4(d) of the Phase 2 Settlement Agreement, the Trustee shall invest the Trust Assets in conservative instruments that will provide interest and increase the value of the Trust Assets, and shall make such investments in accordance with a conservative strategy that emphasizes capital preservation while generating a reasonable level of income, as determined by the Trustee after consultation with the Navajo Nation and the United States; provided, however, that the right and power of the Trust to invest the Trust Assets, or any income earned by the Trust, shall be limited to demand and time deposits, such as certificates of deposit, in banks or other savings institutions whose deposits are federally insured, Treasury securities, or an SIPC-insured brokerage account invested in such demand and time deposits and Treasury securities, and in the cash sweep account maintained by the brokerage firm to hold brokerage account funds in transition periods prior to or following their investment in demand and time deposits and Treasury securities. The Trustee may, at her discretion, invest in demand and time deposits in institutions whose deposits are FDIC-insured, even though individual investments or funds may not be fully FDIC-insured because the amount of such investments may be greater than the limit on FDIC insurance of accounts in a particular institution. Within the above restrictions, if the Trustee invests in a brokerage account, the Trustee is authorized to rely upon the advice and recommendations of the brokerage firm with whom the brokerage account has been established.

2.4.2 The Trustee is expressly prohibited from holding any or all of the Trust Assets in a common, commingled or collective trust account or fund with the assets of any other entity.

2.4.3 Nothing in this Section 2.4 shall be construed as authorizing the Trustee to cause the Trust to carry on any business or to divide the gains therefrom, including without limitation the business of an investment company or a company “controlled” by an “investment company” required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.4 is to authorize the investment of the funds in the Trust Account or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the Trust.

2.4.4 The Trustee shall not incur any liability for following any written direction or order to act (or to refrain to act) from any Beneficiary so long as such written direction is not inconsistent with this Trust Agreement and the Settlement Agreement.

2.4.5 The Trustee shall promptly investigate the purchase of professional liability, auto and general liability insurance policies. If and when authorized in writing to do so by both Agencies, the Trustee shall promptly purchase such insurance, including any increases that may be needed to insurance policies already purchased under the Phase 2 RSE Trust Agreement, using Trust Assets, in an appropriate sum determined after at least ten (10) days' prior notice to and consultation with the Agencies.

2.5 Accounting

The Trustee shall use Trust Assets to implement the Work, pay Future Oversight Costs, and pay Administrative Costs, after receiving approval, where applicable, by the Agencies of deliverables required under this Trust Agreement and the Phase 2 Settlement Agreement. The Trustee shall expend Trust Assets consistently with approved budgets, approved schedules, approved scopes of work, and approved work plans. The Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the Trust, and the assets and liabilities of the Trust, in such detail and for such period of time as may be necessary to enable the Trustee to make full and proper accounting in respect thereof in accordance with Article VI below and to comply with applicable provisions of law and good accounting practices. The Trustee also shall have a financial audit conducted every two years by an independent certified public accountant and shall provide the results of the audit to the Agencies. To the extent that the New Mexico Trust Code may specify obligations to account to the Beneficiaries that are additional to those specified in this Section 2.5 and in Article VI of this Trust Agreement, such additional accounting obligations shall not be mandatory under this Trust Agreement. Beneficiaries shall have the right upon fourteen (14) calendar days' prior written notice delivered to the Trustee to inspect any such books, records or accounts.

2.6 Termination

The Trustee shall not unduly prolong the duration of the Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims against Trust Assets and to effect the distribution of Trust Assets and other receipts relating thereto to the Persons who receive distributions hereunder in accordance with the terms hereof, and to terminate the Trust as soon as practicable upon written notification by both Agencies that the Work is complete, as provided in and consistent with this Trust Agreement and the Phase 2 Settlement Agreement, after at least ten (10) days prior notice to and consultation with the Agencies. The provisions of Sections 2.7, 2.8, 4.3.6, 4.4.6, 6.1 and 6.2 of this Trust Agreement shall survive and remain in effect following such termination.

2.7 Final Disposition of Trust Assets

Upon the completion of all the Work and reimbursement of all Administrative Costs and Future Oversight Costs, and after the Agencies have confirmed to the Trustee that all Work required of this Trust pursuant to the Phase 2 Settlement Agreement is complete, any funds remaining in the Trust Account (including, but not limited to, interest earned) shall be transferred

in the following order: (a) the Trustee, after at least ten (10) days prior notice to and consultation with the Agencies, shall agree to a reservation of funds sufficient to cover any remaining Administrative Costs, including taxes; (b) upon concurrence of the United States that dissolution of the Trust is appropriate and complete, to NNEPA for reimbursement of NNEPA Future Response Costs, pursuant to Subsections 3.2(f) and 3.3(f) of the Phase 2 Settlement Agreement, together with any interest earned; and (c) in the event the Trust Account has funds remaining that were provided directly by the United States, such funds, plus any interest earned on those funds, shall be returned to the United States. In addition, the Trustee shall transfer physical assets to the Navajo Nation Superfund Program if requested by NNEPA to use primarily for Response Actions at any AUMs.

2.8 Document Retention, Access, Submission, and Disposition

2.8.1 Document Retention. The Trustee shall preserve and retain all non-identical copies of documents, reports, and other information (including in electronic form) (referred to in this Section 2.8 and Section 2.9 as “Documents”) now in its possession or control or that of its contractors or employees, or which hereafter come into its possession or control or that of its contractors or employees, that relate in any manner to implementation of this Trust Agreement, performance of the Work (including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, traffic routing, correspondence, and other documents and information regarding the Work), or the liability of any Person under NNCERCLA or CERCLA with respect to any AUM subject to this Trust Agreement.

2.8.2 Document Access. The Trustee shall make such Documents available for inspection by the Agencies upon their request, at reasonable times and in a reasonable manner, or provide such Documents directly to the Agencies, upon their request. Upon either Agency’s request, the Trustee shall organize such Documents by AUM or other manner consistent with the Agencies’ records system.

2.8.3 Document Submission. For any Document provided to the Agencies pursuant to Section 2.8.2 or any other provision of this Trust Agreement (including the attached Statement of Work) in which the Trustee asserts a claim of business confidentiality or that contains personally identifiable information, the Trustee shall submit the Document in the manner described in Sections 2.8.4 and 2.8.5, below.

2.8.4 Confidential Business Information. The Trustee may assert that all or part of a Document provided to the Agencies under this Trust Agreement (including the attached Statement of Work) is confidential business information (CBI) to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Such information is similarly protected under NNCERCLA, 4 N.N.C. § 2301(E), and the Navajo Privacy Act, 2 N.N.C. § 85(A)(19), the latter with reference to federal law. The Trustee shall segregate and clearly identify (by page, paragraph, sentence, or whatever is clearest) all Documents or parts thereof submitted under this Trust Agreement for which the Trustee asserts business confidentiality claims by providing two copies to the Agencies, one copy containing the CBI with a label on each page that the Document contains CBI and the second with the CBI redacted with a label on each page

that the CBI has been redacted. If the Trustee desires confidential treatment for a Document only until a certain date or until occurrence of a certain event, the Trustee shall include that information in the transmittal email or cover letter and on the cover page of the Document. Documents that the Trustee claims to be or contain CBI will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Documents when they are submitted to the Agencies, or if USEPA has determined and the Agencies have notified the Trustee that the Documents are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Documents without further notice to the Trustee.

2.8.5 Personally Identifiable Information. The Trustee shall remove any personally identifiable information (PII), as defined in the Privacy Act of 1974, 5 U.S.C. § 552a, or similar information protected under the Navajo Nation Privacy Act, 2 N.N.C. § 81 et seq., from its submittals to the Agencies wherever possible. Before submitting a Document that contains PII or Privacy Act information, the Trustee shall consider anonymizing the information so that what is submitted no longer contains PII or Privacy Act information. Where this is not possible, the Trustee shall clearly identify in the transmittal email or cover letter that the submittal contains PII or Privacy Act information and submit both a redacted and an unredacted version of the submittal. The Agencies also request that if the Trust collects PII or Privacy Act information from individuals, it provide notice to such individuals that such information will be shared with the Agencies.

2.8.6 Disposition. On termination of the Trust, the Trustee shall provide to both Agencies at least one hundred-eighty (180) days' written notice prior to the destruction of any non-identical Documents described in Section 2.8.1 in order to enable the Agencies to prepare and implement a protocol for their preservation. Upon the request of either Agency, the Trustee shall deliver such Documents to NNEPA, USEPA and/or such other Persons as an Agency may designate. Upon the request of either Agency, the Trustee shall organize such Documents by AUM or other manner consistent with the Agencies' records systems. The Trustee may assert any privilege that is available in law. Should any Documents contain sensitive information, such as confidential business information or personally identifiable information, the Trustee shall follow the instructions for providing the information in Sections 2.8.4 and 2.8.5.

2.9 Final Cost Summaries

In order to facilitate the termination of the Trust, the Agencies will endeavor to submit their final cost summaries pursuant to Sections 4.3 and 4.4 of this Trust Agreement within five (5) months after receiving the final Document production from the Trustee pursuant to Section 2.8.6 of this Trust Agreement, or as soon thereafter as practicable.

ARTICLE III
THE TRUSTEE

3.1 Appointment

3.1.1 Derrith Watchman Moore, not individually but solely in her representative capacity as trustee, is appointed to serve as the Trustee to administer the Trust and the Trust Account in accordance with the Phase 2 Settlement Agreement and this Trust Agreement, and the Trustee hereby accepts such appointment and agrees to serve in such representative capacity, effective on the Effective Date. Subject to the provisions of this Article III, the initial term of the Trustee under this Trust Agreement shall be for three (3) years from the Effective Date. After the expiration of the initial three (3)-year term, the Trustee may be re-appointed for such additional term as may be jointly authorized in writing by the Navajo Nation and the United States, or terminated. Notwithstanding the preceding sentence, the initial three-year term shall automatically be extended until the Trustee is re-appointed or a successor Trustee is appointed, unless the Trustee has been removed for cause pursuant to Section 3.7.2 of this Trust Agreement. The Parties shall meet six months prior to the end of the Trustee's term to discuss the possibilities for a subsequent term. Any successor Trustee shall be appointed in accordance with Section 3.8 of this Trust Agreement.

3.1.2 Subject to the written approval of the Agencies, and subject to Section 3.1.4 of this Trust Agreement, the Trustee shall obtain the services of at least two environmental consultants, and more if desired and appropriate, to manage the performance of the Work defined in Section 1.1.44 of this Trust Agreement (each referred to as a "Consultant"). A Consultant who assists with the RSE, EE/CA, and/or design portions of the Work may not also assist with implementation of the selected remedy and shall be independent from and have no relation to any Consultant assisting with implementation of the remedy. A Consultant assisting with the RSE, EE/CA, and/or design portions of the Work may, however, assist with the Water Studies. Each Consultant shall obtain general, auto, professional liability and workers compensation insurance in appropriate sums, determined after at least ten (10) days prior notice to and consultation with the Agencies, that shall be at least equal to the following: commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits. The beneficiary of the insurance policies shall be the Trust, and such policies shall cover negligence committed by the Consultant, or other actions resulting in a general liability claim, related to implementation of this Trust Agreement and the Phase 2 Settlement Agreement. USEPA and NNEPA shall be named as additional insureds on the general liability policies. The legal relationship of the Consultant to the Trustee is that of an independent contractor professional, not that of an entity employed by the Trustee. The Consultant shall not be deemed a Trust Party.

3.1.3 To obtain candidates for the position of Consultant, the Trustee shall issue a Request for Proposal and solicit at least three (3) bids that meet the following qualifications: (a) at least ten (10) years of senior management roles demonstrating extensive knowledge of and experience with the implementation of environmental

investigation and removal action strategies; (b) a proven track record regarding consultant/contractor management for single projects totaling in excess of five million dollars (\$5,000,000); (c) the ability to create and present detailed presentations for large audiences; and (d) experience with the CERCLA cleanup and remedy selection process. The Trustee shall then conduct an interview process before requesting the Agencies' approval of a candidate for the Consultant position.

3.1.4 The Trustee may continue to use the services of the Consultant already selected under the Phase 2 RSE Trust Agreement to perform the Work defined in Subsection 1.1.45(a) and (b) of this Trust Agreement without conducting the selection process outlined in Sections 3.1.2 and 3.1.3 above. For any other Consultant retained by the Trust to Conduct Work, the Trustee shall follow the process outlined in Sections 3.1.2 and 3.1.3 of this Trust Agreement and that Consultant shall satisfy all the requirements described in Sections 3.1.2 and 3.1.3.

3.2 Generally

The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the objectives and purposes of the Trust, the Phase 2 Settlement Agreement and this Trust Agreement. The Trustee shall have the authority to bind the Trust and any successor Trustee or successor or assign of the Trust but shall for all purposes hereunder be acting in her representative capacity as Trustee and not individually. The Trustee shall not be required to take any action or omit to take any action if, after the advice of counsel, the Trustee believes in good faith that such action or omission is inconsistent with the Trustee's fiduciary duties. The Trustee shall not be required to expend the Trustee's own funds in the performance of the Trustee's duties hereunder, it being the intention of the Parties that the costs and expenses of the Trust, including Administrative Costs, be funded out of Trust Assets, and that all such costs and expenses be incurred and paid only in accordance with an approved budget as required by Section 3.6 of this Trust Agreement.

3.3 Powers

In connection with the administration of the Trust, except as otherwise set forth in this Trust Agreement or the Phase 2 Settlement Agreement, the Trustee is authorized to perform any and all acts necessary to accomplish the objectives and purposes of the Trust. The powers of the Trustee shall include, without limitation, each of the following: (a) to receive, manage, invest, supervise and protect the Trust Assets and to pay obligations owed by the Trust or the Trust Account from Trust Assets held by the Trustee and/or the Trust in accordance with the Trust Agreement and the Phase 2 Settlement Agreement; (b) to engage a Consultant and, as the Trustee deems necessary or appropriate, other Persons to assist the Trustee with respect to the responsibilities described herein; (c) to make distributions of the Trust Assets from the Trust Account for the purposes contemplated in and in accordance with the terms of this Trust Agreement and the Phase 2 Settlement Agreement, including for payment of the Trustee's compensation; and (d) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Trust Agreement and the Phase 2 Settlement Agreement. The Trustee is authorized to execute and deliver all documents on behalf of the Trust to accomplish the purposes of this Trust Agreement and the Phase 2 Settlement Agreement.

3.4 Other Professionals

In addition to the Consultants to be retained pursuant to Section 3.1.2 above, the Trustee is authorized, after at least ten (10) days prior notice to and consultation with and approval by the Agencies, to retain on behalf of the Trust and to pay such additional third parties as the Trustee may deem necessary or appropriate to assist the Trustee in carrying out her powers and duties under the Trust Agreement and the Phase 2 Settlement Agreement, including, without limitation: (a) counsel to the Trustee; (b) a public accounting firm to perform such reviews and/or audits of the financial books and records of the Trust as may be appropriate in the Trustee's reasonable discretion and to prepare and file any tax returns or informational returns for the Trust or the Trust Account as may be required, and/or (c) environmental consultants, community involvement personnel, custodians, security personnel, engineers, surveyors, brokers, contractors, administrative assistants and clerks. In hiring all such Persons, the Trustee and the Consultants shall follow applicable requirements of Sections 604 and 607 of the Navajo Preference in Employment Act ("NPEA"), 15 N.N.C. §§ 604 and 607, and Section 205 of the Navajo Nation Business Opportunity Act ("NBOA"), 5 N.N.C. § 205. The Trustee shall pay all such Persons, including the Consultants, from the Trust Account for services rendered and fees and expenses incurred, in accordance with an approved budget.

3.5 Limitation of the Trustee's Authority

The Trustee is not, and shall not be, authorized to engage in any trade or business with respect to the Trust Assets or any proceeds therefrom. The performance by the Trustee of her duties under this Trust Agreement and the Phase 2 Settlement Agreement does not constitute engaging in a trade or business.

3.6 Compensation of the Trustee

The Trustee shall be reimbursed from the Trust Account for her reasonable and necessary costs and expenses in connection with the Trustee's duties hereunder, including, without limitation, necessary travel and associated lodging, office rent, postage, photocopying, telephone and facsimile charges, upon submission of periodic billings, all in accordance with an approved budget. The Trustee shall also be entitled to receive reasonable compensation for actual services rendered on behalf of the Trust. Such compensation may be in the form of an hourly rate or a salary, and shall be subject to annual reevaluation by the Navajo Nation and the United States as provided in Section 4.2 of this Trust Agreement. For the three-year period beginning with the Effective Date of this Trust Agreement, the hourly rate or salary shall be as agreed upon by the Parties at the time of signature of this Trust Agreement, subject to that annual reevaluation.

3.7 Termination, Replacement, and Removal of the Trustee

3.7.1 Termination. The duties, responsibilities and powers of the Trustee shall terminate on the date the Trust is terminated in accordance with Section 2.6 of this Trust Agreement, except for duties under Sections 2.7, 2.8, 4.3.6, 4.4.6, 6.1, and 6.2, as provided in Section 2.6. The Trustee may resign before the Trust is terminated by giving not less than one hundred twenty (120) days prior written notice thereof to the Navajo Nation and the United States; provided, however, that in the event a suitable replacement is not found and approved by the Navajo Nation and the United States within one hundred twenty (120)

days after receipt of such written notice, the Trustee's resignation shall not become effective and the Trustee shall continue to function in her capacity as Trustee until a suitable replacement is appointed in accordance with Section 3.8 of this Trust Agreement.

3.7.2 Replacement. The Trustee may be replaced, in accordance with Section 3.8 below, upon completion of the initial three (3)-year term defined in Section 3.1.1 of this Trust Agreement or any subsequent term, upon resignation of the Trustee pursuant to Section 3.7.1 of this Trust Agreement, or upon removal of the Trustee pursuant to Section 3.7.3 of this Trust Agreement. Replacement of the Trustee shall not cause the Trust to terminate.

3.7.3 Removal. The Trustee may be removed for "cause" by written agreement of the Navajo Nation and the United States. "Cause" shall include, but not be limited to: (a) a substantial violation of any restriction, or a substantial failure to perform any duty or obligation contained in this Trust Agreement; (b) a failure to perform Trustee's duties hereunder; (c) falsifying records; (d) embezzlement; (e) fraud; or (f) conviction of a felony involving moral turpitude. Such removal shall be effective on the date both the Navajo Nation and the United States have signed such written agreement and the Trustee has been notified in writing of the reasons for her removal. Following such removal, the Trustee shall be replaced in accordance with Section 3.8 below.

3.8 Appointment of Successor Trustees

Any successor Trustee shall be selected by the Navajo Nation with the approval and concurrence of the United States. Like the original Trustee, the successor Trustee shall act as an independent fiduciary, with duties owed to both USEPA and NNEPA as Beneficiaries of the Trust, and shall have previous experience either as a trustee (although not necessarily of an environmental response trust) or as some other type of fiduciary, with a demonstrated understanding of the legal, financial, and ethical obligations incumbent upon a trustee managing a trust with multiple beneficiaries. Such successor Trustee shall execute an instrument accepting such appointment and shall file such acceptance with the Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the rights, powers, trusts and duties of his or her predecessor in the Trust with like effect as if originally named herein. At their mutual discretion, the Navajo Nation and the United States may agree in writing to authorize a Trustee to continue in his or her capacity as Trustee following the date of completion of the initial three (3)-year term or subsequent term, or following the date of removal under Section 3.7.3, until a suitable replacement is found and approved by the Navajo Nation and the United States.

3.9 No Bond

The Trustee shall be exempt from giving any bond or other security in any jurisdiction.

3.10 Limitation of Trustee's Personal Liability

Notwithstanding anything to the contrary herein, the Trustee shall be exculpated, to the greatest extent permitted by applicable law, from any personal liability to any Person for any damages directly or indirectly arising out of any act or omission committed in the administration of this Trust. This exculpation shall not, however, protect the Trustee from any liability for an act or omission committed in bad faith, intentionally, or with reckless indifference to the interest of a

Beneficiary, or from liability for any profit personally derived by the Trustee from a breach of trust.

ARTICLE IV
BUDGET APPROVALS AND DISTRIBUTIONS FROM THE TRUST

4.1 Trust Account

The Trustee shall establish, maintain and hold the Trust Account, in accordance with the Phase 2 Settlement Agreement and this Trust Agreement, to administer the Trust Assets and distributions therefrom.

4.2 Budget Approval Process and Payments by the Trust

The Trustee shall continue to submit to both Agencies for written approval proposed budgets for all Work, Future Oversight Costs, and Administrative Costs to be incurred in the same sequence as established under the Phase 2 RSE Trust Agreement, namely: (a) by November 30 of each year, the Trustee shall submit a proposed budget for all costs of Work, Future Oversight Costs, and Administrative Costs to be incurred during the subsequent eighteen (18)-month period beginning with January of the next calendar year; and (b) by May 31 of each year, the Trustee shall submit a proposed budget for all costs of Work, Future Oversight Costs, and Administrative Costs to be incurred during the subsequent eighteen (18)-month period beginning with July of the same calendar year. Each such budget submission shall separately identify with reasonable specificity all costs of Work, Future Oversight Costs, and Administrative Costs to be incurred during the applicable period, which may pertain to RSEs, Water Studies, EE/CAs or Removal Actions, as the case may be, and, when applicable, the budget submission shall identify which of those costs may require payment from NNEPA Future Response Costs. Each May 31 budget submission, beginning with the May 31 budget submission that is at least one year after the Effective Date, shall also include information sufficient to enable the Navajo Nation and the United States to reevaluate whether the Trustee's hourly compensation rate or salary remains reasonable or should be modified for the subsequent twelve (12)-month period from July through June. If either Agency disapproves the budget submission, the Agencies shall consult and submit a joint request for revisions to the Trustee. The Trustee shall then submit a revised budget to both Agencies within the response period specified in the joint request for revisions, unless a longer response period is subsequently authorized by the Agencies. The Trustee shall not pay any fee or expense that has not been provided for in the applicable approved budget. Each approved budget shall be funded by the transfer or withdrawal of approved amount(s) from the Trust Account.

4.3 Reimbursement of or Advance Payment For Future Oversight Costs to NNEPA

4.3.1 The Trustee shall pay to NNEPA all Future Oversight Costs not inconsistent with the NCP pursuant to Section 4.2 of this Trust Agreement.

4.3.2 NNEPA shall deposit all funds it receives from the Trustee under this Trust Agreement in the Hazardous Substances Fund established under the NNCERCLA, 4 N.N.C. § 2701. NNEPA shall retain and use all such funds to conduct or finance future oversight activities in connection with the Work. For transparency and to inform future budgeting, by the end of March of each year, NNEPA shall endeavor to send the Trustee

and USEPA a cost summary that identifies the direct and indirect costs incurred by NNEPA, its contractors, and its subcontractors during the preceding calendar year.

4.3.3 In the event NNEPA determines that the balance of the account described in Section 4.3.2 above has fallen below the amount necessary to continue funding Future Oversight Costs on an ongoing basis, NNEPA shall notify the Trustee and request in writing such additional funds as NNEPA estimates will be necessary to fund Future Oversight Costs during the ensuing six (6) months. Such written request for additional funds shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such written request, pay the requested amount to NNEPA in accordance with Section 4.4.5 below.

4.3.4 In the event NNEPA incurs Future Oversight Costs without disbursing funds from the account described in Section 4.3.2 above, NNEPA will send the Trustee a written request for reimbursement, which shall include a cost summary identifying all direct and indirect costs incurred by NNEPA, its contractors and its subcontractors for which reimbursement is requested. Such request for reimbursement shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such request for reimbursement, pay the requested amount to NNEPA in accordance with Section 4.3.5 below.

4.3.5 All payments to NNEPA required by this Trust Agreement shall be made in accordance with instructions to be provided by NNEPA.

4.3.6 After NNEPA and USEPA have confirmed in writing to the Trustee, pursuant to Section 2.7 of this Trust Agreement, that all Work required pursuant to the Phase 2 Settlement Agreement is complete, and NNEPA has confirmed that all NNEPA Future Oversight Costs have been fully funded, then if any payments for Future Oversight Costs remain in the NNCERCLA Hazardous Substances Fund NNEPA shall use such funds for work associated with RSEs, EE/CAs, or Response Actions at other Orphan AUMs.

4.4 Reimbursement of or Advance Payment for Future Oversight Costs to USEPA

4.4.1 The Trustee shall pay to USEPA all Future Oversight Costs not inconsistent with the NCP, in accordance with the approved budget pursuant to Section 4.2 of this Trust Agreement.

4.4.2 USEPA shall deposit all funds it receives from the Trustee under this Trust Agreement in the AUM Future Oversight Costs Special Account. By the end of March of each year, for transparency and to inform future budgeting, USEPA shall endeavor to send the Trustee and NNEPA a cost summary that identifies the direct and indirect costs incurred by USEPA and its contractors during the preceding calendar year.

4.4.3 In the event USEPA determines that the balance of the AUM Future Oversight Costs Special Account has fallen below the amount necessary to continue funding Future Oversight Costs on an ongoing basis, USEPA shall notify the Trustee and request in writing such additional funds as USEPA estimates will be necessary to fund Future Oversight Costs during the ensuing twelve (12) months. Such written request for additional funds shall be

in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such written request, pay the requested amount to USEPA in accordance with Section 4.4.5 below.

4.4.4 In the event USEPA incurs Future Oversight Costs without disbursing funds from the AUM Future Oversight Costs Special Account, USEPA will send the Trustee a written request for reimbursement, which shall include a cost summary identifying all direct and indirect costs incurred by USEPA and its contractors for which reimbursement is requested. Such request for reimbursement shall be in accordance with the approved budget as set forth in Section 4.2 above. The Trustee shall, within thirty (30) days after receipt of such request for reimbursement, pay the requested amount to USEPA in accordance with Section 4.4.5 below.

4.4.5 Unless otherwise specified by USEPA, all payments to USEPA required by this Trust Agreement shall be made online to www.Pay.gov which accepts debit and credit cards and bank account ACH. On the www.Pay.gov main page, enter sfo 1.1 in the search field to obtain EPA's Miscellaneous Payment Form—Cincinnati Finance Center. Complete the form with the due date, Site Name, and SSID#.

At the time of payment, the Trustee shall send notice that payment has been made: (a) to USEPA in accordance with Section 8.1 of this Trust Agreement; and b) to the EPA Cincinnati Finance Center by email to cinwd_acctsreceivable@epa.gov. Each such payment and notice shall reference the Site/Spill ID Number A9B6.

4.4.6 After the Agencies have confirmed in writing to the Trustee, pursuant to Section 2.7 of this Trust Agreement, that all Work required pursuant to the Phase 2 Settlement Agreement is complete, and USEPA has confirmed that all USEPA Future Oversight Costs have been fully funded, USEPA shall remit and return to the Trust Account any unused portion of the funds paid by the Trustee to USEPA pursuant to this Trust Agreement.

4.5 Manner of Payment

Unless otherwise specified by this Trust Agreement, cash payments made by the Trust shall be in United States dollars by checks drawn on a domestic bank selected by the Trustee whose deposits are federally insured, or by wire transfer from such a domestic bank.

ARTICLE V **WORK TO BE PERFORMED**

5.1 In General

The Trust shall perform all actions necessary to complete the Work. All Work shall be conducted in accordance with the provisions of this Trust Agreement and the attached Statement of Work, which is incorporated by reference herein, the Phase 2 Settlement Agreement, CERCLA, the NCP, relevant USEPA guidance, and, as applicable or relevant and appropriate, Navajo Fundamental Law, as codified in 2 N.N.C. §§ 200-207, and the NNCERCLA and its implementing regulations. The Trustee shall not commence any Work except in conformance with this Trust Agreement and attached Statement of Work, the Phase 2 Settlement Agreement, and any approval

by the Agencies thereunder. The Trustee shall not commence implementation of a Work Plan without the prior written approval of the Agencies obtained as provided in the attached Statement of Work.

5.2 Oversight

Oversight of the Trust shall be performed jointly by NNEPA and USEPA. The Trustee shall submit all deliverables to both Agencies. In response to such deliverables, and after coordinating and collaborating with USEPA, NNEPA shall send to the Trustee, with a copy to USEPA, either a joint set of the Agencies' written comments and revisions or a joint written approval, partial approval, or approval with conditions. When applicable, the Trustee shall submit a revised deliverable to the Agencies for review within the timeframe specified by the Agencies. The process shall repeat until the Agencies jointly approve the deliverable. Neither Agency shall communicate directions, revisions or approvals to the Trustee *ex parte*.

5.3 Site Access

The Trustee shall follow the best practices described in Section 8.1 of the Phase 2 Settlement Agreement to secure appropriate access to any given site subject to this Trust Agreement. The Trustee shall work closely with NNEPA and NNDOJ to secure any access agreements deemed appropriate under the circumstances and NNEPA and NNDOJ will support and facilitate the Trustee's efforts to arrange for access to the sites in question, pursuant to Section 8.3 of the Phase 2 Settlement Agreement. If the Trustee is unable to obtain necessary access agreements in areas where NNEPA does not have the authority to authorize access, then the Trustee shall notify USEPA and NNEPA as provided in Section 8.4 of the Phase 2 Settlement Agreement and USEPA may assist the Trustee to gain access to the extent necessary to effectuate the Work, as provided in the same Section 8.4.

5.4 Emergency Response and Notification of Release or Threatened Release

In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material at or from any Phase 1 or Phase 2 AUM or AUM where a Water Study was conducted that may constitute an emergency situation or may present an immediate threat to public health or welfare or the environment, the Trustee shall immediately orally notify the representatives of the Agencies listed in this Section 5.4 and shall expeditiously consult with the Agencies regarding any further action that may be required. The Trustee shall submit a written report to the Agencies within five (5) business days after each such release or threatened release, setting forth the events that occurred and the measures taken or to be taken to mitigate any endangerment caused or threatened by the incident and to prevent similar incidents from reoccurring. This reporting requirement is in addition to, and not in lieu of, any other report that may be required under applicable law, including reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

Nothing in this Trust Agreement limits any authority of either Agency to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from any of the AUMs addressed under this Trust Agreement.

Representatives of NNEPA to Contact in the Event of Emergency

Jeremy Bekis, Remedial Project Manager
Navajo Nation Superfund Program
Navajo Nation EPA
43 Crest Road
St. Michaels, AZ 86511
jeremybekis@navajo-nsn.gov
928-871-7089

and

Elisa Arviso, Senior Hydrologist
Navajo Nation Superfund Program
Navajo Nation EPA
43 Crest Road
St. Michaels, AZ 86511
earviso@navajo-nsn.gov
(928) 871-7819

and

Dariel Yazzie, Environmental Program Supervisor
Navajo Nation Superfund Program
Navajo Nation EPA
43 Crest Road
St. Michaels, AZ 86511
darielyazzie@navajo-nsn.gov
(928) 871-7601

Representatives of USEPA to Contact in the Event of Emergency

Nasrin Erdelyi, Remedial Project Manager
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, SFD 6-4
San Francisco, CA 94105
Erdelyi.Nasrin@epa.gov
(415) 972-3050

and

Will C. Duncan III, Assistant Director, Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, SFD 6
San Francisco, CA 94105
duncan.will@epa.gov

(415) 972-3412

and

Sean Hogan, Manager, Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, SFD 6-4
San Francisco, CA 94105
hogan.sean@epa.gov
(415) 972-3465

If the above USEPA Contacts are unavailable, notify the Region IX Duty Officer: (800) 300-2193.

5.5 Public Participation

The Trustee, in consultation with the Agencies, and consistent with the SOW, shall undertake all reasonable and practical efforts to maximize public participation and outreach as part of the Work, and shall use Navajo speakers as fully as possible in these efforts.

ARTICLE VI **FINANCIAL REPORTING AND TAXES**

6.1 Financial Reports

As soon as practicable after the end of each calendar quarter beginning with the quarter ended after the Effective Date, and ending as soon as practicable upon termination of the Trust, the Trustee shall submit to the Beneficiaries a written report, including: (a) financial statements of the Trust at the end of such calendar quarter or period and the receipts and disbursements of the Trust for such calendar quarter or period; and (b) a description of any action taken by the Trustee in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the Trust and of which notice has not previously been given to the Beneficiaries. Further, by February 28 of the calendar year following the Effective Date and each subsequent calendar year, and within six (6) months after termination of the Trust, the Trustee shall submit to the Beneficiaries an annual report that provides the above-described information with respect to the preceding calendar year or, if the report is a final report after termination, with respect to the period from the most recent annual report until the termination of the Trust.

6.2 Taxes and Other Disclosures

The Trustee shall also file or cause to be filed any other statements, returns or disclosures relating to the Trust that are required by any applicable governmental unit, including but not limited to tax returns. All taxes applicable to the Trust shall be paid from the Trust Assets.

6.3 Tax-Exempt Status

The Trustee shall maintain tax-exempt status for the Trust, as permitted by law.

ARTICLE VII
MISCELLANEOUS PROVISIONS

7.1 Amendments and Waivers

Any provision of this Trust Agreement may be clarified, amended or waived by mutual written consent of the Trustee, the Navajo Nation and the United States.

7.2 Governing Law

The Parties agree that this Trust Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States. When federal law is not applicable, however, the rights, duties, and obligations arising under this Trust Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state in which the Trust is situated, which is New Mexico, without giving effect to any principles of conflict of law thereof.

7.3 Headings

The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or any term or provision hereof.

7.4 Actions Taken on Other Than Business Day

If any payment or act under the Trust Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day. For the purposes of this Trust Agreement, a business day shall be any of the days Monday through Friday excluding federal and Navajo holidays.

7.5 Consistency of Agreements and Construction

As of the Effective Date, this Trust Agreement shall amend and replace the Phase 2 RSE Trust Agreement as provided in Section 2.1 of the Phase 2 Settlement Agreement and explained in the Recitals at the beginning of this Trust Agreement and shall be deemed incorporated into the Phase 2 Settlement Agreement. To the extent reasonably possible, the provisions of this Trust Agreement shall be interpreted in a manner consistent with the Phase 2 Settlement Agreement, as clarified by the letter agreement dated December 20, 2019. In the event of an irreconcilable conflict between this Trust Agreement and the Phase 2 Settlement Agreement, the Phase 2 Settlement Agreement shall prevail. The Trustee shall not be considered a party to the Phase 2 Settlement Agreement.

7.6 Compliance with Laws

Any and all distributions of Trust Assets shall be in compliance with all applicable laws.

7.7 No Recourse to Beneficiaries

In no event shall the Beneficiaries have any responsibility to pay any expenses, fees, or other obligations of the Trust, and in no event shall the Trustee, the Consultant, or any other Person employed or contracted to perform services on behalf of the Trust have recourse to the Beneficiaries therefor. This paragraph shall not be construed as defining or limiting any obligations of the Settlor in its capacity as Settlor.

7.8 Status of Beneficiaries

No Beneficiary shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer, or director of the Trust, or to be an owner or operator of any site that is addressed under this Trust Agreement, solely on account of this Trust Agreement or the Phase 2 Settlement Agreement, or actions contemplated thereby, or its status as a Settlor, Beneficiary or Party to this Trust Agreement or the Phase 2 Settlement Agreement.

7.9 Uniform Custodial Trust Act Not Applicable

This Trust Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

7.10 Counterparts

This Trust Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.’

7.11 Integration of Appendices

The following appendices are attached to and incorporated into this Settlement:

Appendix A, the Statement of Work

Appendix B, Fourth Letter Agreement Amending the Phase 1 Trust Agreement, dated May 3, 2019.

ARTICLE VIII
NOTIFICATIONS

8.1 Copies

The Trustee shall send copies of all reports, budgets, Work Plans, statements, and any other documents or written communications that the Trustee is required to submit or from time to time may submit under this Trust Agreement and the Phase 2 Settlement Agreement to the following representatives of each Agency:

For NNEPA:

Authorized representative to receive all notices and submittals of all deliverables:

Jeremy Bekis, Remedial Project Manager
Navajo Nation Superfund Program
Navajo Nation EPA
43 Crest Road
St. Michaels, AZ 86511
Re: Abandoned Uranium Mines – Phase 2 Trust
jeremybekis@navajo-nsn.gov

With a copy to be sent to:

Elisa Arviso, Senior Hydrologist
Navajo Nation Superfund Program
Navajo Nation EPA
43 Crest Road
St. Michaels, AZ 86511
Re: Abandoned Uranium Mines – Phase 2 Trust
earviso@navajo-nsn.gov

and

Dariel Yazzie, Environmental Program Supervisor
Navajo Nation Superfund Program
Navajo Nation EPA
P.O. Box 339
Window Rock, AZ 86515
Re: Abandoned Uranium Mines – Phase 2 Trust
dyazzie@navajo-nsn.gov

For USEPA:

Authorized representative to receive all notices and submittals of all deliverables:

Nasrin Erdelyi
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, SFD 6-4
San Francisco, CA 94105
Re: Abandoned Uranium Mines – Phase 2 Trust
Erdelyi.Nasrin@epa.gov

Changes to authorized representatives listed in this section or Section 8.2 of this Trust Agreement shall be provided in writing to the other Parties.

8.2 Notices

When this Trust Agreement expressly requires notice to the Beneficiaries, or notice to consultation with or approval by “the Navajo Nation” and “the United States,” rather than “NNEPA,” “USEPA,” or one or both of the “Agencies,” the Trustee shall provide written notice to the following representatives of the Navajo Nation and the United States, in addition to the individuals listed in Section 8.1 above:

For the Navajo Nation:

Authorized representative to receive notices under this Section 8.2:

Assistant Attorney General
Natural Resources Unit
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
veblackhat@nndoj.org
Re: Abandoned Uranium Mines – Phase 2 Trust

For the United States:

Notices under this Section 8.2 shall refer to “DJ# 90-11-6-19983” and shall be sent to the following authorized representative:

Chief, Environmental Defense Section
United States Department of Justice
P.O. Box 7611
Washington, DC 20044

With a copy of all notices to be sent to the following:

Regional Director
Navajo Regional Office
Bureau of Indian Affairs
P.O. Box 1060
Gallup, NM 87305
Re: Abandoned Uranium Mines – Phase 2 Trust

Director, Site Operations
Office of Legacy Management, LM-1
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585
Re: Abandoned Uranium Mines – Phase 2 Trust

8.3 Form of Submittal

The Trustee shall submit notices and copies of notices under Sections 8.1 or 8.2 above electronically (e.g., via electronic mail), in lieu of other forms of delivery, unless another form of delivery is requested.

[Signature Page Follows]

THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT.

FOR THE UNITED STATES:

Date: 2/9/2022

By:



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

FOR THE NAVAJO NATION:

Date: _____

DOREEN NANIBAA MCPAUL
Navajo Nation Attorney General

FOR THE TRUSTEE:

Date: _____

DERRITH WATCHMAN MOORE, not individually but in
a representative capacity.

THE UNDERSIGNED PARTIES ENTER INTO THIS AGREEMENT.

FOR THE UNITED STATES OF AMERICA:


Date: _____ By: _____
TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

FOR THE NAVAJO NATION:

Date: 2/9/2022 _____

DOREEN NANIBAA MCPAUL
Navajo Nation Attorney General

FOR THE TRUSTEE:

Date: 02/14/2022 _____

DERRITH WATCHMAN MOORE, not individually but in
a representative capacity.

PHASE 2 EXPANDED TRUST AGREEMENT

STATEMENT OF WORK

TABLE OF CONTENTS

1. INTRODUCTION	4
2. DEFINITIONS	4
3. PUBLIC PARTICIPATION	4
<u>3.1 The Trustee’s Outreach</u>	4
<u>3.2 The Trustee’s Participation in Community Involvement Activities</u>	5
<u>3.3 The Trustee’s CI Coordinator</u>	5
4. GENERAL REQUIREMENTS	5
<u>4.1 Grouping of Phase 1 and Phase 2 AUMs</u>	5
<u>4.2 Priority Media</u>	5
<u>4.3 Contaminants of Potential Concern (“COPC”)</u>	5
<u>4.4 Notice of Fieldwork and Sampling</u>	6
<u>4.5 Split Samples</u>	6
<u>4.6 Cultural Resources Surveys</u>	6
<u>4.7 Biological Surveys</u>	6
5. HUMAN HEALTH RISK ASSESSMENT AND ECOLOGICAL RISK ASSESSMENT (PHASE 1, PHASE 2, AND WATER STUDY AUMs)	7
6. REMOVAL SITE EVALUATION (PHASE 2 AUMS)	8
<u>6.1 Removal Site Evaluation (“RSE”) Work Plan</u>	8
<u>6.2 RSE Reports</u>	8
7. INTERIM REMOVAL ACTIONS (PHASE 1 & 2 AUMS)	8
<u>7.1 Interim Removal Action Work Plan</u>	8
<u>7.2 Implementation of Interim Removal Action</u>	8
<u>7.3 Interim Removal Action Completion Report</u>	9
8. ENGINEERING EVALUATION / COST ANALYSIS (PHASE 1 AUMS)	9
<u>8.1 EE/CA Work Plan</u>	9
<u>8.2 Development and Screening of Alternatives</u>	9
<u>8.3 EE/CA Report</u>	10
9. REMOVAL DESIGN (PHASE 1 AUMS)	10

<u>9.1 Removal Design Work Plan</u>	10
<u>9.2 RD Meetings</u>	11
<u>9.3 Pre-Design Investigation</u>	11
<u>9.4 Treatability Study</u>	11
<u>9.5 Preliminary (30%) RD</u>	12
<u>9.6 Intermediate (60%) RD</u>	12
<u>9.7 Pre-Final (95%) RD</u>	12
<u>9.8 Final (100%) RD</u>	13
10. REMOVAL ACTION (PHASE 1 AUMS)	13
<u>10.1 Removal Action Work Plan</u>	13
<u>10.2 Independent Quality Assurance Team</u>	13
<u>10.3 Preconstruction Conference</u>	14
<u>10.4 Inspections</u>	14
<u>10.5 Off-Site Shipments</u>	14
<u>10.6 Removal Action Construction Completion</u>	15
<u>10.7 Notification of Completion of Action Memorandum Response Action</u>	16
11. POST REMOVAL SITE CONTROL (PHASE 1 AUMS)	17
<u>11.1 PRSC</u>	17
<u>11.2 PRSC Plan</u>	17
<u>11.3 Certification of Work Completion</u>	17
12. WATER STUDIES	18
<u>12.1 Water Study Scope of Work and Work Plans</u>	18
<u>12.2 Water Study Report</u>	19
13. REPORTING	19
<u>13.1 Biweekly Conference Calls</u>	19
<u>13.2 Quarterly Progress Reports</u>	19
<u>13.3 Quarterly Meetings</u>	20
<u>13.4 Notice of Field Work</u>	20
<u>13.5 Laboratory Results</u>	20
14. DELIVERABLES	20
<u>14.1 Approval</u>	20
<u>14.2 Implementation</u>	20
<u>14.3 General Requirements for Deliverables</u>	20
<u>14.4 Technical Specifications</u>	20

<u>14.5 Certification</u>	21
<u>14.6 Supporting Deliverables</u>	21
15. SITE MANAGEMENT PLAN	25
<u>15.1 SMP</u>	25
<u>15.2 SMP Content</u>	25
<u>15.3 Annual Priority Setting</u>	25
<u>15.4 Draft SMP</u>	26
<u>15.5 Final SMP</u>	26
<u>15.6 Notice of SMP Schedule Changes</u>	26
16. SCHEDULE OF DELIVERABLES	26

1. INTRODUCTION

This Statement of Work (“SOW”) outlines the Work required to implement Article V of the Phase 2 Expanded Trust Agreement (“Trust Agreement”) and sets forth the procedures and other requirements for performing that Work. The schedule for providing the associated Work deliverables is included in Section 16 of this SOW. This SOW is incorporated by reference into the Trust Agreement, as provided in Trust Agreement § 5.1.

A list of many USEPA publications applicable or relevant to the Work may be found on the following USEPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policyguidance-and-laws>
Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>.

Applicable or relevant NNEPA laws, policy and guidance may be found on the NNEPA website: <https://www.navajoepa.org/main>. In addition, the Navajo Fundamental Law is codified at 1 N.N.C. §§ 201-206.

For any regulation or guidance referenced in this SOW, the reference shall be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after the Trustee receives notification from the Agencies of the modification, amendment, or replacement.

This SOW applies to Work performed after the Effective Date. In the event of a conflict between an approved scope of work or work plan and this SOW, the approved scope of work or work plan shall control.

2. DEFINITIONS

The terms used in this SOW that are defined in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), in regulations promulgated under CERCLA, or in the Trust Agreement shall have the meanings assigned to them in CERCLA, in such regulations, or in the Trust Agreement, except that the term “Paragraph” or “¶” means a paragraph of this SOW and the term “Section” means a section of this SOW, unless otherwise stated. In the event of any conflict between this SOW and the Trust Agreement, the Trust Agreement shall control. Terms used in this SOW that are defined in the Trust Agreement are capitalized.

3. PUBLIC PARTICIPATION

3.1 The Trustee’s Outreach

The Trustee’s outreach activities may include but are not limited to: conducting outreach to obtain access to perform the Work; providing notification of planned Work; and responding to inquiries from the community regarding the Work. The Trustee shall make special efforts to maximize outreach to and public participation from the communities located near the AUMs that are addressed under the Trust Agreement. As provided in Trust Agreement §§ 4.6 and 5.7, the Trustee shall use Navajo speakers as fully as possible in conducting this outreach. The Trustee will inform the Agencies in advance of planned outreach activities and coordinate with the Agencies as needed.

The Trustee’s outreach activities do not include the community involvement activities addressed in ¶ 3.2; however, all outreach and community involvement activities conducted by the Trustee pursuant to ¶¶ 3.1-3.2 are subject to Agency oversight. The Trustee provided an updated Community Outreach Plan to the Agencies in January 2021, which shall be updated from time to time upon the Agencies’ request.

3.2 The Trustee’s Participation in Community Involvement Activities

If requested by the Agencies, the Trustee shall participate in community involvement activities, including: (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to the following means of dissemination: newspaper, radio, social media, and/or Internet; and (2) public meetings that may be held or sponsored by the Agencies to explain activities at or relating to the Abandoned Uranium Mines (“AUMs”) addressed by the Trust. The Trustee’s support of the Agencies’ community involvement activities may include providing online access to initial submissions and updates of deliverables to: (1) Chapter officials; (2) any community advisory groups, (3) any Technical Assistance Grant recipients and their advisors, and (4) other entities near or otherwise affected by the AUMs to provide them with a reasonable opportunity for review and comment. Upon the Agencies’ request, the Trustee shall establish a community information repository at or near the AUMs at issue.

3.3 The Trustee’s CI Coordinator

If requested by the Agencies, the Trustee shall designate a Trustee’s Community Involvement Coordinator (“the Trustee’s CI Coordinator”). The Trustee may hire a contractor for this purpose pursuant to Section 3.4 of the Trust Agreement. The Trustee’s CI Coordinator is responsible for providing support regarding the Agencies’ community involvement activities, including coordinating with the Agencies regarding responses to the public’s inquiries about the AUMs.

4. GENERAL REQUIREMENTS

4.1 Grouping of Phase 1 and Phase 2 AUMs

Many of the Phase 1 and Phase 2 AUMs are relatively small and located adjacent or close to each other. Further, waste rock and other materials from these nearby AUMs may have been consolidated as part of earlier reclamation work. The Trustee may group these AUMs together for purposes of performing the Work and one deliverable may cover a group of these AUMs, with the approval of the Agencies. Deliverables and other requirements specified in this SOW for individual AUMs are satisfied by providing the deliverable and complying with the requirements for an AUM grouping that has been approved pursuant to this paragraph.

4.2 Priority Media

Priority media at each Phase 1 and Phase 2 AUM include soils (surface and subsurface), sediments (surface and along channels), and water (groundwater from existing and accessible wells and surface water from drainages, springs, or ponds), which present the greatest potential risk to human health and the environment.

4.3 Contaminants of Potential Concern (“COPC”)

The Agencies will identify and provide the Trustee with the COPCs.

4.4 Notice of Fieldwork and Sampling

The Trustee shall provide notice to the Agencies of all field work and sampling activities, including any soil, sediment, surface water and groundwater sampling and scanning.

4.5 Split Samples

Upon request from the Agencies, the Trustee shall provide the Agencies with split samples to be analyzed for corroboration analysis.

4.6 Cultural Resources Surveys

The Trustee shall not proceed with any intrusive work at any AUM addressed by the Trust until a notice-to-proceed is received from the Agencies, unless such work is required for completion of the cultural resources survey required under this paragraph.

(a) The Trustee shall conduct a cultural resources survey at each AUM addressed by the Trust according to the guidelines of the Navajo Nation Historic Preservation Department (“NNHPD”) and Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, unless a cultural resources survey covering the Work already was conducted and a clearance was received.

(b) Each cultural resources survey shall include: (1) a cultural resources inventory, (2) consultation with Chapter Houses, landowners, residents, and other applicable stakeholders, and (3) a pedestrian survey resulting in full coverage of the areas surveyed (to the extent practicable).

(c) The Trustee shall record burials and cultural sites (prehistoric or historic and newly discovered or previously recorded) in their entirety, including the coordinates of the boundaries (i.e., Global Positioning System). The Trustee shall mark boundaries of applicable findings in the field with wooden stakes and flagging around the boundaries. The Trustee shall create a scaled map of each Site showing features, artifact concentrations, diagnostic artifacts, and topographic features. For any cultural resources identified, the Trustee shall conduct an in-field analysis (including photographs).

(d) Upon the completion of the cultural resources survey, the Trustee shall submit a Cultural Resources Survey Report for review and approval to the Navajo Nation Heritage and Historic Preservation Department (“NNHHPD”). Respondent shall submit a copy of the final report and the approval from the NNHHPD to the Agencies.

4.7 Biological Surveys

(a) The Trustee shall conduct a Biological Resources Field Survey for any areas of the AUMs addressed by the Trust that were not previously surveyed, and Work shall not begin until a notice-to-proceed is received from the Agencies. The Trustee shall conduct the Biological Resources Field Survey in consultation with U.S. Fish & Wildlife Service (“USFWS”) and in coordination with the Navajo Natural Heritage Program (“NNHP”) under the Navajo Nation Department of Fish & Wildlife (“NNDFW”). Prior to initiating the Biological Resources Field Survey, the Trustee shall submit data requests for species of concern and biological resources to the NNDFW and for federal threatened and endangered species and critical habitat to the USFWS. To be consistent with Navajo Fundamental Law, biological resources shall include all life forms starting from

microorganisms such as those which form desert soil crusts or grow in seeps and springs and are the essential foundation of fragile desert ecosystems.

(b) The Trustee shall conduct the biological survey for vegetation or wildlife species-of-concern according to the NNDFW guidelines, the Navajo Nation Endangered Species List, and the Endangered Species Act, including the procedures set forth in the Biological Resource Land Use Clearance Policies and Procedures (RCP), RCS-44-08 (NNDFW, 2008), the Species Accounts document (NNHP, 2008a, 2008b), and the USFWS survey protocols and recommendations. These documents present guidelines for approval and submittal processes as well as species-specific information regarding distribution, life histories, habitat, and survey methods to assist with survey and project planning. The biological survey shall be performed by experienced professionals, with guidance from the RCP, Species Accounts document, and NNDFW and USFWS personnel.

(c) In lieu of conducting the process described above, with prior approval from the USFWS, NNHP and USEPA, the Trustee may utilize a “real-time” survey approach by having an on-scene survey specialist present during intrusive field work to confirm no biologically sensitive resources are disturbed in "real-time.”

5. HUMAN HEALTH RISK ASSESSMENT AND ECOLOGICAL RISK ASSESSMENT (PHASE 1, PHASE 2, AND WATER STUDY AUMs)

The Agencies will determine the scope of the Risk Assessments for each AUM. Each Risk Assessment shall be incorporated into the Engineering Evaluation/Cost Analysis (“EE/CA”) Report for the Phase 1 AUMs, the RSE Report for the Phase 2 AUMs, and the Water Study Report for the Water Study AUMs. Unless otherwise directed by the Agencies, the Risk Assessment shall include a Human Health Risk Assessment and an Ecological Risk Assessment (collectively, “Risk Assessment”) for each of the Phase 1 and 2 and Water Study AUMs. The Risk Assessment for the Water Study AUMs shall be a Baseline Risk Assessment and address all risk pathways in relation to groundwater and surface water, including a soils and sediments pathway, whereas the Risk Assessment for the Phase 1 and 2 AUMs may be more limited as determined by the Agencies.

Unless otherwise directed by the Agencies, the Trustee shall conduct the Risk Assessments in accordance with applicable USEPA and NNEPA guidance, including but not limited to: “Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part A),” (RAGS, EPA-540-1-89-002, OSWER Directive 9285.7-01A, December 1989); “Interim Final Risk Assessment Guidance for Superfund, Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments),” (RAGS, EPA 540-R-97-033, OSWER Directive 9285.7-01D, January 1998); “Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments” (ERAGS, EPA-540-R-97-006, OSWER Directive 9285.7-25, June 1997) or subsequently issued guidance.

The Risk Assessment shall take into account Navajo-specific risk factors as identified by the Agencies.

6. REMOVAL SITE EVALUATION (PHASE 2 AUMS)

6.1 Removal Site Evaluation (“RSE”) Work Plan

The Trustee shall submit to the Agencies for approval an RSE Work Plan for each Phase 2 AUM, including planning documents such as schedules and timelines which can be updated periodically and as necessary. The Trustee may subdivide the RSE Work Plan into separate Work Plans for each phase of the RSE. The Work Plan shall include a section on Risk Assessment, as discussed in Section 5.

On September 7, 2018, the Agencies approved the Trust’s Scope of Work for the RSEs for the thirteen Cameron and Coalmine Mesa AUMs listed at that time in Addendum 1 to the Phase 2 Settlement Agreement. On April 22, 2019, the Agencies approved the Stage 1 Work Plan for these Phase 2 Addendum 1 AUMs. On July 6, 2021, the Trustee submitted for Agency review and approval the following draft deliverables: (1) Stage 2 Work Plan for the Addendum 1 Sites; (2) Scope of Work for the Addendum 2 Sites; and (3) Stage 1 Work Plan for Addendum 2 Sites. On August 23, 2021, the Agencies conditionally approved the Scope of Work for the Addendum 2 Sites. The Trustee has not yet submitted the Stage 2 Work Plan for Addendum 2 Sites. The Trustee also will be submitting a Scope of Work and Work Plan for the two Phase 2 AUMs added by Addendum 3 to the Phase 2 Settlement Agreement.

6.2 RSE Reports

The Trustee shall submit to the Agencies for approval an RSE report for each Phase 2 AUM summarizing all technical conclusions based on an analysis of available data and including a Risk Assessment, pursuant to Section 5.

Each RSE Report shall include determinations as to: (a) whether soil, sediment, surface water, or groundwater (to the extent sampled) has been affected by the AUM(s) at issue; (b) if so, whether the affected media pose an unacceptable risk to human health or the environment; and (c) whether further Response Action is needed.

Each RSE Report shall be accompanied by a separate addendum of actual costs incurred in complying with the Phase 2 Settlement Agreement and the Trust Agreement with respect to that RSE.

7. INTERIM REMOVAL ACTIONS (PHASE 1 & 2 AUMS)

7.1 Interim Removal Action Work Plan

If directed by the Agencies as selected in an Action Memorandum, the Trustee shall develop and submit to the Agencies for approval an Interim Removal Action Work Plan, including planning documents such as schedules and timelines which can be updated periodically.

7.2 Implementation of Interim Removal Action

The Trustee shall implement the approved Interim Removal Action Work Plan in accordance with an approved schedule.

7.3 Interim Removal Action Completion Report

The Trustee shall submit to the Agencies for approval an Interim Removal Action Completion Report that contains the following:

- (1) Descriptions of the work conducted, maps of the areas affected, and drawings that provide as-built details; and
- (2) Description of any ongoing maintenance or management required for the Interim Removal Action, and a proposed Post Removal Site Control (“PRSC”) Plan consistent with Section 300.415(1) of the NCP and OSWER Directive No. 9360.2-02.

8. ENGINEERING EVALUATION / COST ANALYSIS (PHASE 1 AUMS)

8.1 EE/CA Work Plan

The Trustee shall submit to the Agencies for approval an EE/CA Work Plan, including planning documents such as schedules and timelines which can be updated periodically. The EE/CA Work Plan shall include a proposed outline of the EE/CA, including the Performance Standards (“PS”) and a description of proposed alternatives for analysis, as discussed in ¶ 8.2, below. The Work Plan shall include a section on Risk Assessment, as discussed in Section 5.

8.2 Development and Screening of Alternatives

The Trustee shall develop an appropriate range of waste management and treatment options and shall evaluate these options during the development and screening of alternatives. The alternatives shall include options for managing waste both on and off Navajo Lands. The Trustee shall provide the Agencies with a description of proposed Removal Action Objectives (“RAOs”) and a description of proposed alternatives in the EE/CA Work Plan. The Trustee shall screen the comprehensive list of possible alternatives in the Work Plan and provide a list of alternatives for a detailed analysis in the EE/CA. As soon as possible after receipt of the EE/CA work plan, the Agencies will endeavor to reach a joint decision whether to approve or require revisions to the Trustee’s list of alternatives. If a dispute arises between the Agencies on this issue, they will attempt to resolve it within thirty (30) days of receipt of the EE/CA work plan by following the “talking things out” approach to dispute resolution described in Section 10.1 of the Phase 2 Settlement Agreement. If the Agencies fail to resolve their dispute through that method, they will attempt to resolve it through formal non-binding alternative dispute resolution, pursuant to Phase 2 Settlement Agreement § 10.2.

(a) Detailed Analysis of Alternatives

Subject to the paragraph above, the Trustee shall conduct the EE/CA in accordance with the provisions in CERCLA, the NCP, and USEPA guidance, including but not limited to the Guidance on Conducting Non-Time-Critical Removal Actions under CERCLA, OSWER (Aug. 1993), EPA 540-F93-057, and other appropriate guidance. The EE/CA shall identify the objectives of the planned Removal Action (“RA”), propose alternatives that may be used to achieve these objectives, and analyze those alternatives for cost, effectiveness, and ability to be implemented.

(b) Alternatives Analysis for Engineering and Institutional Controls and Screening

The Alternatives Analysis for Engineering and Institutional Controls and Screening shall (i) state the objectives (i.e., what will be accomplished) for the Engineering and Institutional Controls; (ii) determine the specific types of Engineering and Institutional Controls that can be used to meet the RAOs; (iii) investigate when the Engineering and Institutional Controls need to be implemented and/or secured and how long they must be in place; and (iv) research, discuss, and document any agreement with the proper entities (e.g., the Navajo Nation, Navajo Chapters, Navajo individuals who have an interest in the Phase 1 AUM, the relevant state, if any, conservation organizations, and the Trustee) on exactly who will be responsible for securing, maintaining, and enforcing the Engineering and Institutional Controls. The Trustee shall be responsible for monitoring and ensuring implementation of all Institutional Controls. Based on the RSE reports for the Phase 1 AUMs, the Agencies have determined that institutional controls shall not be considered as the sole removal action alternative in an EE/CA for a Phase 1 AUM but may be considered as supporting another removal action alternative (for example, to ensure limits on access to a constructed disposal cell).

8.3 EE/CA Report

The Trustee shall submit to the Agencies for approval an EE/CA Report. After each EE/CA Report is complete, USEPA, after consultation with NNEPA, may issue an Action Memorandum selecting a response action.

9. REMOVAL DESIGN (PHASE 1 AUMS)

9.1 Removal Design Work Plan

For each Phase 1 AUM for which a Removal Design (“RD”) is selected in an Action Memorandum, the Trustee shall submit to the Agencies for approval a Removal Design Work Plan (“RDWP”), including planning documents such as schedules and timelines which can be updated periodically. Unless otherwise directed by the Agencies, the RDWP shall include, but is not limited to:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by the Agencies to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the RA as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and of any anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Description of any proposed treatability study;
- (h) Description of any applicable permitting requirements and other regulatory requirements; and

- (i) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements.

9.2 RD Meetings

The Trustee shall meet with the Agencies to discuss RD issues at a frequency directed by the Agencies.

9.3 Pre-Design Investigation

If directed by the Agencies, the Trustee shall conduct a Pre-Design Investigation (“PDI”) for any of the Phase 1 AUMs. The purpose of the PDI is to address data gaps by conducting additional field investigations.

(a) PDI Work Plan. The Trustee shall submit to the Agencies for approval a PDI Work Plan (“PDIWP”), including planning documents such as schedules and timelines which can be updated periodically. The PDIWP shall include:

- (1) An evaluation and summary of existing data and description of data gaps;
- (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
- (3) Cross references to quality assurance/quality control (“QA/QC”) requirements set forth in the Quality Assurance Project Plan (“QAPP”), as described in ¶ 14.5(e) (Supporting Deliverables).

(b) PDI Evaluation Report. Following the PDI, the Trustee shall submit to the Agencies for approval a PDI Evaluation Report. This report shall include:

- (1) Summary of the investigations performed;
- (2) Summary of investigation results;
- (3) Summary of validated data (i.e., tables and graphics);
- (4) Data validation reports and laboratory data reports;
- (5) Narrative interpretation of data and results;
- (6) Results of statistical and modeling analyses;
- (7) Photographs documenting the work conducted; and
- (8) Conclusions and recommendations for the RD, including design parameters and criteria.

9.4 Treatability Study

If directed by the Agencies, the Trustee shall conduct a Treatability Study (“TS”) for any of the Phase 1 AUMs.

(a) Treatability Study Work Plan. The Trustee shall submit to the Agencies for approval a TS Work Plan (“TSWP”), including planning documents such as schedules and timelines which can be updated periodically. The Trustee shall prepare the TSWP in accordance with USEPA’s *Guide for Conducting*

Treatability Studies under CERCLA, Final (Oct. 1992), as supplemented for RD by the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995).

(b) Treatability Study Evaluation Report. The Trustee shall submit to the Agencies for approval a TS Evaluation Report.

9.5 Preliminary (30%) RD

If directed by the Agencies, the Trustee shall submit to the Agencies for comment a Preliminary (30%) RD. The Preliminary RD shall include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) A PRSC Plan;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with USEPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air quality monitoring and dust suppression, during the RA;
- (g) Any proposed revisions to the RA Schedule that is set forth in the Site Management Plan ("SMP") described in Section 15; and
- (h) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 14.5 (Supporting Deliverables): Field Sampling Plan; Quality Assurance Project Plan; Site Wide Monitoring Plan; Construction Quality Assurance/Quality Control Plan; Transportation and Off-Site Disposal Plan; PRSC Plan; and Institutional Controls Implementation and Assurance Plan.

9.6 Intermediate (60%) RD

If directed by the Agencies, the Trustee shall submit to the Agencies for comment an Intermediate (60%) RD. The Intermediate (60%) RD shall: (a) be a continuation and expansion of the Preliminary (30%) RD; (b) address the Agencies' comments regarding the Preliminary (30%) RD; and (c) include the same elements as are required for the Preliminary (30%) RD.

9.7 Pre-Final (95%) RD

The Trustee shall submit to the Agencies for comment a Pre-final (95%) RD. The Pre-final (95%) RD shall be a continuation and expansion of any previous RD submittal and must address the Agencies' comments regarding any previous RD submittal (i.e., Preliminary (30%) RD or Intermediate (60%) RD, if required). The Pre-final (95%) RD shall serve as the approved Final (100%) RD if the Agencies approve the Pre-final (95%) RD without comments. The Pre-final (95%) RD shall include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
- (b) A survey and engineering drawings showing existing Phase 1 AUM features, such as elements, property borders, easements, and Phase 1 AUM conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required pursuant to ¶¶ 9.5-9.6 to be included in Preliminary (30%) and Intermediate (60%) RDs;
- (d) A specification for photographic documentation of the RA; and
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD, if one was requested.

9.8 Final (100%) RD

The Trustee shall submit to the Agencies for approval the Final (100%) RD. The Final (100%) RD shall address all comments by the Agencies on the Pre-final (95%) RD and shall be provided to the Agencies as directed in the Agencies' comments.

10. REMOVAL ACTION (PHASE 1 AUMS)

10.1 Removal Action Work Plan

For each Phase 1 AUM for which a response action is selected in an Action Memorandum, the Trustee shall submit to the Agencies for approval an RA Work Plan (RAWP), including planning documents such as schedules and timelines which can be updated periodically, that also includes:

- (a) A proposed RA Construction Schedule (e.g., critical path method, Gantt chart);
- (b) An updated Health and Safety Plan (HASP), described in ¶ 14.5 (Supporting Deliverables), that covers activities during the RA; and
- (c) If applicable, plans for satisfying permitting requirements, including for obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

10.2 Independent Quality Assurance Team

If directed by the Agencies, the Trustee shall designate an Independent Quality Assurance Team (IQAT). The IQAT shall be independent of the Consultants already performing Work for the Trustee. The Trustee may hire a separate Consultant to serve as the IQAT or, alternatively, the IQAT may consist of employees of the Trust. The IQAT will have the responsibility to determine whether Work is of expected quality and conforms to applicable plans and specifications. The IQAT will have the responsibilities described in Chapter 2.1.3 of the *Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties*, EPA/540/G-90/001 (April 1990). The Trustee shall follow Sections 3.1.2 - 3.1.3 of the Trust Agreement in selecting an IQAT, regardless of whether the IQAT consists of Consultants and/or employees of the Trust pursuant to Section 3.4 of the Trust Agreement.

10.3 Preconstruction Conference

If directed by the Agencies, the Trustee shall hold a preconstruction conference with the Agencies as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). The Trustee shall prepare minutes of the conference and shall distribute the minutes to the Agencies.

10.4 Inspections

(a) The Agencies may conduct periodic inspections of or have an on-site presence during the Work. At the Agencies' request, the Consultant or other designee shall accompany the Agencies or their representatives during inspections.

(b) If directed by the Agencies, the Trustee shall provide on-site office space for Agency personnel or their representatives to perform their oversight duties. The minimum office requirements are a private office with at least 150 square feet of floor space, an office desk with chair, a telephone with a private line if cell service is unreliable, access to facsimile and reproduction machines, wireless internet access, and sanitation facilities.

10.5 Off-Site Shipments

(a) Hazardous substances, pollutants, and contaminants.

The Trustee may ship hazardous substances, pollutants, and contaminants from one or more Phase 1 or Phase 2 AUMs to an off-site facility only if the Trustee complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, and applicable provisions of Navajo law. The Trustee will be deemed in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if the Trustee obtains a prior determination from USEPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

(b) Waste Material.

The Trustee may ship Waste Material from the AUMs to an off-site waste management facility only if, prior to any shipment, the Trustee provides notice to the appropriate state environmental official in the receiving facility's state and to the Agencies. This notice requirement shall not apply to any off-site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. The Trustee also shall notify the state environmental official referenced above and the Agencies' RPMs of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different off-site facility. The Trustee shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped. If Waste Material will be transported across Navajo Nation lands, the Trustee also shall provide at least four days advance notice to the Agencies and the Navajo Nation Director of Public Safety of the information listed in (1)-(4) and the route of the shipment.

(c) Investigation Derived Waste.

The Trustee may ship Investigation Derived Waste (“IDW”) from the AUMs to an off-site facility only if the Trustee complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA’s Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) (Treatability Study Samples), are not subject to 40 C.F.R. § 300.440.

10.6 Removal Action Construction Completion

(a) RA Construction

For purposes of this ¶ 10.6(a), “RA Construction” comprises, for any RA that involves the construction and operation of a system to achieve PS (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.

(b) Inspection of Constructed Remedy

The Trustee shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection shall be attended by the Trustee and the Agencies. A re-inspection shall be conducted if requested by the Agencies.

(c) Shakedown Period

There shall be a shakedown period of up to one year for the Agencies to review whether the remedy is functioning properly and performing as designed. The Trustee shall provide such information as the Agencies request for such review.

(d) RA Construction Deficiencies

Upon notification by the Agencies of any deficiencies in the RA Construction, the Trustee shall take all necessary steps to correct the deficiencies and bring the RA Construction into compliance with the approved RD, any approved design changes, and the approved RAWP. If applicable, the Trustee shall comply with any schedule provided by the Agencies in their notice of deficiency.

(e) RA Construction Report

Following the shakedown period, the Trustee shall submit an “RA Report” for each Phase 1 AUM requesting a joint Agency determination that RA Construction has been completed. The RA Report shall: (1) include statements by a registered professional engineer and the Trustee that construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of

USEPA's *Close Out Procedures for NPL Sites* guidance (May 2011); and (5) be certified in accordance with ¶ 14.4 (Certification).

(f) Agencies Conclude RA Construction Not Complete

If the Agencies determine that RA Construction is not complete, the Agencies shall so notify the Trustee. Agency notice will include a description of, and schedule for, the activities that the Trustee must perform to complete RA Construction. The Agencies' notice may include a schedule for completion of such activities or may require the Trustee to submit a proposed schedule for approval by the Agencies. The Trustee shall perform all activities described in the Agencies' notice in accordance with the schedule.

(g) Agencies Conclude RA Construction Complete

When the Agencies determine, based on the initial or any subsequent RA Report, that RA Construction is complete, the Agencies shall so notify the Trustee.

10.7 Notification of Completion of Action Memorandum Response Action

(a) Action Memorandum Response Action Inspection

The Trustee shall schedule an inspection for the purpose of obtaining the Agencies' Notification of Completion of each Action Memorandum Response Action. The inspection must be attended by the Trustee, USEPA and/or its representatives, and NNEPA and/or its representatives.

(b) Action Memorandum Response Action Completion Report

Following the inspection, the Trustee shall submit an Action Memorandum Response Action Completion Report to the Agencies, documenting the completion of response actions required under the Action Memorandum, with the exception of PRSCs, and requesting the Agencies' Notification of Completion of such Action Memorandum Response Action. The Action Memorandum Response Action Completion Report must: (1) include certifications by a registered professional engineer and by the Trustee that the response actions required under the Action Memorandum, with the exception of PRSC activities, are complete; and (2) be certified in accordance with ¶ 14.4 (Certification).

(c) Agencies Conclude Response Action Not Complete

If the Agencies conclude that the Response Action is not complete, the Agencies will so notify the Trustee. The Agencies' notice will include a description of the activities that the Trustee shall perform to complete the Response Action. The Agencies' notice will include specifications and a schedule for such activities or will require the Trustee to submit specifications and a schedule for the Agencies' approval or approval with modification. The Trustee shall perform all activities described in the notice or in the specifications and schedule approved by the Agencies.

(d) Agencies Conclude Response Action Complete

If the Agencies conclude, based on the initial and any subsequent Action Memorandum Response Action Completion Report, that the Response Action is

complete, except for any continuing obligations under the Trust Agreement, the Agencies will provide written notice to the Trustee. The Trustee must receive a Notification of Completion for each Action Memorandum Response Action for that portion of the Work to be deemed performed pursuant to the Phase 2 Settlement Agreement.

11. POST REMOVAL SITE CONTROL (PHASE 1 AUMS)

11.1 PRSC

The Trustee shall conduct all approved PRSCs for each Phase 1 AUM, unless another entity is specified by the Agencies to implement them. PRSCs may include operation of treatment remedies; periodic inspection of the Phase 1 AUMs and any remedies, including waste repositories; monitoring and repair of erosion control measures at Phase 1 AUMs and any waste repositories; and monitoring any ICs implemented as part of an RA.

11.2 PRSC Plan

The Trustee shall submit to the Agencies for approval a PRSC Plan that describes the requirements for inspecting, operating, and maintaining the RA, including planning documents such as schedules and timelines which can be updated periodically. The Trustee shall develop the PRSC Plan in accordance with Operation and Maintenance in the Superfund Program, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001). The PRSC Plan shall include the following additional requirements:

- (a) Description of PS required to be met to implement the Action Memorandum;
- (b) Frequency and description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
- (c) Description of records and reports that will be generated during PRSC activities, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to the Agencies;
- (d) Description of corrective action in case of system failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material that may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should PRSC systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
- (e) Description of corrective actions to be implemented if PS are not achieved and a schedule for implementing these corrective actions.

11.3 Certification of Work Completion

- (a) Work Completion Inspection. The Trustee shall schedule an inspection for the purpose of obtaining the Agencies' Certification of Work Completion for each of the Phase 1 AUMs. The inspection shall be attended by the Trustee and the Agencies.

(b) Work Completion Report. Following the inspection, the Trustee shall submit a Work Completion Report to the Agencies, requesting the Agencies' Certification of Work Completion. The Work Completion Report shall: (1) include certifications by a registered professional engineer and by the Trustee that the Work, including all PRSC activities, is complete; and (2) be certified in accordance with ¶ 14.4 (Certification). If the RA Report or Monitoring Report submitted under ¶ 10.8(b) includes all elements required under this ¶ 11.3(b), then the RA Report or Monitoring Report suffices to satisfy all requirements under this ¶ 11.3(b).

(c) The Agencies Conclude Work Not Complete. If the Agencies conclude that the Work is not complete, the Agencies shall so notify the Trustee. The Agencies' notice must include a description of the activities that the Trustee must perform to complete the Work. The Agencies' notice must include specifications and a schedule for such activities or must require the Trustee to submit a schedule for the Agencies' approval. The Trustee shall perform all activities described in the notice or in the specifications and schedule approved by the Agencies.

(d) The Agencies Conclude Work Complete. If the Agencies conclude, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, except for any continuing obligations under the Trust Agreement, the Agencies shall so certify in writing to the Trustee. Issuance of the Certification of Work Completion does not affect the following continuing obligations: Sections 2.7, 2.8, 4.4.6, 4.5.6, 6.1 and 6.2 of the Trust Agreement.

12. WATER STUDIES

12.1 Water Study Scope of Work and Work Plans

The Trustee shall submit to the Agencies for approval a Water Study Scope of Work for each of the two required Water Studies, along with any necessary Water Study Work Plans, including planning documents such as schedules and timelines which can be updated periodically and as necessary. Each Work Plan shall include a Section on Baseline Risk Assessment, as discussed in Section 5. The Trustee may subdivide each Water Study Work Plan into separate Work Plans for each stage of each Water Study.

The Agencies approved the Trust's Amended Scope of Work for the Claim 28 Water Study on March 20, 2019. The Agencies conditionally approved the Claim 28 Water Study Work Plan Stage 1 Geophysical Survey on December 13, 2018 and the Claim 28 Water Study Work Plan Stage 1 Geophysics Survey on February 4, 2020; these two documents were combined into a single document on August 21, 2020. On July 6, 2021, the Trustee submitted for review and comment by the Agencies the Claim 28 Stage 2 Work Plan. On December 8, 2021, the Trustee submitted the Claim Stage 2 Work Plan and Technical Memo, revised to address the Agencies' comments.

On July 16, 2021 the Agencies approved the Scope of Work for the Saytah/George Simpson 1 Incline (SGS). On June 24, 2021, the Trustee submitted for review and comment by the Agencies the SGS Stage 1 Work Plan. The Trustee has not yet submitted the SGS Stage 2 Work Plan.

12.2 Water Study Report

The Trustee shall submit for approval by the Agencies a report (the “Water Study Report”) for each of the two required Water Studies summarizing all technical conclusions from analysis of available data and including a Risk Assessment.

The Water Study Report shall include determinations as to: (a) whether groundwater or surface water has been affected by the AUM at issue; (b) if so, whether the affected waters pose an unacceptable risk to human health or the environment; and (c) whether further Response Action is needed.

Each Water Study Report shall be accompanied by a separate addendum of actual costs incurred in complying with the Phase 2 Settlement Agreement and the Trust Agreement with respect to that Water Study.

13. REPORTING

13.1 Biweekly Conference Calls

The Trustee shall convene biweekly conference calls with the Agencies. On the call, the Trustee or the Trustee’s representatives shall provide updates on all current and, as appropriate, upcoming tasks and raise issues that may need to be resolved in order to expedite completion of the Work. The Trustee shall circulate meeting minutes to the Agencies.

13.2 Quarterly Progress Reports

The Trustee shall submit quarterly progress reports to the Agencies for comment. The reports shall cover all activities that took place during the prior reporting period, including:

- (a) The actions taken to achieve compliance with the SMP described in Section 15 (Site Management Plan);
- (b) A summary of all results of sampling, tests, and all other data received or generated by the Trustee;
- (c) A description of all deliverables that the Trustee submitted to the Agencies;
- (d) A description of all activities that are scheduled for the next quarter;
- (e) A description of any problems, delays, or adverse conditions that materially impair the ability to meet the deadlines in the SMP, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the SMP, work plans or other schedules that the Trustee has proposed or that have been approved by the Agencies;
- (g) A summary of expenditures and costs incurred for the reporting period and the SMP calendar year, with an explanation of any significant discrepancies in the SMP cost estimates, including actual costs that deviate from the estimated costs by 10%; and

(h) A description of all activities undertaken in support of Section 3 (Public Participation) during the reporting period and those to be undertaken in the next quarter.

13.3 Quarterly Meetings

The Trustee may provide for quarterly meetings with the Agencies to review the quarterly progress report and the progress of the Trust generally.

13.4 Notice of Field Work

The Trustee shall notify the Agencies before the start of field work.

13.5 Laboratory Results

The Trustee shall provide a copy of all unvalidated and validated laboratory results to the Agencies.

14. DELIVERABLES

14.1 Approval

The Trustee shall submit deliverables to the Agencies for approval or comment as specified in this SOW.

For any deliverable submitted to the Agencies for approval, the Agencies may approve, disapprove, require revisions to, or modify the deliverable in whole or in part. If the Agencies require revisions, the Trustee shall submit a revised deliverable within the response period specified in the Agencies' request for revisions. Once approved, or approved with modifications, the deliverable, the schedule, and any subsequent modifications shall be incorporated into this Trust Agreement.

14.2 Implementation

The Trustee shall implement this SOW and all Work Plans approved by the Agencies in accordance with the approved planning documents, such as schedules and timelines.

14.3 General Requirements for Deliverables

Unless otherwise requested by either Agency, the Trustee shall submit deliverables electronically. Maps, drawings or other exhibits that are larger than 8.5" by 14" shall be submitted in both paper and electronic form.

14.4 Technical Specifications

Sampling and monitoring data shall be submitted in standard regional Electronic Data Deliverable ("EDD") format. Unless otherwise specified by the Agencies, the Trustee shall provide laboratory project data as a published "project" in Scribe, a software tool developed by USEPA, and may be required to also provide the data in an alternate digital format useable by either Agency. Site-specific geospatial data shall be maintained and managed using a geographic information system ("GIS"). Unless otherwise specified by the Agencies, the Trustee shall provide data in the following formats:

- (a) Photographs and videos shall be provided in native format (e.g., jpeg or MP3) and organized using a logical naming convention and tables tracking metadata.

(b) Hard copies of relevant non-digital data shall be provided (e.g., maps and historical aerial photographs); applicable hard copy maps may be scanned into Geotiff format, georectified, and included in any geospatial data deliveries.

(c) Tabular data not included in the GIS, including laboratory analytical results, shall be provided as a published Scribe project and in a standard EDD format specified by the Agencies, such as Microsoft Access or Excel.

(d) Global position system (“GPS”) point coordinates not included in the GIS shall be provided in a digital format.

(e) Spatial data, including spatially referenced data and geospatial data, shall be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions shall include the geospatial collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data shall be accompanied by metadata, and such metadata shall be compliant with USEPA Region 9 NAUM metadata guidelines or similar guidance. An add-on metadata editor for ESRI software, the USEPA Metadata Editor (EME), complies with these FGDC and USEPA metadata requirements and is available at <https://edg.epa.gov/EME/>. Additional data submission requirements may be added or updated by the Agencies, such as Map Document guidelines, required projections, and standardized table or fields.

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

(g) Spatial data submitted by the Trustee does not, and is not intended to, define the boundaries of the AUMs.

14.5 Certification

All deliverables required in this SOW shall be signed by the Trustee and shall contain the following statement: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

14.6 Supporting Deliverables

The Trustee shall submit, or, if directed by the Agencies, update if already submitted, each of the supporting deliverables identified in this Paragraph for approval by the Agencies, except as specifically provided. The Trustee shall develop the deliverables in accordance with all applicable regulations, guidance, and policies. The Trustee shall update each of these supporting deliverables as necessary or appropriate during the

course of the Work, and/or as requested by the Agencies. For each component of the Work, the Agencies may direct the Trustee to submit an accompanying supporting deliverable.

(a) Health and Safety Plan. The Health and Safety Plan (“HASP”) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work or component of the Work. The HASP shall be developed in accordance with USEPA’s Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926 for the protection of human health and the environment. The Trustee submitted an updated draft Programmatic HASP to the Agencies for review and approval on May 26, 2021. On August 23, 2021, the Trustee submitted a final HASP to the Agencies, in response to the Agencies comments.

(b) Emergency Response Plan. The Emergency Response Plan (“ERP”) describes procedures to be used in the event of an accident or emergency at the Phase 1 or Phase 2 AUMs (for example, power outages, mine waste transport accidents, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP shall include:

- (1) Name of the person or entity responsible for responding in the event of an emergency;
- (2) Plan and date(s) for meeting(s) with the Agencies, Navajo chapters, and local community, including local, State, federal and tribal agencies involved in responding to the emergency, as well as local emergency squads and hospitals;
- (3) Notification activities in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11004; and
- (4) A description of all necessary actions to ensure compliance with Section 5.4 (Emergency Response and Notification of Release or Threatened Release) of the Trust Agreement in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Phase 1 or Phase 2 AUMs or an AUM where a Water Study was conducted (“Water Study AUM”) that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

(c) Data Management Plan. The Data Management Plan describes the plan for the generation, validation, and distribution of project data deliverables. The Data Management Plan addresses the following topics:

- (1) Data management processes, including identification of the data management team and management of data connected to the Work;
- (2) The data management system, including databases, software and specification of EDD;

(3) Management and administration of the data management system, including access, security and data backup; and

(4) A discussion of the management of both tabular and spatial (GIS) data.

On September 23, 2021, the Trustee submitted a final Data Management Plan in response to the Agencies' comments.

(d) Field Sampling Plan. The Field Sampling Plan ("FSP") addresses sample collection activities for each AUM or approved group of AUMs. The FSP shall be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. The FSP shall include vertical and lateral characterization and verification sampling utilizing an appropriate statistical approach and a sufficient radiological scanning approach. An approach consistent with the Multi-Agency Radiation Survey and Site Investigation Manual should be used. Visual Sampling Plan software can be used to properly document that soil sampling approach is statistically representative. The Trustee shall develop each FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).

(e) Quality Assurance Project Plan. The QAPP augments the FSP and addresses sample analysis and data handling regarding the Work. The QAPP shall include a detailed explanation of the Trustee's quality assurance, quality control, and chain of custody procedures for all assessment, treatability, design, compliance, and monitoring samples, and for any subcontracted analytical services it also shall include as attachments all statements of work, standard operating procedures, and other supporting documentation. The QAPP shall be developed in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP shall include procedures:

(1) To ensure that the Agencies and their authorized representatives have reasonable access to laboratories used by the Trustee in implementing the Trust Agreement (the "Trustee's Labs");

(2) To ensure that the Trustee's Labs analyze all samples submitted by the Agencies pursuant to the QAPP for quality assurance monitoring;

(3) To ensure that the Trustee's Labs perform all analyses using USEPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to USEPA;

(4) To ensure that the Trustee's Labs participate in an USEPA-accepted QA/QC program or other QA/QC program acceptable to the Agencies;

- (5) For the Trustee to provide the Agencies with a 2-week notice prior to any sample collection activity;
- (6) For the Trustee to provide split samples and/or duplicate samples to the Agencies upon request;
- (7) For the Agencies to take any additional samples that they deem necessary;
- (8) For the Agencies to provide to the Trustee, upon request, split samples and/or duplicate samples in connection with oversight sampling by the Agencies; and,
- (9) For the Trustee to submit to the Agencies all sampling and test results and other data in connection with the implementation of the Trust Agreement.

The Trustee submitted an updated Programmatic QAPP to the Agencies for review and approval on June 3, 2021.

(f) Construction Quality Assurance Plan/Construction Quality Control Plan (CQAP/CQCP). The purpose of the CQAP is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the CQCP is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQAP/CQCP shall:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQAP/CQCP;
- (2) Describe the PS required to be met to achieve Completion of the RA;
- (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
- (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQAP/CQCP;
- (5) Describe industry standards and technical specifications used in implementing the CQAP/CQCP;
- (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
- (7) Describe procedures for documenting all CQAP/CQCP activities; and
- (8) Describe procedures for retention of documents and for final storage of documents.

(g) Transportation and Off-Site Disposal Plan. The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 10.5 (Off-Site Shipments). The TODP shall include: (1) Proposed routes for off-site shipment of Waste Material; (2) Identification of communities affected by shipment of Waste

Material; and (3) Description of plans to minimize impacts on affected communities.

15. SITE MANAGEMENT PLAN

15.1 SMP

The Trustee shall submit an SMP to the Agencies annually for approval, pursuant to ¶¶ 15.4-15.5. The SMP is a dynamic document to be used as a management tool in planning, reviewing, and setting priorities for all response activities at the Phase 1 and Phase 2 AUMs and the Water Study AUMs. The SMP shall cover a period of three (3) consecutive calendar years, and it shall be revised annually to cover the next rolling three (3)-year period and accommodate new information, including changes to schedules, costs, and other variables regarding the Work.

15.2 SMP Content

The SMP shall include the following:

- (a) An overview (e.g., location, phase of cleanup, notable features) of all AUMs covered by the Trust Agreement;
- (b) Proposed groupings of those AUMs for purposes of completing the Work and submitting deliverables that cover a group of AUMs, including a figure or figures showing those AUM locations.
- (c) A list of AUMs where one or more components of the Work will be performed during the relevant three (3)-year planning period;
- (d) A schedule of all components of the Work and interim tasks for each such component that will be performed during the three (3)-year planning period; and
- (e) A budget of estimated costs for the relevant three (3)-year planning period for the components of the Work in the SMP, with estimated costs provided for each calendar year.

15.3 Annual Priority Setting

- (a) Each year, as an extension of a quarterly meeting, the Trustee shall have a Priority Setting meeting with the Agencies to discuss priorities for components of the Work to include in the SMP. Unless otherwise directed by the Agencies, the initial SMP Priority Setting meeting shall occur one month after the Effective Date of the Trust Agreement, and all future Priority Setting meetings shall occur by September 30 of each year.
- (b) Priorities may include risks to public health and the environment. Other priorities may include efficiencies such as performing the same task in multiple geographic areas, or performing multiple tasks in a single geographic area. Priority setting may also take into consideration the actual and estimated cost of work performed in the SMP for the current calendar year and the estimated cost of future work. Based on this meeting, the Agencies will approve the components of the Work and schedules to be included in the next SMP.

15.4 Draft SMP

Each year the Trustee shall submit to the Agencies for comment, at least one month prior to the annual priority-setting meeting, a Draft SMP.

15.5 Final SMP

For the first SMP required under this Statement of Work, the Trustee shall submit the Final SMP to the Agencies for approval no later than one month after receipt of any Agency comments on the Draft SMP. For each subsequent SMP, the Trustee shall submit the Final SMP to the Agencies for approval by the later of December 31 or one month after receipt of any Agency comments on the Draft SMP.

15.6 Notice of SMP Schedule Changes

The Trustee shall notify the Agencies as soon as possible of any changes that may delay the SMP schedule and of delays in performing any component of the Work. The Trustee shall notify the Agencies about delays to interim tasks, other than components of the Work, in the next Quarterly Report.

16. SCHEDULE OF DELIVERABLES

Timing requirements for deliverables that are not included on the following table will be determined when appropriate in the approved SMP.

Section	Task	Deliverable	Timing
3.1	Public Participation: The Trustee's Outreach	Notice of planed outreach activities	Two (2) weeks in advance of any planned outreach activities
3.2	Public Participation: The Trustee's Participation in Community Involvement Activities	Establishment of an Information Repository	To be determined by the Agencies
4.4	General Requirements: Notice of Fieldwork and Sampling	Notice of all fieldwork and sampling activities	Two (2) weeks prior to fieldwork and sampling activities
4.6	General Requirements:	Initiate Cultural Resources Survey	Prior to intrusive work, to be determined by the Agencies

	Cultural Resources Surveys		
4.7	General Requirements: Biological Surveys	Initiate Biological Survey	Prior to intrusive work, to be determined by the Agencies
6.1	Removal Site evaluations (Phase 2 AUMs): RSE Scope of Work and Work Plan	Submit Scope of Work and Work Plans for the two AUMs added by Addendum 3 Submit Stage 2 or Subsequent Stage Work Plan for Addendum 2 Sites	Within sixty (60) days of the effective date of the Phase 2 Expanded Trust Agreement for Scope of Work; for Stage 1 Work Plan, within sixty (60) days of approval of Scope of Work; for Stage 2 and any subsequent stage Work Plans, within sixty (60) days of submitting draft report containing results from prior stage Work Plan Within sixty (60) days of submitting draft report containing results from prior stage work plan
7.1	Interim Removal Actions (Phase 1 & 2 AUMS): Interim Removal Action	Submit a Work Plan for each Interim Removal Action	Within thirty (30) days of receipt of USEPA's Action Memorandum
7.3	Interim Removal Action Completion Report	Submit an Interim Removal Action Completion Report	Within thirty (30) days of completion of on-site activities
8.1 – 8.2	Engineering Evaluation/Cost Analysis (Phase 1 AUMs): EE/CA	Submit EE/CA work plan including proposed alternatives to be considered in the EE/CA	Within thirty (30) days of the date that USEPA issues a notice to commence work on the EE/CA, per Phase 2 Settlement Agreement § 5.4(b).

9.1	Removal Design (Phase 1 AUMs); Removal Design Work Plan	Submit a Removal Design Work Plan (“RDWP”)	Within sixty (60) days of the Trustee’s receipt of the Action Memorandum.
10.1	Removal Action (Phase 1 AUMs): Removal Action Work Plan	Submit a Removal Action Work Plan	Within sixty (60) days of the Agencies’ approval of the Final (100%) RD.
10.6(e)	Removal Action (Phase 1 AUMs): Removal Action Construction Completion	Submit an RA Report	Within sixty (60) days of the Agencies’ Notification of Completion of each Removal Action Construction Completion.
10.7(b)	Removal Action (Phase 1 AUMs): Action Memorandum Response Action Completion Report	Submit an Action Memorandum Response Action Completion Report	Within sixty (60) days of the Agencies’ Notification of Completion of each Action Memorandum Response Action.
11.2	Post Removal Site Control (Phase 1 AUMs): PRSC Plan	Submit a PRSC Plan	Within sixty (60) days of the Agencies’ Notification of Completion of each Action Memorandum Response Action.
12.1	Water Studies: Water Study Scope of Work and Work Plans	Submit work plans for the Saytah/George Simpson 1 Incline Water Study	Submit Stage 2 and any subsequent stage work plans within sixty (60) days of submitting draft report containing results from prior stage work plan.

13.1	Reporting: Biweekly Conference Calls	Host Conference Calls with Agencies Circulate meeting minutes of the Conference Calls	Every two (2) weeks Within ten (10) days after the Conference Call
13.2	Reporting: Quarterly Progress Reports	Submit Quarterly Progress Reports	Commencing with the quarter following the Effective Date and until the Agencies approve the RA Completion or RA Construction Completion
13.4	Reporting: Notice of Field Work	Provide notice of field work	At least two (2) weeks prior to the start of field work
13.5	Reporting: Laboratory Results	Submit a copy of all unvalidated and validated laboratory results.	Within five (5) days of the Trustee's or the Consultant's receipt of such results.
15.3	Site Management Plan: Priority Setting Meeting	Priority Setting Meeting	Initial SMP Priority Setting meeting shall occur thirty (30) days after the Effective Date, and all future Priority Setting meetings shall occur by September 30th of each year.
15.4	Site Management Plan: Draft SMP	Submit Draft SMP	Initial Draft SMP thirty (30) days after the Priority Setting meeting, and all future Draft SMPs no later than thirty (30) days after the Priority Setting meeting in that year
15.5	Site Management Plan: Final SMP	Submit Final SMP	Initial Final SMP thirty (30) days after receipt of any comments by the Agencies on the Initial Draft SMP. All future Final SMPs shall be developed by the later of either December 31 or thirty (30) days after receipt of any comments by the Agencies on the Draft SMP

15.6	Site Management Plan: Notice of SMP Schedule Changes	Notify the Agencies of any changes that will delay the SMP schedule.	As soon as possible and at least seven (7) days prior to the deadline in the SMP schedule.
------	--	--	--