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03/10/2006 05:00 PM $26.00
Book - 9265 Pg - 4877-4962
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: ZJM, DEPUTY - WI 86 P.

WHEN RECORDED MAIL TO:
Kevin R. Murray
Mabey Murray LC
136 South Main, Suite 1000
Salt Lake City, UT 84101

Parcel I.D. Nos. 21234760030000
21262000150000
21264010030000

AGREEMENT, GRANT OF ACCESS TO UDEQ, AND COVENANT NOT TO SUE

See Exhibit 3 for description of property.

LTC # 37980

AGREEMENT, GRANT OF ACCESS TO UDEQ, AND COVENANT NOT TO SUE

I. INTRODUCTION

This Agreement, Grant of Access and Covenant Not to Sue ("Agreement") is made and entered into by and between the State of Utah, Department of Environmental Quality ("UDEQ") and Littleson, Inc. ("Littleson" or "Settling Respondent"; collectively, the "Parties").

This Agreement is entered into pursuant to the Utah Hazardous Substances Mitigation Act ("HSMA"), as amended, §§ 19-6-301, et seq, Utah Code Annotated 1953, as amended, and the authority of the Executive Director of UDEQ to compromise and settle claims under HSMA; the Utah Environmental Institutional Control Act, §§ 19-10-101, et seq, Utah Code Annotated 1953, as amended; and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C.A. §§ 9601, et seq.

The Midvale Slag Superfund Site (the "Site") is located in Midvale, Utah, encompassing approximately 446 acres bounded approximately by 7800 South Street on the south, the Jordan River on the west, 6400 South Street on the north, 700 West Street on the northeast and east, and Holden Street on the southeast. The Site is comprised of two Operational Units (OU1 and OU2), upon which Littleson shall perform a remedial action pursuant to the terms of that certain Consent Decree Littleson has entered into with the United States Environmental Protection Agency ("EPA"), Attachment 1 hereto. A fence in line with 7200 South Street and just north of the smelter slag deposits defines the boundary between OU1 and OU2. The Site also includes portions of the bed and banks of the Jordan River contiguous to OU1 and OU2.

OU2 encompasses the area most directly impacted by the historical smelting operations on the site, the history of which is set forth in the Record of Decision for OU2 (the "ROD"), which was jointly issued by the EPA and UDEQ on or about October 31, 2002. The ROD describes the selected remedy for OU2 in detail and sets forth the rationale for the selected remedy. These descriptions and rationales are incorporated herein by reference.

II. DEFINITIONS

1. Terms used in this Agreement shall have the meaning assigned to them in the following sources, including any amendments to those sources, in the order given: (a) definitions contained in this Agreement; (b) HSMA; (c) HSMA rules; (d) CERCLA; and (e) CERCLA regulations.

2. "Bona Fide Prospective Purchaser" shall mean any person, corporation, or entity that shall acquire any legal interest in any portion of the Site after the effective date of this Agreement, provided that: (1) such person, corporation or entity is not

directly responsible for any Existing Contamination, and (2) the requirements of Paragraph 31 herein have been met.

3. "City" shall mean the City of Midvale, Salt Lake County, Utah.

4. "Consent Decree" shall mean the RD/RA Consent Decree between EPA and Littleson, dated Nov. 16, 2004.

5. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

6. "Existing Contamination" shall mean any hazardous substances, hazardous materials, pollutants, or contaminants present or existing on or under the Site, including but not limited to any groundwater contamination, as of the effective date of this Agreement.

7. "Natural Resource Damages" shall mean any injury to, destruction of, or loss of natural resources (including any costs of assessing such injury, destruction, or loss) that in any way arise from or relate to Existing Contamination.

8. "Parties" shall mean UDEQ and the Settling Respondent.

9. "Property" shall mean all or any portion of the property within the Site boundaries owned by Settling Respondent on the effective date of this Agreement.

10. "Response" shall have the meaning assigned in CERCLA and, to the extent that meaning does not include the following activities, shall also include:

a. Post-remedial activities necessary to assure that the remedy has been implemented appropriately and that property owners are complying with institutional controls; and

b. Activities associated with the periodic reviews required by CERCLA Section 121(c) (42 U.S.C. § 9621(c)).

11. "Settling Respondent" shall mean Littleson, Inc., its successors and assigns.

12. "Site" shall mean the Midvale Slag Superfund Site, as is depicted generally on the map enclosed as Attachment 2 to this Agreement.

13. "UDEQ" shall mean the State of Utah, Department of Environmental Quality.

III. STATEMENT OF FACTS

14. Beginning in the early 1980s, the Site has been under investigation by EPA, UDEQ, and others. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 11, 1991, 55 Fed. Reg. 5598.

15. In April and May of 2002, EPA, pursuant to 40 C.F.R. § 300.430, issued three Final Focused Feasibility Study reports for the Site, each discussing one of the three contaminated media found at the Site (Groundwater, Slag, and Mixed-Smelter Wastes).

16. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed by EPA on October 29, 2002, to which UDEQ gave its concurrence on October 31, 2002.

IV. CONSIDERATION

17. In consideration of and in exchange for UDEQ's Covenant Not to Sue in Article VIII herein, Settling Respondent: 1) shall comply with the terms of the Consent Decree; 2) shall grant UDEQ access to the Site as hereafter provided; 3) shall comply with the institutional controls for the Site as set forth in the Consent Decree; and 4) shall exercise due care as hereafter provided.

V. ACCESS/NOTICE TO SUCCESSORS IN TITLE

18. Settling Respondent hereby agrees to provide to UDEQ, its authorized officers, employees, representatives, and all other persons performing Response actions under UDEQ's oversight, an irrevocable right of access at all reasonable times, and any time in the event of an emergency, to enter the Property and to enter any other property to which access is required for the implementation of Response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing Response actions at the Site under applicable law. Response actions may include: conducting field inspections and investigations, taking samples, including split samples, of air, soil, surface water, ground water, and materials disposed of on the Site; drilling of holes for surface and subsurface investigations; installation of monitoring wells; taking Response actions as specified in the ROD; and other such actions as may be necessary to protect human health and the environment. To the extent it is initiating or leading oversight of a Response action, UDEQ agrees to provide reasonable notice, considering the circumstances, to Settling Respondent of the timing of Response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, UDEQ retains all of its access authorities and rights, including enforcement authorities related thereto, under applicable law.

19. Within thirty (30) days after the effective date of this Agreement, Settling Respondent shall record with the Salt Lake County Recorder's Office a copy of this Agreement. Thereafter, each deed, title, or other instrument conveying an interest in all or any portion of the Property shall contain a notice stating that the Property is subject to this Agreement. A copy of these documents shall be sent to the persons listed in Article XV (Notices and Submissions).

20. Settling Respondent shall ensure that, to the best of its ability, any lessees, sublessees, and successors in title, including any Bona Fide Prospective Purchasers of the Property, shall provide the same access and cooperation.

21. Settling Respondent agrees to abide by all access requirements and institutional controls implemented by virtue of Article IX (Access and Institutional Controls) of the Consent Decree. All of the terms and conditions of the Utah *Environmental Institutional Control Act (Utah Code §§ 19-10-101, et seq.) shall apply to* this Agreement and Settling Respondent agrees to abide by the same. By entering into this Agreement, the requirement of Utah Code Sec. 19-10-103 of approval by the Executive Director of UDEQ shall be deemed satisfied and the Executive Secretary hereby agrees to provide the signature required by Utah Code Sec. 19-10-104(7) upon request by the Settling Respondent.

VI. DUE CARE/COOPERATION

22. Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable federal, state and local laws and regulations. In the event Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, hazardous materials, pollutants, or contaminants at or from the Site that constitute an imminent and substantial endangerment to health or the environment, Settling Respondent shall immediately take appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under applicable law, immediately notify UDEQ of such release or threatened release.

VII. CERTIFICATION

23. By entering into this Agreement, Settling Respondent certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to UDEQ all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, hazardous materials, pollutants, or contaminants at or from the Site. If information provided by a Settling Respondent is not materially accurate and complete, UDEQ may terminate this Agreement as to Settling Respondent, and the Covenant Not To Sue and other benefits UDEQ granted to the Settling Respondent under this Agreement shall be null and void.

VIII. UDEQ'S COVENANT NOT TO SUE

24. Subject to the Reservation of Rights in Article IX of this Agreement, upon Settling Resondent's execution and recordation of the access easements and institutional controls as required under Article V (Access/Notice to Successors in Title), UDEQ covenants not to sue or to take any other civil or administrative action, or to otherwise assert any claim against Settling Respondent or its present and former

officers and directors (and including any Bona Fide Prospective Purchaser) arising from or relating to the Existing Contamination, including without limitation any claim for injunctive relief, reimbursement of Response costs, or for Natural Resource Damages.

IX. RESERVATION OF RIGHTS

25. The covenant not to sue set forth in Article VIII above does not pertain to any matters other than those expressly specified therein. UDEQ reserves, and this Agreement is without prejudice to, all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Respondent or any Bona Fide Prospective Purchaser to meet a requirement of this Agreement, including but not limited to Article IV (Consideration), Article V (Access/Notice to Successors in Title), Article VI (Due Care/Cooperation), and Article XIV (Payment of Costs);

b. any liability resulting from future releases of hazardous substances, hazardous materials, pollutants, or contaminants at or from the Site caused or contributed to by Settling Respondent or any Bona Fide Prospective Purchaser;

c. any liability resulting from exacerbation by Settling Respondent or any Bona Fide Prospective Purchaser of Existing Contamination;

d. criminal liability; and

e. liability for future violations of federal, state or local laws or regulations.

26. With respect to any claim or cause of action asserted by UDEQ, Settling Respondent or the respective Bona Fide Prospective Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to the Existing Contamination.

27. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which UDEQ may have against any person, firm, corporation or other entity (other than Bona Fide Prospective Purchasers) not a party to this Agreement.

28. Nothing in this Agreement is intended to limit the right of UDEQ to undertake future response actions or restoration actions at the Site or to seek to compel parties other than Settling Respondent or Bona Fide Prospective Purchasers to perform or pay for Response actions or restoration actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of Response actions or restoration actions which may be taken or be required by UDEQ in exercising its authority under state or federal law. Furthermore, nothing in this Agreement is intended to limit the right of UDEQ to seek to compel parties other than Settling Respondent or Bona Fide Prospective Purchasers to pay damages for injuries to natural resources at the Site

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associated with the Existing Contamination, nor does this Agreement restrict or limit the scope of those damages.

X. SETTLING RESPONDENT'S COVENANT NOT TO SUE

29. In further consideration of UDEQ's Covenant Not To Sue in Article VIII of this Agreement, Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against UDEQ, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to any claims arising out of Response activities at the Site, except to the extent directly attributable to UDEQ's negligent acts or omissions.

XI. PARTIES BOUND/TRANSFER OF COVENANT

30. This Agreement shall apply to and be binding upon UDEQ and shall apply to, be binding on, and inure to the benefit of Settling Respondent, its successors, assigns, agents, contractors and Bona Fide Prospective Purchasers (pursuant to the following paragraph). Each signature of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

31. The rights, benefits and obligations conferred upon Bona Fide Prospective Purchasers under this Agreement shall become effective if the following requirements of this paragraph are met:

a. Prior to any conveyance of Property by Settling Respondent, Settling Respondent shall give UDEQ written notice of conveyance of any interest in all or any portion of the Property described herein not less than thirty (30) days prior to the conveyance which notice shall include copies of the documents prescribed by subparagraph b., below;

b. No conveyance of any title in all or any portion of the Property shall be consummated by the Settling Respondent or any future owner of all or any portion of the Property without, before the transfer: 1) providing copies of this Agreement to the Bona Fide Prospective Purchaser; and 2) requiring the Bona Fide Prospective Purchaser to assume in writing the obligations and responsibilities of Settling Respondent set forth in this Agreement; and

c. The Bona Fide Prospective Purchaser shall comply with the requirements and provisions relating to Bona Fide Prospective Purchasers set forth in the Consent Decree.

32. Subject to the reservation of rights set forth in Article IX above, if the conveying Settling Respondent or Property owner complies with the requirements of Paragraph 31, the conveying Settling Respondent or subsequent Property owner shall not be responsible for any subsequent action or inaction at the conveyed portion of the Property. If the conveying Settling Respondent or subsequent Property owner does not

comply with the requirements of Paragraph 31, the conveying Settling Respondent or Property owner shall continue to be bound by all the terms and conditions of this Agreement for the conveyed Property.

33. Notwithstanding any other provision of this Agreement, no transfer of the benefits conferred under this Agreement may be made to any person who would be subject to liability for Existing Contamination at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for any reason other than that person's status as owner or operator of the Site after the date of this Agreement, nor shall UDEQ's Covenant Not To Sue be effective with respect to any successors-in-title who do not agree in writing to comply with this Agreement prior to the transfer.

XII. DISCLAIMER

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

XIII. DOCUMENT RETENTION

35. Settling Respondent agrees to retain and make available to UDEQ all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least five (5) years following the effective date of this Agreement, unless otherwise agreed to in writing by the Parties. At the end of five (5) years, Settling Respondent shall, prior to destruction or other disposal of such documents, notify UDEQ of the location thereof and shall provide UDEQ with an opportunity to take possession of or copy any such documents at the expense of UDEQ.

XIV. PAYMENT OF COSTS

36. If a Settling Respondent fails to comply with the terms of this Agreement, including but not limited to the provisions of Article V (Access/Notice to Successors in Title) or Article VI (Due Care/Cooperation), it shall be liable for all litigation and other enforcement costs, incurred by UDEQ to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

37. Settling Respondent shall send copies of notices and other documents required by this Agreement to UDEQ as specified below.

BK 9265 PG 4884

Superfund Project Manager, Midvale Slag Site
Division of Environmental Response & Remediation
Department of Environmental Quality
168 North 1950 West
Salt Lake City, Utah 84114-4840

UDEQ will send all correspondence to Settling Respondent at the address listed below.

Kevin R. Murray
LeBoeuf Lamb Greene and MacRae, LLP
1000 Kearns Building
136 South Main St.
Salt Lake City, UT 84101-1685

XVI. EFFECTIVE DATE

38. The effective date of this Agreement shall be the same as the effective date of the Consent Decree.

XVII. TERMINATION

39. If any Settling Respondent or Bona Fide Prospective Purchaser believes that any or all of the obligations under Article V (Access/Notice to Successors in Title) are no longer necessary to ensure compliance with the requirements of this Agreement, that party may request in writing that UDEQ agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from UDEQ to terminate such provision(s). Any denial by UDEQ may be challenged only in accordance with the provisions of the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-1 et seq., Utah Code Annotated 1953, as amended. Neither Settling Respondent nor any Bona Fide Prospective Purchaser shall otherwise institute legal proceedings, by way of quiet title or otherwise, to void or amend this Agreement unless UDEQ has given advance written approval for such.

XVIII. CONTRIBUTION PROTECTION

40. With regard to claims for contribution against Settling Respondent or any Bona Fide Prospective Purchaser, the Parties hereto agree that Settling Respondent, its officers and directors, and any Bona Fide Prospective Purchaser, shall be entitled to protection from contribution actions or claims as provided in CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and, if and to the extent applicable, the provisions of the HSMA, for matters addressed in this Agreement. The matters addressed in this Agreement include all response actions taken or to be taken and any response costs incurred or to be incurred by UDEQ, the United States, or any other person at the Site arising from or relating to the Existing Contamination.

41. Settling Respondent agrees with respect to any suit or claim for contribution brought by it for matters addressed in this Agreement that it will notify UDEQ in writing no later than sixty (60) days prior to the initiation of such suit or claim.

42. Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters addressed in this Agreement that they will notify UDEQ in writing within ten (10) days of service of the complaint on it, except that failure to provide such notice shall in no way limit Settling Respondent's rights under Paragraph 39 of this Agreement.

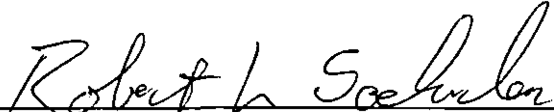
IT IS SO AGREED:

STATE OF UTAH, DEPARTMENT OF ENVIRONMENTAL QUALITY
BY:

Date: 9/24/04

Dianne R. Nielson, Ph.D.
Executive Director

LITTLESON, INC
BY:



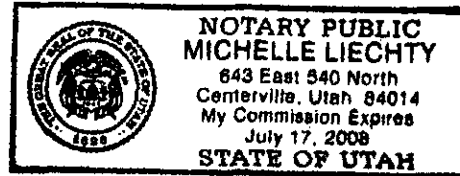
Date: 9/14/04

Robert Soehnlen
President

STATE OF UTAH
COUNTY OF SALT LAKE

On the 10th day of March, 2006, personally appeared before me Robert Soehnlen, the President of Littleson, Inc., a Delaware corporation, who duly acknowledged to me that he executed the foregoing instrument on September 14, 2004, on behalf of said corporation, pursuant to authority granted by a resolution of its Board of Directors.

Commission Expires: 07-17-2008
Residing: Centerville, Utah


NOTARY PUBLIC
MICHELLE LIECHTY
643 East 540 North
Centerville, Utah 84014
My Commission Expires
July 17, 2008
STATE OF UTAH

ATTACHMENT 1

FILED
CLERK, U.S. DISTRICT COURT
2004 NOV 16 P 2:50
DISTRICT OF UTAH
BY: DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Littleson, Inc., Plaintiff, vs. Metals Reserve Co., the United States of America, and Union Pacific Railroad Co., Defendants.	Order Entering of Consent Decree Case No. 2:99-CV-757 TS (Consolidated Cases)
The United States of America, Plaintiff, vs. Littleson, Inc., Midvale City Corp., Union Pacific Railroad Co., Defendants.	

Defendant United States of America ("United States") made a motion that the Court enter a consent decree and approve its settlement of the pending matter. The Court notes that this consent decree is supported by all parties to this matter. Additionally, as required by federal law,

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the United States has published the proposed settlement in the Federal Register and has received no public comments or objections.

While the approval of settlements is a matter of judicial discretion, "[i]n exercising its discretion, the trial court must approve a settlement if it is fair, reasonable and adequate." Jones v. Nuclear Pharmacy, Inc., 741 F.2d 322, 324 (10th Cir. 1984). Particularly when the United States has entered into a consent decree, a court should treat a proposed settlement with significant deference. Sam Fox Publ'g Co. v. United States, 366 U.S. 683, 689 (1961).

The Court agrees with the United States' assessment of the reasonableness and fairness of the proposed settlement. Furthermore, the proposed settlement appears to be the result of arm's length negotiation, which came after extensive discovery clarified the facts of this case. No party involved in this dispute, and indeed no third party through the public comment process, has presented this Court any evidence that casts doubt on the adequacy of the proposed settlement or has opposed the settlement in any way.

Moreover, the Court finds the United States' assessment of the adequacy of the proposed settlement to be persuasive. The proposed settlement requires extensive action to remediate the contaminated site. This cleanup has been approved by the EPA, and the State of Utah has concurred with the proposed remedial action.

The Court also finds that the proposed consent decree will serve the public interest. As the United States notes, the resulting cleanup will allow for future development of the site and remove environmental hazards currently present on the site.

In summary, the Court finds that the proposed consent decree is consistent with the principles set forth in CERCLA, procedurally and substantively fair, and in the public interest. Accordingly, this Court enters the proposed consent decree and approves the proposed settlement.

DATED this 16th day of November, 2004.

BY THE COURT:

TED STEWART
United States District Court Judge

jmr

United States District Court
for the
District of Utah
November 16, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cv-00757

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE UNITED STATES OF AMERICA, Plaintiff, v. LITTLESON, INC., a Delaware corporation; MIDVALE CITY CORPORATION, a municipal corporation and political subdivision of the State of Utah; and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, Defendants.	**RD/RA CONSENT DECREE** Civil No. 2:04CV__________

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I. BACKGROUND

A. Defendant Littleson, Inc. ("Littleson") filed a complaint in the matter of Littleson, Inc. v. Metals Reserve Co. *et al.*, Civil No. 2:99CV0757ST (the "Littleson Litigation") against the United States and Metals Reserve Company, a now-defunct federal corporation (collectively the "Settling Federal Agencies"), as well as the Union Pacific Railroad, alleging that the Settling Federal Agencies and Union Pacific Railroad are liable for contribution pursuant to Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9613(f)(1), and further seeking a declaratory judgment that Littleson is entitled to a credit against its liability to the United States from the amounts the United States has recovered in settlements with other parties.

B. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in the above-referenced action against Littleson, Inc., Union Pacific Railroad Company, and Midvale City alleging that each is a liable party pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The United States in its pleading seeks, *inter alia*, compensation for its past and future response costs associated with the Site. The United States intends to file a motion to consolidate this action with the Littleson Litigation.

C. In accordance with the National Contingency Plan, EPA notified the Utah Department of Environmental Quality (the "State") of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service ("USFWS") on September 22, 2000 and the State on September 22, 2000 (collectively the "Trustees") of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the Trustees to participate in the negotiation of this Consent Decree.

E. The Settling Defendants that have entered into this Consent Decree deny and do not admit any liability arising out of the transactions or occurrences alleged in the pleadings, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Further, the

Settling Federal Agencies deny and do not admit any liability arising out of the transactions or occurrences alleged in any claim asserted by Littleson.

F. Beginning in the early 1980s, the Site has been under investigation by EPA, the State, and others. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, by publication in the Federal Register on February 11, 1991, 55 Fed. Reg. 5598.

G. On April 28, 1995, the Regional Administrator, EPA Region 8, issued a Record of Decision for the OU1 portion of the Site. Response actions as required by the OU1 ROD were initiated in 1996 and construction completion was achieved in 1998.

H. In April and May of 2002, EPA, pursuant to 40 C.F.R. § 300.430, issued three Final Focused Feasibility Study reports for the Site, each discussing one of the three contaminated media found at the Site (Groundwater, Slag, and Mixed-Smelter Wastes).

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS reports and of the Proposed Plan for remedial action on May 20, 2002, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the Proposed Plan for remedial action and conducted a public meeting on June 13, 2002 in Midvale, Utah. A copy of the transcript of the public meeting is available as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented for the OU2 portion of the Site is embodied in a final Record of Decision for OU2 ("OU2 ROD"), executed by EPA on October 29, 2002, to which the State gave its concurrence on October 31, 2002. The OU2 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments.

K. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to EPA, EPA believes that the Littleson Work (as defined herein) will be properly and promptly conducted by Littleson if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Based on information presently available to EPA, EPA believes that with necessary funding provided by EPA, Midvale City will properly and promptly

implement and enforce the Institutional Controls in accordance with the requirements of this Consent Decree and the Cooperative Agreement.

N. Solely for the purposes of Section 113(j) of CERCLA 42 U.S.C. § 9613(j), the remedial action selected by the OU2 ROD shall constitute a response action taken or ordered by the President.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged, costly, uncertain, and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants waive all objections and defenses they may have as to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to, is binding upon, and inures to the benefit of, the United States and the Settling Defendants. Any change in ownership or corporate status of the Settling Defendants, including, but not limited to, any transfer of assets, including real or personal property, shall not alter their respective responsibilities under this Consent Decree, except as specifically provided herein.

3. Littleson shall provide a copy of this Consent Decree to the Supervising Contractor and make available to other contractors and subcontractors hired to perform the Littleson Work required by this Consent Decree and to each person representing Littleson with respect to the Site or the Littleson Work and shall condition all contracts entered into hereunder upon performance of the Littleson Work in conformity with the terms of this Consent Decree. Littleson or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Littleson Work required by this Consent Decree. Littleson shall nonetheless be responsible for ensuring, to the extent allowed by law, that its contractors and subcontractors perform the Littleson Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Littleson within the meaning of Section

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107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Littleson shall also provide a copy of this Consent Decree to any Littleson Work Successor, as defined herein.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Article" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Category I," "Category II," "Category III," and "Category IV" materials shall have the same meanings as set forth in the OU2 ROD.

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

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Article XXXI. APPENDICES). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Construction Work" shall mean Work Milestones 3.3 through 3.10 (as defined in the RD Work Plan).

"Cooperative Agreement" shall mean a Support Agency Cooperative Agreement or similar funding arrangement between Midvale City and EPA whereby and pursuant to which EPA provides Midvale City the funding necessary to implement and enforce the Institutional Controls.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday, or State or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or State or Federal holiday, the period shall run until the close of business of the next Working Day.

"Disbursement Request" shall mean the application Littleson will provide to EPA as a condition for receiving reimbursement as provided in Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS below. Each Disbursement Request shall include: a cover letter, an invoice, a copy of the Work Milestone Payment Schedule, and a copy of the approved Inspection Checklist(s) applicable to the Work Milestone(s). The cover letter will address verification issues associated with Littleson's satisfactory completion of the applicable Work Milestone(s) and a financial certification. The invoice shall specify the total amount due to Littleson for the completion of the Work Milestone(s),

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provide a description of services rendered for the Work Milestone(s), and list the documents reviewed in support of the Disbursement Request.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 117.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs (including oversight costs) concerning or in any way relating to the Site incurred by the United States after the Effective Date.

"Groundwater O&M" shall mean the implementation of the operation and maintenance plan for groundwater wells (and related activities) to be developed by EPA as part of the remedial design for the groundwater remedial alternative adopted in the OU2 ROD.

"Inspection Checklists" shall mean the Work Milestone Completion Inspection Checklists as defined in the RD Work Plan. The Inspection Checklists are intended to provide a detailed, task-specific inspection format to formally document the completion of each Work Milestone.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Interest Earned" shall mean interest earned on amounts in the Midvale Slag Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"Institutional Controls" shall mean those regulations, requirements, duties, and controls developed, implemented, and enforced in accordance with the OU1 and OU2 Institutional Control Process Plans attached hereto as Appendix J and Appendix K, respectively.

"Littleson" shall mean Littleson, Inc., a Delaware corporation, its successors, and assigns.

"Littleson Work" means the Milestone Work and the obligations required by Article XXVII. RETENTION OF RECORDS or Article IX. ACCESS, O&M, AND INSTITUTIONAL CONTROLS of this Consent Decree.

"Littleson Work Successor" shall mean any person or entity that EPA approves pursuant to Paragraph 9(c) to assume any or all of Littleson's obligations to implement all or any part of the Milestone Work under this Consent Decree.

"Midvale City" shall mean the Midvale City Corporation, a municipal corporation and political subdivision of the state of Utah.

"Midvale Slag Special Account" shall mean the "EPA Hazardous Substance Superfund, Special Account Number 0871;" associated with EPA Site/Spill Identification Number 0871, and DOJ Case Number 90-11-3-1194/1.

"Midvale Slag Disbursement Special Account" shall mean the special account established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and this Consent Decree.

"Milestone Work" means all activities necessary to complete the Work Milestones.

"MRRC" means Mining Remedial Recovery Company, Inc., the owner of approximately 11 acres located in the southeast area of OU2.

"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.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Milestone Work, as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the RD Work Plan. For purposes of this Consent Decree, O&M shall not include activities required to maintain the effectiveness of the Milestone Work on portions of the Site not owned by Littleson (including but not limited to properties owned or operated by MRRC, Utah Transit Authority and UPRR) as of the Effective Date.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

"Parties" shall mean the United States, Littleson, UPRR, and Midvale City.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs (including oversight costs) that the United States paid at or in connection with the Site prior to the Effective Date, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq*. (also known as the Resource Conservation and Recovery Act).

"OU1 Record of Decision" or "OU1 ROD" shall mean the EPA Record of Decision relating to the Midvale Slag Site signed on April 28, 1995 by the Regional Administrator, EPA Region 8, and all attachments thereto, as well as any Explanations of Significant Difference or modifications to the OU1 ROD as of the Effective Date. The OU1 ROD is attached as Appendix A-1.

"OU2 Record of Decision" or "OU2 ROD" shall mean the EPA Record of Decision relating to the Midvale Slag Site signed on October 29, 2002 by the Regional Administrator, EPA Region 8, and all attachments thereto, as well as any Explanations of Significant Difference or modifications to the OU2 ROD as of the Effective Date. The OU2 ROD is attached as Appendix A-2.

"Remedial Action" shall mean those activities to be undertaken by Littleson, EPA, UDEQ, Midvale City, or any other entity to implement the OU1 ROD or the OU2 ROD.

"Remedial Action Work Plan" or "RA Work Plan" shall mean the document as defined in Paragraph 11 hereof.

"Remedial Design" shall mean those activities to be undertaken by Littleson to develop the final plans and specifications relating to the Milestone Work.

"Remedial Design Work Plan" or "RD Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and attached hereto as Appendix B.

"Settling Defendants" shall mean Littleson, UPRR, and Midvale City.

"Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix F, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

"Site" shall mean the Midvale Slag Superfund Site, located approximately 12 miles south of Salt Lake City, Utah, in Midvale City, Murray, and West Jordan, Utah. The Site is bounded approximately by 7800 South Street on the South, the Jordan River on the west, 6400 South Street on the north, 700 West Street on the northeast and east, and Holden Street on the southeast. The Site has an area of approximately 446 acres and is divided into two operable units, Midvale Slag Operable Unit No. 1 (OU1) and Midvale Slag Operable Unit 2 (OU2). OU2 comprises the southern approximately 180 acres of the Site and is the subject of this Consent Decree. A fence in line with 7200 South Street and just north of the smelter slag deposits defines the boundary between OU1 and OU2. Included within OU2 are the Silver Refinery Area, located in the southeast portion of OU2, and the Butterfield Lumber property, located west of Holden Street and south of the UPRR Property. Remedial action was previously completed on the Butterfield Lumber portion of OU2 and, therefore, no additional response actions will be undertaken as to that

portion of the Site under this Consent Decree. The general physical features of the Site are presented on Figure 1, attached hereto as Appendix C.

"State" and "UDEQ" shall mean the Utah Department of Environmental Quality and any successor or subordinate departments or agencies of the State.

"Supervising Contractor" shall mean the principal contractor retained by Littleson to supervise and direct the implementation of the Milestone Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, and any natural resource trustee.

"UPRR" shall mean the Union Pacific Railroad Company, a Delaware corporation, and its officers, directors, predecessors, successors, and assigns.

"UPRR O&M" shall mean the performance of necessary maintenance with respect to the at grade public railroad crossing for a new public road that may be installed through the UPRR Property after completion of the Littleson Work as required by Utah law, and the coordination of access rights and track protection for activities related to the performance of the Remedial Action within the UPRR Property.

"UPRR Property" shall mean that parcel of real property more particularly described in Appendix I hereto.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work Milestones" refer to specific remedial design and remedial action work tasks as defined in the RD Work Plan.

"Work Milestone Areas" means the geographic areas defined in the RD Work Plan and depicted in Figure 3 to the RD Work Plan.

"Work Milestone Payment Schedule" or "WMPS" refers to Table 1 attached to the RD Work Plan. The WMPS identifies the lump sum amount EPA agrees to pay Littleson from the Midvale Slag Disbursement Special Account upon satisfactory completion of each Work Milestone, as provided in Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS of this Consent Decree.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to:

   a) resolve the claims of the United States which have been alleged in the Complaint against Littleson, Midvale City, and UPRR with regard to the Site, as provided in this Consent Decree;

   b) protect public health or welfare or the environment at the Site by the design and implementation of the Littleson Work. The Littleson Work is to be financed by Littleson and funds from the Midvale Slag Disbursement Special Account in accordance with Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS;

   c) resolve the claims of Settling Defendants which have or could have been asserted against the United States with regard to the Site as provided in this Consent Decree;

   d) provide for the implementation and enforcement of Institutional Controls by Midvale City (in accordance with and subject to this Consent Decree and the Cooperative Agreement); and

   e) provide for access from, and the performance of the UPRR O&M work by, UPRR.

6. Commitment by Littleson and the Settling Federal Agencies. Littleson shall finance (subject to Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS) and perform the Littleson Work in accordance with this Consent Decree, the OU1 and OU2 RODs, the RD Work Plan and other plans, standards, specifications, and schedules set forth herein or developed by Littleson and approved by EPA pursuant to this Consent Decree. The Settling Federal Agencies shall reimburse the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs as provided in this Consent Decree. The total amount to be paid by Settling Federal Agencies shall be deposited in the Midvale Slag Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or, after completion of remediation, to be transferred by EPA to the Hazardous Substances Superfund.

7. Compliance With Applicable Law. All activities undertaken by Littleson pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations. Littleson must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU1 and OU2 RODs and the RD Work Plan. The activities conducted pursuant to this Consent Decree, if approved by EPA pursuant to Article XI.

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EPA APPROVAL OF DELIVERABLES, shall be deemed to be consistent with the NCP and applicable federal, state, and local laws and regulations.

8. Permits.

a) As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Littleson Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Littleson Work). Where any portion of the Littleson Work that is not on-site requires a federal, state, or local permit or approval, Littleson shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b) Littleson may seek relief for any delay in the performance of the Littleson Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Littleson Work pursuant to Article XX. FORCE MAJEURE of this Consent Decree.

c) This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a) Within thirty (30) days of the Effective Date, Littleson will record a Notice in substantially the same form as the document attached hereto as Appendix D. The Notice will be filed with the Recorder's Office, Salt Lake County, State of Utah. Littleson shall provide EPA with a certified copy of the recorded Notice within thirty (30) days of recording such Notice.

b) Within thirty (30) days of the Effective Date, UPRR will record a Notice in substantially the same form as the document attached hereto as Appendix E. The Notice will be filed with the Recorder's Office, Salt Lake County, State of Utah. UPRR shall provide EPA with a certified copy of the recorded Notice within thirty (30) days of recording such Notice.

c) In the event that any person or entity desires to assume all or any portion of the Littleson Work ("Littleson Work Successor"), Littleson shall have the right to request that EPA accept such Littleson Work Successor's agreement to be bound by and to perform any such obligations under this Consent Decree. The Littleson Work Successor shall comply with the provisions of this Consent Decree, including Paragraph 11(c), below. If EPA approves of the Littleson Work Successor's assumption of all or any portion of the Littleson Work, then upon the Littleson Work Successor's execution and delivery of an agreement providing for the assumption of such obligations, in a form acceptable to EPA and Littleson, the

covenant not to sue as provided in Article XXIII. COVENANTS BY THE UNITED STATES and contribution protection as provided in Article XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION shall immediately become effective as to Littleson as to the specific aspect of the Littleson Work assumed by the Littleson Work Successor. EPA will not unreasonably withhold its consent to the assumption by any Littleson Work Successor of all or any part of the Littleson Work; provided that the Littleson Work Successor is able to demonstrate to EPA's satisfaction that it is capable of performing the portion of the Littleson Work to be assumed. Upon satisfactory completion of all aspects of the Littleson Work assumed by the Littleson Work Successor, the covenant not to sue as provided in Article XXIII. COVENANTS BY THE UNITED STATES, and the contribution protection, as provided in Article XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION shall become effective as to the Littleson Work Successor and the Littleson Work assumed and completed. Nothing in this Paragraph is intended to limit the rights, duties, and remedies applicable to and inuring to the benefit of any successor or assign of Littleson who does not fall within the definition of a "Littleson Work Successor."

VI. PERFORMANCE OF THE LITTLESON WORK

10. Selection of Supervising Contractor.

a) All aspects of the Milestone Work pursuant to Articles VI. PERFORMANCE OF THE LITTLESON WORK, VII. REMEDY REVIEW, VIII. QUALITY ASSURANCE, SAMPLING. AND DATA ANALYSIS, and XV. EMERGENCY RESPONSE of this Consent Decree shall be under the direction and supervision of the Supervising Contractor. EPA hereby approves of **ENTACT SERVICES, LLC** as the Supervising Contractor.

b) If at any time after the Effective Date, Littleson proposes to change a Supervising Contractor. Littleson shall give notice of the proposal to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs. directs. or supervises any Milestone Work under this Consent Decree. Approval of a new Supervising Contractor shall not be unreasonably withheld. If EPA and Littleson are not able to agree as to a proposed Supervising Contractor and the failure to agree prevents Littleson from meeting one or more deadlines in this Consent Decree or in a plan approved by EPA pursuant to this Consent Decree, Littleson may seek relief under the provisions of Article XX. FORCE MAJEURE of this Consent Decree.

11. Work Plans and Deliverables.

a) Remedial Design Work Plan. The RD Work Plan, including all of its separate attachments, is hereby approved and accepted by EPA. Any action or

requirement in the RD Work Plan (including its attachments) may be modified by mutual agreement between EPA and Littleson without modifying this Consent Decree. The RD Work Plan is incorporated into and is enforceable under this Consent Decree.

b) Remedial Action Work Plan. Remedial design and remedial action deliverables associated with the Work Milestones, including a submission and review schedule, are described in Section 5 of the RD Work Plan. After approval of the Remedial Design and Remedial Action Work Plan by EPA, Littleson shall implement the activities required under the Remedial Action Work Plan. Littleson shall submit to EPA all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Article XI. EPA APPROVAL OF DELIVERABLES. Unless otherwise directed by EPA, Littleson shall not commence physical activities at the Site prior to receipt of written Notice to Proceed from EPA.

c) Operation and Maintenance Plan. An Operation and Maintenance Plan for the final soil cover system and associated stormwater management features will be prepared as part of the RA Work Plan. O&M activities conducted pursuant to the O&M Plan during the first year after completion of Remedial Action is defined in the RD Work Plan as the "O&M Warranty Period" and will be performed as provided in the RD Work Plan. O&M activities conducted pursuant to the O&M Plan after completion of the O&M Warranty Period will be performed as provided below in Paragraph 21(c).

d) Prior to EPA approving a Littleson Work Successor to perform all or part of the remaining Milestone Work pursuant to Paragraph 9(c) of this Consent Decree, the Littleson Work Successor shall submit and obtain EPA's approval of a modified RD and RA Work Plan (and other deliverables, as applicable), pursuant to the procedure set forth in this Paragraph 11 and Article XI. EPA APPROVAL OF DELIVERABLES sufficient to define the Littleson Work Successor's obligations and responsibilities with regard to that portion of the Littleson Work it seeks to perform and for which it seeks to assume responsibility.

12. Modifications to the RD Work Plan, Remedial Design, or RA Work Plan.

a) No modification of the final RD Work Plan, or to the Remedial Design or the RA Work Plan (once approved by EPA as provided in this Consent Decree), may be required by EPA unless such modification is consistent with the scope of the remedy selected in the OU1 ROD or OU2 ROD and the Milestone Work as set forth in the RD Work Plan. Any such modification shall be in writing or by oral request with timely written confirmation.

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b) If Littleson objects to any modification to the RD Work Plan, Remedial Design, or RA Work Plan required by EPA under this paragraph, Littleson may seek dispute resolution pursuant to Article XXI. DISPUTE RESOLUTION. The RD Work Plan, Remedial Design, or RA Work Plan shall be modified in accordance with final resolution of the dispute.

c) If Littleson desires to deviate from the approved final RD Work Plan, the Remedial Design, the RA Work Plan, or any schedule or plan relating thereto, Littleson may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator, which shall not be unreasonably withheld. EPA's Project Coordinator shall provide written confirmation of any oral approval within five (5) days of granting such oral approval.

d) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further actions as otherwise provided in this Consent Decree.

13. Off-site Shipments.

a) This paragraph 13(a) shall apply to all Waste Material as defined in this Consent Decree and as further specified in the OU2 ROD. Littleson shall, prior to any off-Site shipment of Waste Material from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

i) Littleson shall include in the written notification the following information, where available: (A) the name and location of the facility to which the Waste Material is to be shipped; (B) the type and quantity of the Waste Material to be shipped; (C) the expected schedule for the shipment of the Waste Material; and (D) the method of transportation. Littleson shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii) The identity of the receiving facility and state will be determined by Littleson. Littleson shall provide the information required by Paragraph 13(a) as soon as practicable but not less than thirty (30) days before the Waste Material is shipped.

b) Before shipping any un-treated hazardous substances or pollutants or contaminants from the Site (other than Category IV materials which are exempt

from this requirement) to an off-site location, Littleson shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3) and 40 C.F.R. 300.440. With the exception of Category IV materials, Littleson shall only send hazardous substances or pollutants or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

c) EPA agrees that Category IV material may be beneficially reused, both on and off Site, as provided in the OU2 ROD.

VII. REMEDY REVIEW

14. Periodic Review. EPA shall conduct any studies and investigations in order to determine whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

15. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health or the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA or the NCP. EPA may not, however, require Littleson to undertake or perform any further response actions with respect to the Site, except as provided in Paragraph 12 or in Article XXIII. COVENANTS BY THE UNITED STATES. EPA may not require UPRR or Midvale City to undertake or perform any further response actions with respect to the Site, except as to those matters identified in Paragraph 93.

16. Opportunity To Comment. Littleson and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 96137(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9612(c), and to submit written comments for the record during the comment period.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

17. Littleson shall ensure that quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples are performed in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, December, 2002), and subsequent amendments to such guidelines upon notification by EPA to Littleson of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Littleson shall submit to EPA for approval a Quality Assurance Project Plan ("QAPP") that is consistent with the RD Work Plan, the NCP and applicable guidance documents. If relevant to the

proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Littleson shall allow EPA personnel and its authorized representatives access at reasonable times to all laboratories utilized by Littleson in implementing this Consent Decree. In addition, Littleson shall take reasonable measures to ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Littleson shall take reasonable steps to ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," dated September 2002, and the "Contract Lab Program Statement of Work for Organic Analysis," dated May 1999, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, Littleson may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Littleson shall take reasonable steps to ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA equivalent QA/QC program. Littleson shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Littleson shall take reasonable steps to ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

18. Upon request, Littleson shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Littleson shall notify EPA not less than ten (10) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Littleson to take split or duplicate samples of any samples it takes as part of EPA's oversight of Littleson's implementation of the Littleson Work.

19. Littleson shall submit to EPA copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Littleson with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

20. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including

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enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS, O&M, AND INSTITUTIONAL CONTROLS

21. With respect to any real property within the Site that is owned or controlled by Littleson, Littleson shall:

    a) commencing on the date of lodging of this Consent Decree, permit the United States, the State, Midvale City and their representatives, including EPA and its contractors, to have access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

        i) Monitoring the Remedial Action;

        ii) Verifying any data or information submitted to the United States;

        iii) Conducting investigations relating to contamination at or near the Site;

        iv) Obtaining samples;

        v) Assessing the need for, planning, or implementing additional response actions at or near the Site;

        vi) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

        vii) Implementing the Remedial Action pursuant to the conditions set forth in Paragraph 97 of this Consent Decree;

        viii) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Littleson or its agents, consistent with Article XXVI. ACCESS TO INFORMATION;

        ix) Assessing Littleson's compliance with this Consent Decree;

        x) Assessing compliance with the Institutional Control Process Plans for OU1 and OU2; and

        xi) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

    b) Commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other real property as it may possess within the Site, in any

manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree or interfere with or adversely affect railroad operations or maintenance of the UPRR Property.

c) Commencing on the expiration of the O&M Warranty Period (as defined in the RD Work Plan), perform O&M with respect to the soil cover system to be installed in OU2 until such time as redevelopment occurs on any given parcel of property, whereupon the maintenance of the final covers will be governed by the Institutional Control Process Plan for OU2.

d) Comply with and follow the Institutional Controls, to the extent they are applicable to Littleson or its activities.

22. Restrictive Covenants.

a) Within thirty (30) days of the Effective Date, Littleson shall execute and record in the Recorder's Office of Salt Lake County, State of Utah, an easement, running with the land, in substantially the same form as the document attached hereto as Appendix D that grants a right of access to the United States, the State, Midvale City, and their representatives for the purpose of enforcing, in accordance with their respective authorities, applicable Institutional Controls and conducting any lawful activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 21 above.

b) At the time of subdivision (as defined by the Midvale City Municipal Code) of all or any portion of the Site located within the boundaries of Midvale City, Littleson or its successor shall execute and record in the Recorder's Office of Salt Lake County, State of Utah, restrictive covenants, running with the land, that:

i) require future landowners to comply with applicable Institutional Controls developed under the Institutional Control Process Plans, including, without limitation, maintenance and repair of covers and barriers; compliance with landscaping, excavation, irrigation, stormwater management and erosion controls; compliance with imported fill requirements; and prohibitions against disturbance of existing groundwater wells or drilling new groundwater wells;

ii) create a Property Owners' Association for each Subdivision of the Site where certain residential uses will occur (as described in the Institutional Control Process Plans) with authority to enforce property owners' compliance with the Institutional Control Process Plans and applicable Institutional Controls and to oversee and maintain certain areas as defined in the Institutional Control Process Plans;

iii) grant a right to Midvale City to enforce Institutional Controls; and,

iv) grant to the United States, in accordance with its authority under this Consent Decree, and to the State, in accordance with its authority to enforce Institutional Controls in the form of restrictive covenants under the Utah Environmental Institutional Control Act, Utah Code § 19-10-101 *et seq.*, a right to enforce applicable Institutional Controls in the event Midvale City fails to enforce such Institutional Controls. Nothing in this Consent Decree is intended or shall be construed to alter or expand the role of the State with respect to matters of municipal governance and land use.

23. EPA hereby designates Littleson, Midvale City, the State and UPRR (including their respective contractors, agents, successors and assigns) as persons entitled to access pursuant to the terms and conditions of the Consent Decree between EPA and Sharon Steel Corporation, the Consent Decree between EPA and Butterfield Lumber, and the Prospective Purchaser Agreement between EPA and the Utah Transit Authority to the extent necessary to perform any portion of the Littleson Work, to implement and enforce the Institutional Controls, O&M, or UPRR O&M.

24. With respect to the UPRR Property, UPRR shall:

a) commencing on the Effective Date of this Consent Decree, provide the United States, the State, Littleson, Midvale City and their representatives, including EPA and its contractors, with access at all reasonable times to the UPRR Property as necessary for the purpose of conducting any lawful activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 21(a) of this Consent Decree; provided however, the entry and any work performed by Littleson upon the UPRR Property will be subject to the terms and conditions of the Contractor's Right of Entry Agreements (or other applicable agreements) negotiated between Littleson and UPRR;

b) commencing on the Effective Date of this Consent Decree, refrain from using the UPRR Property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree;

c) comply with and follow the Institutional Controls, to the extent they are applicable to the UPRR Property or its activities and do not violate any federal or state regulation or rule concerning maintenance and conditions of railroad rights of way; and

d) commencing on the Effective Date of this Consent Decree, perform the applicable UPRR O&M in coordination with the Littleson Work.

25. The Institutional Controls applicable to the Site shall be developed as set forth in the Institutional Control Process Plans for OU1 and OU2 attached hereto as Appendix J and Appendix K, respectively. The Institutional Control Process Plans and the Institutional Controls may be amended and modified from time to time in the manner provided under the Institutional Control Process Plans without amending this Consent Decree.

26. EPA has determined that additional land or water use restrictions are needed to implement the remedy selected in the OU2 ROD. Accordingly, Midvale City hereby agrees to implement and enforce those Institutional Controls applicable to Midvale City (as defined in the Cooperative Agreement) in accordance with and subject to this Consent Decree and the Cooperative Agreement. EPA agrees to provide to Midvale City under the Cooperative Agreement the funding necessary for Midvale City to implement and enforce the Institutional Controls. Accordingly, Midvale City hereby agrees to implement and enforce the Institutional Controls in accordance with and subject to this Consent Decree and the Cooperative Agreement.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

28. In addition to any other requirement of this Consent Decree, Littleson shall submit to EPA copies of written monthly progress reports by the tenth day of every month following the lodging of this Consent Decree until Littleson obtains a Certification of Construction Work Completion pursuant to Paragraph 49(b). After such notification, Littleson shall provide quarterly reports to EPA until EPA notifies Littleson of completion of Milestone Work pursuant to Paragraph 50. If requested by EPA, Littleson shall also provide briefings for EPA to discuss the progress of the Littleson Work. The progress reports shall include the following information:

   a) a description of the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;

   b) a summary of all results of sampling and tests and all other data received or generated by Littleson or its contractors or agents in the previous month;

   c) identification of all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month;

   d) a description of all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts;

e) information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Littleson Work, and a description of efforts made to mitigate those delays or anticipated delays;

f) any modifications to the work plans or other schedules that Littleson has proposed to EPA or that have been approved by EPA; and

g) a description of all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks.

29. Littleson shall notify EPA of any material change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

30. Upon the occurrence of any event during performance of the Littleson Work that Littleson is required to report pursuant to Section 103 of CERCLA 42 U.S.C. § 9603 or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 1104, Littleson shall, within twenty-four (24) hours of Littleson's discovery of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 8, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or EPCRA Section 304, 42 U.S.C. § 1104.

31. Within twenty (20) days of the onset of such an event, Littleson shall furnish to EPA a written report, signed by Littleson's Project Coordinator, summarizing the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Littleson shall submit a report summarizing all actions taken in response thereto.

32. Littleson shall submit copies of all plans, reports, and data required by the RD or RA Work Plans or any other approved plans to EPA in accordance with the schedules set forth in such plans. Upon request by EPA, Littleson shall submit in electronic form all portions of any report or other deliverable Littleson is required to submit pursuant to the provisions of this Consent Decree.

33. All reports and other documents submitted by Littleson to EPA (other than the monthly progress reports referred to above) which purport to document Littleson's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Littleson.

XI. EPA APPROVAL OF DELIVERABLES

34. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the deliverable; (b) approve the deliverable upon specified conditions; (c) modify the deliverable to cure the deficiencies; (d) disapprove, in whole or in part, the deliverable, directing that Littleson modify the deliverable; or (e) any combination of the above.

35. Resubmission of Deliverables

    a) If EPA disapproves (in whole or in part), modifies, or imposes a condition on any deliverable or other submission, EPA shall provide Littleson with written notice of the deficiency and shall provide Littleson with the right to cure the deficiency or satisfy the condition. Upon receipt of such notice, Littleson shall, within thirty (30) days (or such longer time as specified by EPA in such notice), correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Article XXII. STIPULATED PENALTIES, shall accrue during the thirty (30)-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect. Notwithstanding the receipt of such notice, Littleson shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the deliverable.

    b) If EPA determines that Littleson submitted a deliverable with a material defect as provided above, Littleson shall be deemed to have failed to submit an adequate deliverable on a timely basis, unless Littleson invokes the dispute resolution procedures set forth in Article XXI. DISPUTE RESOLUTION and EPA's determination is overturned pursuant to that Article. If EPA's determination of material defect is not overturned, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

    c) Littleson shall have the right to invoke the Dispute Resolution procedures set forth in XXI. DISPUTE RESOLUTION with respect to EPA's disapproval, imposition of conditions, or other modification of a deliverable.

36. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

37. EPA hereby designates Fran Costanzi as its Project Coordinator. Littleson hereby designates, and EPA approves, Liz Scaggs of ENTACT Services, LLC, as its Project

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Coordinator. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) Working Days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Any replacement Project Coordinator for Littleson shall be subject to approval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Littleson Work. Littleson's Project Coordinator shall not be an attorney for Littleson in this matter. Littleson's Project Coordinator may designate other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

38. The United States may designate other representatives, including, but not limited to, EPA employees and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Littleson Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

39. EPA's Project Coordinator and Littleson's Project Coordinator will meet (in person or by telephone call), at a minimum, monthly.

XIII. ASSURANCE OF ABILITY TO COMPLETE LITTLESON WORK

40. Within thirty (30) days of the Effective Date, Littleson shall establish and maintain, either directly or through its Supervising Contractor, financial security for $2,700,000 (Two Million, Seven Hundred Thousand Dollars), representing the differential between the amount available to Littleson pursuant to Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS and the costs of the Milestone Work as estimated by EPA. This financial security shall be an insurance policy in substantially the same form as the document attached hereto as Appendix G.

41. In the case that any Littleson Work Successor assumes responsibility for any or all of the Littleson Work, as provided in Paragraph 9(c), such financial assurance shall be in a form and in an amount acceptable to EPA, consistent with the scope of the remaining work assumed by such Littleson Work Successor, and shall be in one or more of the following forms:

   a) A performance bond or other insurance policy guaranteeing or insuring completion of the Milestone Work naming EPA as an additional insured;

   b) One or more irrevocable letters of credit;

c) A trust fund;

d) A guarantee to perform the Milestone Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Littleson Work Successor; or

e) A demonstration that the Littleson Work Successor satisfies the requirements of 40 C.F.R. Part 264.143(f).

42. If any Littleson Work Successor seeks to demonstrate the ability to complete the Littleson Work through a guarantee by a third party pursuant to Paragraph 41(d) of this Consent Decree, such Littleson Work Successor shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If such successor seeks to demonstrate its ability to complete the Littleson Work by means of the financial test or the corporate guarantee pursuant to Paragraph 41(d) or 41(e), it shall submit initially and resubmit annually on the anniversary of the Effective Date sworn statements conveying the information required by 40 C.F.R. Part 264.143(f). In the event that EPA determines at any time that the financial assurances provided pursuant to this Article are inadequate, such successor shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 41 of this Consent Decree. Such successor's inability to demonstrate financial ability to complete the Littleson Work shall not excuse performance by Littleson of any activities required under this Consent Decree.

43. Any Littleson Work Successor approved under Paragraph 9(c) to take over all or any portion of the Littleson Work that has provided financial assurance pursuant to this Article may change the form of financial assurance provided under this Article at any time, upon notice to and approval by EPA, provided that the new form of assurance is in substantially the same form as that described in Paragraph 41 and otherwise meets the requirements of this Article. In the event of a dispute, the Littleson Work Successor may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. COMPLETION OF MILESTONE WORK

44. Work Milestones and Inspection Checklists. The Work Milestones provide a framework whereby the Milestone Work can be defined, measured, and documented, including confirming the periodic and cumulative progress of the Milestone Work. The Inspection Checklists provide a task-specific format to formally document the completion of each Work Milestone.

45. Field Inspections. EPA shall have the responsibility to certify when each Work Milestone has been completed. It is anticipated that EPA will employ a combination of oversight and field inspections to accomplish this certification process. Work Milestone field inspections shall be conducted pursuant to a schedule agreed upon by EPA and

Littleson. EPA and Littleson anticipate that EPA will be provided with at least ten (10) Working Days notice before a field inspection. Reasonable accommodations and adjustments to the field inspection schedule will be made during the course of Work Milestone activities.

46. Inspection Checklists. During oversight leading up to the field inspections and during the field inspections, it is anticipated that both Littleson and EPA will use the applicable Inspection Checklist to confirm the completeness and accuracy of the work. If the EPA representative determines that the Work Milestone has been completed, the Inspection Checklist shall be so noted and executed by EPA and Littleson. The executed Inspection Checklist shall constitute final certification of completion of the Work Milestone for all purposes, including Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS.

47. Notice of Supplemental Work. If, after completion of the field inspection, EPA determines that the specified Work Milestone or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify Littleson in writing of the activities that must be undertaken by Littleson pursuant to this Consent Decree to complete the Work Milestone. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RA Work Plan or require Littleson to submit a schedule to EPA for approval pursuant to Article XI. EPA APPROVAL OF DELIVERABLES. Littleson shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Article XXI. DISPUTE RESOLUTION. After the deficiency has been corrected or otherwise resolved, a supplemental inspection will be scheduled, if necessary, within a reasonable time. This process will then be repeated as necessary until the EPA is able to certify that the Work Milestone has been completed.

48. Certification of satisfactory completion of any particular Work Milestone pursuant to Paragraph 46 shall not affect Littleson's obligations under this Consent Decree with respect to any other Work Milestone.

49. Completion of Construction Work.

    a) When Littleson concludes that all Construction Work has been completed, Littleson shall provide notice to EPA requesting that EPA schedule and conduct a pre-final inspection. UPRR and Midvale City will also be invited to attend the inspection. If, after the pre-final inspection, Littleson still believes that that the Construction Work has been fully performed, Littleson shall submit a request for Certification of Construction Work Completion, along with a written Remedial Action Report by a registered professional engineer stating that the Construction Work has been completed in full satisfaction of the requirements of this Consent Decree. The Remedial Action Report shall contain the following statement,

signed by a responsible corporate official of Littleson or Littleson's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

b) If, after review of the Remedial Action report, EPA determines that the entirety of the Construction Work has been completed in accordance with this Consent Decree, EPA will immediately certify to Littleson that the Construction Work is completed (a "Certification of Construction Work Completion").

c) If, after review of the Remedial Action Report, EPA determines that any portion of the Construction Work has not been completed in accordance with this Consent Decree, EPA will notify Littleson in writing of the activities that must be undertaken by Littleson pursuant to this Consent Decree to complete the Construction Work; provided, however, that EPA may only require Littleson to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the OU1 ROD or OU2 ROD and the Milestone Work as set forth in the WMPS. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the RA Work Plan or require Littleson to submit a schedule to EPA for approval pursuant to Article XI. EPA APPROVAL OF DELIVERABLES. Littleson shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Article XXI. DISPUTE RESOLUTION. After completion of such additional work, Littleson shall have the right to invoke the procedure for obtaining certification of completion of the Construction Work as provided in this paragraph.

50. Completion of Milestone Work. Within thirty (30) days after EPA's written certification of completion of Work Milestones 3.11 and 3.12 (through the applicable Inspection Checklists), EPA shall issue a written certification that all of the Milestone Work has been completed in accordance with this Consent Decree.

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Littleson Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Littleson shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is

unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Littleson shall notify the EPA Region 8 hotline at 1-800-227-8914. Littleson shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the RD Work Plan.

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: a) to take all appropriate action to protect human health or the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health or the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Article XXIII. COVENANTS BY THE UNITED STATES.

XVI. PAYMENTS FOR RESPONSE COSTS

53. Payments for Past Response Costs. In full satisfaction of Littleson's liabilities relating to Past and Future Response Costs, Littleson shall pay EPA twenty percent (20%) of its Net Development Cash Flows from land sale activities at the Site each calendar year that cumulative Net Development Cash Flows from land sale activities at the Site is a positive quantity, up to a total aggregate amount of $2,200,000, as follows:

   a) "Net Development Cash Flows" means cash (or cash equivalents) received by Littleson for the sale or transfer of any interest in land at the Site, net of the cash (or cash equivalents) expended by Littleson to prepare or market the land for sale. In calculating Littleson's Net Development Cash Flows, Littleson shall be entitled to include in its cash outflow all necessary and ordinary business expenses to further the development or sale of land at the Site ("Development Business Expenses."). Development Business Expenses will be deemed necessary and ordinary if Littleson reports or will report such Development Business Expenses to the Internal Revenue Service as a deduction, irrespective of whether such Development Business Expense qualifies as a current deduction under the Internal Revenue Code or must be taken over time through depreciation, amortization, or similar method. For purposes of calculating Littleson's Net Development Cash Flows, all Development Business Expenses will be deemed to be current as of the time they are first incurred. EPA and Littleson further agree that Littleson's Development Business Expenses will include, by way of illustration and not limitation, direct land development, marketing, and sale costs and expenses, real estate taxes, as well as 33.33 percent of Littleson's total internal overhead.

   b) Cumulative Net Development Cash Flows will be calculated in arrears as the sum of each annual net cash flow from land sales as of January 1, 2004 to December 31st of the most recently elapsed year, except that for purposes of calculating the

cumulative Net Development Cash Flows, Littleson will be entitled to treat, as though they were incurred during 2004, certain development expenses incurred by Littleson starting in late 2002 in the amount of $530,000.

c) Net Development Cash Flows will be disclosed to EPA through annual, audited cash flow statements prepared in accordance with the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 95 *Statement of Cash Flows*. Cash flows from financing and from non-development operations and investing, including loans made to the company by its shareholders, will not be considered as cash flows subject to payment to EPA. The audited statement will be prepared by a qualified accounting firm retained by Littleson and will certify that the cash flow statement has been prepared in accordance with the terms and conditions of this Paragraph 53. Statements will be submitted and payments (if applicable) will be made on or before May 15th of each calendar year, starting in 2005. EPA shall have sixty (60) days to challenge the audited statement. Littleson's obligation to provide audited statements under this subparagraph will terminate upon (i) Littleson's sale of all marketable real property within the boundaries of the Site; or (ii) the payment to EPA of the total aggregate amount of $2,200,000, whichever first occurs.

d) If Littleson disposes of real property within the Site through a bartering transaction or tax deferred exchange (as opposed to a transaction based upon cash or cash equivalents), the fair market value of such consideration shall be used as a proxy for cash consideration to calculate Net Development Cash Flows.

e) Payments shall be made to the EPA Hazardous Substance Superfund in the manner specified in Paragraph 58 below. The total amount to be paid by Littleson shall be deposited in the Midvale Slag Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substances Superfund.

XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

54. Creation of Midvale Slag Disbursement Special Account and Agreement to Disburse Funds to Littleson. Within thirty (30) days after the Effective Date, EPA shall establish a new special account, the Midvale Slag Disbursement Special Account, within the EPA Hazardous Substance Superfund and shall transfer $16,155,000 from the Midvale Slag Special Account to the Midvale Slag Disbursement Special Account. Subject to the terms and conditions set forth in this Article and subsequent to the Effective Date of this Consent Decree, EPA agrees to make Sixteen Million Dollars ($16,000,000) in the Midvale Slag Disbursement Special Account available for disbursement to Littleson to accomplish Littleson Work as set forth in this Article. An additional amount of up to Fifty Thousand Dollars ($50,000) will be made available to Littleson from the Midvale Slag Disbursement Special Account for Contingency Work Milestone 3.3.1, as provided

more fully in the RD Work Plan. An additional amount of One Hundred Five Thousand Dollars ($105,000) will be made available to Littleson, on a lump sum basis, from the Midvale Slag Disbursement Special Account for Contingency Work Milestone 3.6.1, as provided more fully in the RD Work Plan.

55. Timing, Amount, and Method of Disbursing Funds From the Midvale Slag Disbursement Special Account.

a) Littleson has developed a Work Milestone Payment Schedule, attached to the RD Work Plan as Table 1.0. The Work Milestone Payment Schedule establishes the lump sum amount Littleson will be reimbursed after satisfactory completion of each Work Milestone. The lump sum amounts established in the Work Milestone Payment Schedule do not include any costs relating to development enhancements or other non-reimbursable costs as provided in Paragraph 56, below. Satisfactory completion of the Work Milestone shall be documented in the applicable final, executed Inspection Checklist as provided in Article XIV. COMPLETION OF MILESTONE WORK.

b) Any time after EPA approval through execution of an Inspection Checklist as provided in Article XIV. COMPLETION OF MILESTONE WORK, Littleson may submit to EPA a Disbursement Request with respect to such Work Milestone(s). All Disbursement Requests received by EPA on or before the final Working Day of any calendar quarter (ending on March 31, June 30, September 30, and December 31) shall be accepted for processing and payment during the next quarter by the date specified in subparagraph 55(d).

c) Each Disbursement Request shall contain the following statement signed by the Supervising Contractor's Chief Financial Officer or an Independent Certified Public Accountant:

"To the best of my knowledge, after thorough investigation and review of Littleson's documentation of costs incurred and paid for Littleson Work performed pursuant to this Consent Decree as to Work Milestone No(s). _______ as defined in the Remedial Action Work Plan, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

Upon request by EPA, Littleson shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Disbursement Request.

d) Subject to subparagraph 55(e), EPA shall pay Littleson with respect to all Disbursement Requests accepted for processing during any calendar quarter as

provided in subsection 55(b) above, on or before the final Working Day of the next month following the end of the calendar quarter (e.g., April, July, October, and January). All payments shall be made as directed by Littleson in writing.

e) If EPA finds that a Disbursement Request contains an error, is not complete, or includes costs previously reimbursed, it will notify Littleson and provide a reasonable opportunity to cure the deficiency by submitting a revised Disbursement Request. If Littleson fails to cure the deficiency within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Littleson's costs eligible for disbursement for that submission and disburse the corrected amount to Littleson in accordance with the procedures set forth in this Paragraph. Littleson may dispute EPA's objections to any Disbursement Request or any recalculation under this Paragraph pursuant to Article XXI. DISPUTE RESOLUTION. In no event shall Littleson be disbursed funds from the Midvale Slag Disbursement Special Account in excess of amounts properly documented in a Disbursement Request accepted or modified by EPA.

56. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Littleson for, disbursement from the Midvale Slag Disbursement Special Account: (a) costs incurred by Littleson prior to the Effective Date, except as to those costs incurred in performing Milestone Work; (b) attorneys' fees and costs; (c) costs of any response activities Littleson performs that are not required under, or approved by EPA pursuant to, this Consent Decree; (d) costs related to the Littleson Litigation, settlement, or development of potential contribution claims or identification of other potentially responsible parties; (e) internal costs of Littleson, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Littleson directly performing the Littleson Work; (f) costs solely attributable to the construction of development improvements; (g) costs solely attributable to Littleson's efforts to obtain necessary approvals from Midvale City; or (h) any costs incurred by Littleson pursuant to Article XXI. DISPUTE RESOLUTION.

57. Termination of Disbursements from the Midvale Slag Disbursement Special Account. EPA's obligation to disburse funds from the Midvale Slag Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Littleson has: (a) knowingly submitted a materially false or misleading Disbursement Request with the intention of claiming costs excluded from disbursement under Paragraph 56; (b) submitted a materially inaccurate or incomplete Disbursement Request and has failed to correct the materially inaccurate or incomplete Disbursement Request within sixty (60) days after being notified in writing of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Disbursement Request if required by Paragraph 55 within thirty (30) days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Article because of Littleson's failure to submit the Disbursement Request. EPA's obligation to disburse funds from the Midvale Slag Disbursement Special Account shall also terminate upon

EPA's assumption of performance of any portion of the Littleson Work pursuant to Paragraph 97 when such assumption of performance of the Littleson Work is not challenged by Littleson or, if challenged, is upheld under Article XXI. DISPUTE RESOLUTION. Littleson may dispute EPA's termination of Midvale Slag Disbursement Special Account disbursements under Article XXI. DISPUTE RESOLUTION.

58. <u>Recapture of Midvale Slag Disbursement Special Account Disbursements.</u> Upon termination of disbursements from the Midvale Slag Disbursement Special Account under Paragraph 57, if EPA has previously disbursed funds from the Midvale Slag Disbursement Special Account for activities specifically related to the reason for termination (*e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit an invoice to Littleson for those amounts already disbursed from the Midvale Slag Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Littleson. Within thirty (30) days of receipt of EPA's invoice, Littleson shall reimburse the Hazardous Substance Superfund. Midvale Slag Special Account, for the total amount invoiced by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, Special Account Number 0871" referencing the name and address of the party making payment, EPA Site/Spill Identification Number 0871, and DOJ Case Number 90-11-3-1194/1. Littleson shall send the check(s) to:

Regular mail:
Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, etc.:
US EPA 360859
Mellon Client Service Center Room 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:
Wire transfers should be sent directly to the Federal Reserve Bank in New York City with the following information:
ABA = 021030004
TREAS NYC CTR
BNF=/AC-68011008

At the time of payment, Littleson shall send notice that payment has been made to the United States, to EPA, and to the Regional Financial Management Officer, in accordance

with Article XXVIII. NOTICES AND SUBMISSIONS. Upon receipt of payment, EPA may deposit all or any portion thereof in the Midvale Slag Special Account or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Littleson pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Littleson may dispute EPA's determination as to recapture of funds pursuant to Article XXI. DISPUTE RESOLUTION.

XVIII. REIMBURSEMENT OF RESPONSE COSTS

59. As soon as reasonably practicable after the Effective Date, and consistent with subparagraph 59(b), the United States, on behalf of the Settling Federal Agencies, shall:

    a) Pay to the EPA Hazardous Substance Superfund $2,204,946, in reimbursement of Past and Future Response Costs. The total amount to be paid by Settling Federal Agencies shall be deposited in the Midvale Slag Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substances Superfund. Such payment shall be made in the same manner as specified in Paragraph 58 above.

    b) If the payment to the EPA Hazardous Substances Superfund required by this subparagraph is not made as soon as reasonably practicable, the appropriate EPA Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within one hundred and twenty (120) days after the Effective Date, EPA and DOJ have agreed to resolve the issue within thirty (30) days in accordance with that certain letter agreement dated December 28, 1998.

60. In the event that payments required by Paragraph 59 are not made within one hundred and twenty (120) days of the Effective Date, interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the Effective Date and accruing through the date of the payment.

61. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

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XIX. INDEMNIFICATION AND INSURANCE

62. Littleson's Indemnification of the United States.

    a) The United States does not assume any liability by entering into this agreement or by virtue of any designation of Littleson as EPA's authorized representative under Section 104(e) of CERCLA. Littleson shall indemnify, save and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Littleson, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Littleson as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, Littleson agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Littleson, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Littleson in carrying out activities pursuant to this Consent Decree. Neither Littleson nor any such contractor shall be considered an agent of the United States.

    b) The United States shall give Littleson written notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph and shall consult with Littleson prior to settling such claim.

63. Littleson waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Littleson and any person for performance of Littleson Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Littleson shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Littleson and any person for performance of Littleson Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

64. No later than fifteen (15) days before commencing any on-site Littleson Work, Littleson or the Supervising Contractor shall secure, and shall maintain until EPA's Certification of Completion of Milestone Work pursuant to Paragraph 50, comprehensive general liability insurance with general aggregate limits of $2 million dollars and an occurrence limit of $1 million, and automobile liability insurance with limits of $1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the

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duration of this Consent Decree, Littleson shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Littleson Work on behalf of Littleson in furtherance of this Consent Decree. Prior to commencement of the Littleson Work under this Consent Decree, Littleson shall provide to EPA certificates of such insurance and a copy of each insurance policy. Littleson shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Littleson demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Littleson need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XX. FORCE MAJEURE

65. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Littleson, of any entity controlled by Littleson, or of Littleson's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Littleson's best efforts to fulfill the obligation. The requirement that Littleson exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Littleson Work.

66. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Littleson shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, EPA Region 8 ("ARA"), within three (3) Working Days of when Littleson first knew that the event might cause a delay. Within twenty (20) days thereafter, Littleson shall provide in writing to EPA the following information: (a) a description of the reasons for the delay; (b) the anticipated duration of the delay; (c) a description of all actions taken or to be taken to prevent or minimize the delay; (d) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (e) a description of Littleson's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and (f) a statement as to whether, in the opinion of Littleson, such event may cause or contribute to an endangerment to public health, welfare or the environment. Littleson shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Littleson from asserting

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any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure.

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

68. If Littleson elects to invoke the dispute resolution procedures set forth in Article XXI. DISPUTE RESOLUTION, it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Littleson shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Littleson complied with the requirements of this Article. If Littleson carries this burden, the delay at issue shall be deemed not to be a violation by Littleson of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

69. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Article shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Article shall not apply to actions by the United States to enforce obligations of any of the Settling Defendants that have not been disputed in accordance with this Article.

70. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between EPA and the Settling Defendant raising the dispute (the "Disputing Party"). The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is extended by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

71. Statements of Position.

a) In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the

informal negotiation period, the Disputing Party invokes the formal dispute resolution procedures of this Article by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, factual data, analysis or opinion supporting that position, and supporting documentation relied upon by the Disputing Party. The Statement of Position shall specify the Disputing Party's position as to whether formal dispute resolution should proceed under Paragraph 72 or Paragraph 73.

b) Within ten (10) days after receipt of the Disputing Party's Statement of Position, EPA will serve on the Disputing Party its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 72 or Paragraph 73. Within five (5) Working Days after receipt of EPA's Statement of Position, the Disputing Party may submit a Reply.

c) If there is disagreement between EPA and Disputing Party as to whether dispute resolution should proceed under Paragraph 72 or Paragraph 73, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable, unless the Disputing Party ultimately appeals to the Court to resolve the dispute, in which case the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraph 72 and Paragraph 73.

72. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by any Disputing Party regarding the validity of either the OU1 or OU2 ROD provisions, except that the Disputing Party retains its right to challenge any Explanation of Significant Difference or modification to either ROD that is not in effect as of the Effective Date.

a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Article. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b) The ARA, Office of Ecosystems Protection and Remediation will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 72(a). This decision shall be binding upon the Disputing

Party, subject only to the right to seek judicial review pursuant to Paragraph 72(c) and (d).

c) Any administrative decision made by EPA pursuant to Paragraph 72(b) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Disputing Party with the Court and served on all Parties within ten (10) Working Days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Disputing Party's motion within twenty (20) days.

d) In proceedings on any dispute governed by this Paragraph, the Disputing Party shall have the burden of demonstrating that the decision of the ARA is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 72(a).

73. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a) Following receipt of the Disputing Party's Statement of Position submitted pursuant to Paragraph 71, the ARA will issue a final decision resolving the dispute. The ARA's decision shall be binding on the Disputing Party unless, within ten (10) Working Days of receipt of the decision, the Disputing Party files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Disputing Party's motion in accordance with the rules of this Court.

b) Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

74. The invocation of formal dispute resolution procedures under this Article shall not extend, postpone or affect in any way any obligation of any Party under this Consent Decree, not directly in dispute, unless EPA agrees or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 82. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Disputing Party does not prevail on the disputed issue, stipulated penalties (as

applicable) shall be assessed and paid as provided in Article XXII. STIPULATED PENALTIES.

XXII. STIPULATED PENALTIES

75. Littleson shall be liable for stipulated penalties in the amounts set forth in this Article to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Article XX. FORCE MAJEURE. "Compliance" by Littleson shall include completion of the activities under this Consent Decree or any Work Plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the RD Work Plan, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

76. Stipulated Penalty Amounts - Littleson Work. Unless EPA, in its sole discretion, chooses to waive stipulated penalties, the following stipulated penalties shall accrue per violation per day for any material noncompliance with the requirements of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 250	1st through 14th day
\$ 500	15th through 30th day
\$ 1000	31st day and beyond

77. Stipulated Penalty Amounts - Reports. Unless EPA, in its sole discretion, chooses to waive stipulated penalties, the following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports required by the Statement of Work:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 125	1st through 14th day
\$ 250	15th through 30th day
\$ 500	31st day and beyond

78. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient deliverable as provided under XI. EPA APPROVAL OF DELIVERABLES; (2) with respect to a decision by the ARA under

Paragraph 72(b) or 73(a) of Article XXI. DISPUTE RESOLUTION, during the period, if any, beginning on the day that Littleson's Statement of Position is received by EPA until the date that the ARA issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Article XXI. DISPUTE RESOLUTION, during the period, if any, beginning on the day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

80. All penalties accruing under this Article shall be due and payable to the United States within thirty (30) days of Littleson's receipt from EPA of a written demand for payment of the penalties, unless Littleson invokes the Dispute Resolution procedures under XXI. DISPUTE RESOLUTION. All payments to the United States under this Article shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, Attn: Superfund Accounting, Lockbox 360859, Pittsburgh, PA 15251-6859, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0871, the DOJ Case Number 90-11-3-1194/1, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Article, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Article XXVI (Notices and Submissions).

81. The payment of penalties shall not alter in any way Littleson's obligation to complete the performance of the Littleson Work required under this Consent Decree.

82. Penalties shall continue to accrue as provided in this Article during any dispute resolution period, but need not be paid until the following:

a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b) If the dispute is appealed to this Court and the United States prevails in whole or in part, Littleson shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c) If the District Court's decision is appealed by any Party, Littleson shall pay all accrued penalties determined by the District Court to be owing to the United

States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Littleson to the extent that they prevail.

83. If Littleson fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Littleson shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 79.

84. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Littleson's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

85. Notwithstanding any other provision of this Article, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXIII. COVENANTS BY THE UNITED STATES

86. Littleson. In consideration of Littleson's performance of the Littleson Work under the terms of this Consent Decree, and except as otherwise specifically provided for in Paragraphs 93, 94, and 95 of this Article, the United States (i) hereby covenants not to sue or take administrative action, or to otherwise assert any claim against Littleson or its present or former officers or directors, arising from or relating to the Site, Past Response Costs, Future Response Costs, or the Remedial Action; and (ii) hereby releases and waives any lien it may have with respect to the Site now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of a release of hazardous substances that were disposed of at the Site prior to the Effective Date. These covenants not to sue and releases are conditioned upon the satisfactory performance by Littleson of its obligations under this Consent Decree but shall take effect immediately upon the Effective Date.

87. Release of Lien. Within thirty (30) days of the Effective Date, the United States shall cause to be recorded a Release of Lien in substantially the same form as the document attached hereto as Appendix H.

88. Littleson's Successors and Assigns. The covenants, releases, and agreements set forth in this Article shall inure to the benefit of Littleson (including its present and former officers

and directors) and its successors and assigns, and shall be binding upon and enforceable against the United States.

89. Bona Fide Purchasers. Without in any way limiting the applicability of Paragraphs 86 or 88, EPA further covenants not to assert any claims and to release and waive all claims or causes of action that it may have for all matters relating to the Site against any Bona Fide Purchaser that acquires an ownership or other interest in any real property located within the Site after certification of construction completion. For purposes of this Consent Decree, a person or entity shall be considered a Bona Fide Purchaser meeting the statutory definition of "bona fide prospective purchaser" set forth in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40) if:

a) The person or entity acquires an interest in real property situated within the boundaries of the OU1 portion of the Site; or

b) The person or entity acquires an interest in real property situated within the boundaries of the OU2 portion of the Site after the relevant Certification(s) of Construction Work Completion (pursuant to Paragraph 48) have been obtained for the applicable property; or after modified Work Milestones for the relevant property, established in accordance with Section 2.4.8 of the RD Work Plan, have been completed.

Provided, however, that no person or entity shall be considered a Bona Fide Purchaser if such person or entity:

c) Is responsible for the release of any reportable quantity of hazardous substances at the Site; or

d) Fails to comply with the substantive requirements of Article IX. ACCESS, O&M, AND INSTITUTIONAL CONTROLS (or any covenant or obligation created pursuant thereto) or fails to comply with any request for information or administrative subpoena issued by EPA related to the Site.

90. Settling Federal Agencies. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 93, 94, and 95 of this Article, EPA covenants not to take administrative action against the Settling Federal Agencies arising from or relating to the Site, Past Response Costs, Future Response Costs, or the Remedial Action. These covenants and releases are conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree, including the payments required by Paragraph 59, and shall take effect immediately as of the Effective Date. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

91. UPRR. In consideration of UPRR's obligations under the terms of this Consent Decree and the obligations set forth in the Midvale Slag Superfund Site Settlement and Release Agreement by and between Littleson and UPRR, and except as otherwise specifically provided in Paragraphs 93, 94, and 95 of this Article, the United States hereby covenants not to sue or take administrative action, or to otherwise assert any claim against UPRR arising from or relating to the Site, Past Response Costs, Future Response Costs, or the Remedial Action. This covenant is conditioned upon the satisfactory performance by UPRR of the UPRR O&M, but shall take effect immediately upon the Effective Date of this Consent Decree.

92. Midvale City. In consideration of Midvale City's performance of its obligations under the terms of this Consent Decree, and except as otherwise specifically provided for in Paragraph 93 of this Article, the United States hereby covenants not to sue or take administrative action, or to otherwise assert any claim against Midvale City arising from or relating to the Site, Past Response Costs, Future Response Costs, or the Remedial Action. This covenant is conditioned upon Midvale City's satisfactory implementation or enforcement of the Institutional Controls, but shall take effect immediately upon the Effective Date of this Consent Decree.

93. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants and Settling Federal Agencies with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Littleson, Midvale City, and UPRR, and EPA reserves, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to:

a) claims based on a failure by Settling Defendants or the Settling Federal Agencies to meet and perform their respective responsibilities as required pursuant to this Consent Decree; provided however, that each Settling Defendant and Setting Federal Agency shall be responsible to perform only the work or perform only those obligations required herein and none of the Settling Defendants or Settling Federal Agencies shall be responsible to perform the work or fulfill the obligations required herein to be performed by any other Settling Defendant or Settling Federal Agency;

b) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c) liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal by a Settling Defendant of Waste Material at or in connection with the Site, other than as provided in the OU1 ROD and OU2 ROD, the Littleson Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendants;

d) liability for damages for injury to, destruction of, or loss of natural resources under federal trusteeship;

e) criminal liability; and

f) liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

94. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Littleson or UPRR, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, (i) to perform further response actions relating to OU2, or (ii) to reimburse the United States for additional costs of response if, prior to issuance of a Certification of Construction Work Completion as to OU2, pursuant to Paragraph 49:

a) conditions at OU2, previously unknown to EPA, are discovered, or

b) information, previously unknown to EPA, is received, in whole or in part;

and, EPA determines that these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action as pertaining to OU2 is not protective of human health or the environment.

For purposes of this Paragraph 94, the conditions and information known to EPA shall mean the conditions and information known to EPA as of the date that this Consent Decree is lodged with the United States District Court, or reasonably foreseeable at that time, as set forth in the OU2 ROD or otherwise in the administrative record relating to the Site, and including specifically the information and conditions discussed in Paragraph 96, below.

95. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Littleson or UPRR, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, (i) to perform further response actions relating to the Site, or (ii) to reimburse the United States for additional costs of response if, as to the OU2 portion of the Site subsequent to issuance of the Certification of Construction Work Completion pursuant to Paragraph 49, or as to the OU1 portion of the Site:

a) conditions at the Site, previously unknown to EPA, are discovered, or

b) information, previously unknown to EPA, is received, in whole or in part; and

EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

For purposes of this Paragraph 95 as pertaining to OU2, the conditions and information known to EPA shall mean the conditions and information known to EPA as of the date of the Certification of Completion of Construction, or reasonably foreseeable at that time, as set forth in the administrative record supporting the OU2 ROD, the post-OU2 ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of Construction, and further including specifically the information and conditions discussed in Paragraph 96, below.

For purposes of this Paragraph 95 as pertaining to OU1, the conditions and information known to EPA shall mean the conditions and information known to EPA as of the date of the Certification of Completion of Construction, or reasonably foreseeable at that time, and including specifically the information and conditions discussed in Paragraph 96, below.

96. Scope of Reservations as to Groundwater. Subject only to the general reservation of rights set forth in Paragraph 93, the Parties expressly agree that Littleson (including any past or present director, officer, successors, assigns, or Bona Fide Purchasers) and UPRR and Midvale City shall not be liable for any Past or Future Response Costs arising from or relating to groundwater contamination associated with the Site in the event that the preferred remedial alternative for groundwater adopted in the OU2 ROD is determined to not be protective of human health or the environment or is otherwise ineffective.

97. Littleson Work Takeover. In the event EPA determines that Littleson has ceased implementation of any portion of the Littleson Work, is seriously or repeatedly deficient or late in its performance of the Littleson Work, or is implementing the Littleson Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Littleson Work as EPA determines necessary. Littleson may invoke the procedures set forth in Article XXI. DISPUTE RESOLUTION, Paragraph 72 to dispute EPA's determination that takeover of the Littleson Work is warranted under this Paragraph. Should EPA take over the Littleson Work, EPA shall use funds from Littleson's financial assurance pursuant to Paragraph 40 towards completing the Littleson Work. Any unreimbursed costs incurred by the United States in performing the Littleson Work pursuant to this Paragraph shall be considered Future Response Costs that Littleson shall be required to pay.

98. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

99. Covenant Not to Sue by Settling Defendants. Subject to the reservations in this Article, Littleson, UPRR and Midvale City covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, including, but not limited to:

a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42 U.S.C. § 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

b) any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. § 9607 or 9613 related to the Site;

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

d) any direct or indirect claim for disbursement from the Midvale Slag Disbursement Special Account (established pursuant to this Consent Decree), except as provided in Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS or the Cooperative Agreement.

e) any direct or indirect claim relating to the allocation by the United States of funds recovered by the United States in settlements with other parties relating to the Site including, without limitation, claims that the Settling Defendants are entitled to a credit or set-off with respect to such funds.

Except as provided in Paragraph 103 (Waiver of Claims Against De Micromis Parties), and Paragraph 104 (Waiver of Claims Against *De Minimis* Parties), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Article XXIII. COVENANTS BY UNITED STATES against any Settling Defendant, but only to the extent that any such Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

100. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site, or this Consent Decree. This covenant does not preclude demand for

reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

101. General Reservation of Rights.

a) Settling Defendants reserve, and this Consent Decree is without prejudice, to claims against the United States, subject to the provisions of Chapter 171 of Title 28 of 44 United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Littleson's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

b) Settling Defendants reserve, and this Consent Decree is without prejudice, to contribution claims or any other claims under CERCLA (including without limitation the claims referred to in Paragraph 99(e)) against the Settling Federal Agencies or any other person in the event any claim is asserted by the United States against any of the Settling Defendants under the authority of or under Paragraphs 93(b)-(d), 94, 95, or 96 of Article XXIII. COVENANTS BY THE UNITED STATES, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against the Settling Defendants.

102. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

103. Waiver of Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to a Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

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a) the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials, but

b) this waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

104. Waiver of Claims Against De Minimis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

105. No Third-Party Beneficiaries. Except as provided in Paragraph 89 (Bona Fide Purchasers), Paragraph 103 (Waiver of Claims Against De Micromis Parties), or Paragraph 104 (Waiver of Claims Against De Minimis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party (or a Littleson Work Successor) to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 89 (Bona Fide Purchasers), Paragraph 103 (Waiver of Claims Against De Micromis Parties), or Paragraph 104 (Waiver of Claims Against *De Minimis* Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party (or successor) may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party (or successor) hereto.

106. Contribution Protection. The Parties agree, and by entering this Consent Decree this Court finds, that Littleson, including its present and former officers and directors, Bona Fide Purchasers of any real property located within the Site (as set forth in Paragraph 89), and the other Settling Defendants and Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For purposes of this Paragraph, "matters addressed in this Consent Decree" is

defined as all response actions taken or to be taken, and all response costs incurred or to be incurred by the United States or any other person, with respect to the Site.

107. Notice. Settling Defendants individually agree that, with respect to any suit or claim for contribution brought by any such Settling Defendant for matters related to this Consent Decree, such Settling Defendant will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Defendants also individually agree that, with respect to any suit or claim for contribution brought against any such Settling Defendant for matters related to this Consent Decree, such Settling Defendant will notify in writing the United States within twenty (20) days of service of the complaint upon such Settling Defendant. In addition, any such Settling Defendant shall notify the United States within ten (10) days of service or receipt of any motion for summary judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

108. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, no Settling Defendant shall assert or maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claimsplitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Article XXIII. COVENANTS BY UNITED STATES or the reservation of Settling Defendants' rights as set forth in Article XXIV. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES.

XXVI. ACCESS TO INFORMATION

109. Each Settling Defendant shall, upon request, provide to EPA copies of any non-privileged documents and information within its possession or control or that of its contractors or agents relating to their respective activities at the Site or to the implementation of their respective obligations under this Consent Decree, including, as applicable, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Littleson Work, Groundwater O&M, and/or implementation or enforcement of the Institutional Controls, as applicable. Each Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of their applicable obligations under this Consent Decree, including without limitation, the Littleson Work, and/or implementation or enforcement of the Institutional Controls, as applicable.

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110. Business Confidential and Privileged Documents.

a) Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA or the United States under this Consent Decree 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). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified such Settling Defendant that the documents or information 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 or information without further notice to such Settling Defendant.

b) Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege in lieu of providing documents, upon request it shall provide the EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by the Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

111. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

112. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

XXVII. RETENTION OF RECORDS

113. Until ten (10) years after Littleson's receipt of EPA's notification pursuant to Paragraph 50(b) of Article XIV. *COMPLETION OF MILESTONE WORK*, and except as otherwise specifically provided in the Cooperative Agreement, Settling Defendants shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its

possession or control that relate in any manner to its liability under CERCLA with respect to the Site; provided, however, that each Settling Defendant must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendants must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Littleson Work, UPRR O&M relating to performance of the Remedial Action on the UPRR Property, and/or implementation or enforcement of the Institutional Controls; provided, however, that Settling Defendants (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of the Littleson Work, UPRR O&M relating to performance of the Remedial Action on the UPRR Property, and/or implementation or enforcement of the Institutional Controls and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

114. At the conclusion of this document retention period, each Settling Defendant shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, any such Settling Defendant shall deliver requested records or documents to EPA. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If a Settling Defendant asserts such a privilege, it shall, upon request, provide with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information: and (6) the privilege asserted by the Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

115. Each Settling Defendant hereby individually certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVIII. NOTICES AND SUBMISSIONS

116. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, Littleson, Midvale City, Settling Federal Agencies, or UPRR, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-1194/1

Chief, Environmental Defense Section
United States Department of Justice
P. O. Box 23986
Washington, DC 20026-3986
Re: DJ #s: 90-11-6-05738; 90-11-6-05739

And

Assistant Regional Administrator 8 EPR
United States Environmental Protection Agency
Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

As to EPA:

Frances L. Costanzi 8 EPR-SR
EPA Project Coordinator
United States Environmental Protection Agency
Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

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As to the Regional Financial Management Officer:

Regional Financial Management Office 8TMS-F
United States Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

As to Littleson:

Robert Soehnlen
Littleson, Inc.
2100 East Bengal Blvd.
F 203
Salt Lake City, Utah 84123

With a copy to:

Kevin R. Murray
1000 Kearns Bldg.
136 South Main Street
Salt Lake City, Utah 84104-1645

As to Midvale City

Christine Richman
Director
Community & Economic Development
City of Midvale
655 W. Center Street
Midvale, Utah 84047

With a copy to:

Martin Pezely
City Attorney
City of Midvale
655 W. Center Street
Midvale, Utah 84047

As UPRR:

David P. Young
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
Fax: (402) 271-7107

With a copy to:

Dennis C. Farley
Lear & Lear, LLP
299 South Main, Suite 2200
Wells Fargo Center
Salt Lake City, Utah 84111
Fax: (801) 538-5001

XXIX. EFFECTIVE DATE

117. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXX. RETENTION OF JURISDICTION

118. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Article XXI. DISPUTE RESOLUTION hereof.

XXXI. APPENDICES

119. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" includes the OU1 ROD (Appendix A-1), and the OU2 ROD (Appendix A-2).

"Appendix B" is the RD Work Plan.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is a form of Notice and Easement Littleson will record with the Salt Lake County Recorder's Office in accordance with Paragraphs 9(a) and 22(a).

"Appendix E" is a form of Notice UPRR will record with the Salt Lake County Recorder's Office in accordance with Paragraph 9(b).

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"Appendix F" is a list of the departments, agencies, and instrumentalities of the United States defined herein as the "Settling Federal Agencies."

"Appendix G" is the form of insurance policy for purposes of financial assurance.

"Appendix H" is the form of Release of Lien.

"Appendix I" is the legal description of the UPRR Property.

"Appendix J" is the Institutional Control Process Plan for OU1.

"Appendix K" is the Institutional Control Process Plan for OU2.

XXXII. COMMUNITY RELATIONS

120. Littleson shall propose to EPA their participation in the Community Relations plan to be developed by EPA. EPA will determine the appropriate role for Littleson under the Plan. Littleson shall also cooperate with EPA in providing information regarding the Littleson Work to the public. As requested by EPA, Littleson shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXIII. MODIFICATION

121. Schedules specified in this Consent Decree for completion of the Littleson Work may be modified by agreement of EPA and Littleson. All such modifications shall be made in writing.

122. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

123. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

124. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXV. SIGNATORIES/SERVICE

125. Each undersigned representative of Littleson, Midvale City, or UPRR to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

126. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified such Settling Defendant in writing that it no longer supports entry of the Consent Decree.

127. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Each Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Parties agree that no Settling Defendant need file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXVI. FINAL JUDGMENT

128. This Consent Decree and its appendices shall constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree (including without limitation the representations, agreements, or understandings set forth in the Midvale Slag Superfund Site Settlement and Release Agreement between UPRR and Littleson).

129. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF ________________, 2004.

BY THE COURT

____

TED STEWART
United States District Judge

BK 9265 PG 4950

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleson, Inc. *et al.*, relating to the Midvale Slag Superfund Site.

FOR THE UNITED STATES OF AMERICA

Sept. 7, 2004
DATE

Robert Homiak for
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Sept 7, 2004
DATE

Robert Homiak
ROBERT R. HOMIAK
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Sept 7, 2004
DATE

Robert Homiak for
DAVID S. GUALTIERI
Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
P. O. Box 23986
Washington, D.C. 20026-3986

________ ____, 2004
DATE

PAUL M. WARNER, United States Attorney
District of Utah

____
DANIEL D. PRICE
Assistant United States Attorney
185 South State Street, Suite 400
Salt Lake City, UT 84111

THE UNDERSIGNED PARTY *enters into this Consent Decree in the matter of* United States v. Littleson, Inc. *et al.*, relating to the Midvale Slag Superfund Site.

July 20 2004
DATE

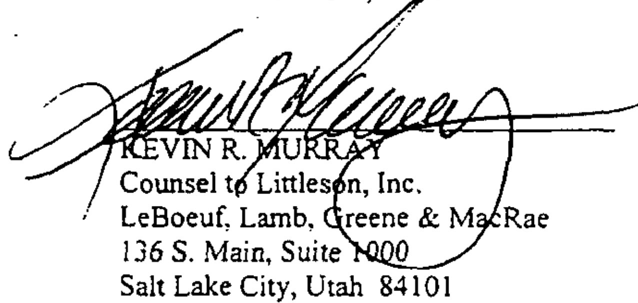
CAROL RUSHIN
Assistant Regional Administrator, Region 8
U.S. Environmental Protection Agency
United Stated Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

July 16, 2004
DATE

Michael T. Risner for
KATHERINE J. TETER
Senior Enforcement Attorney, Region 8
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

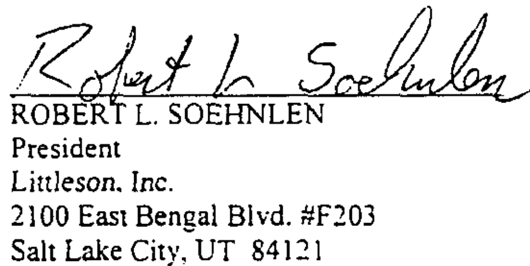
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleson, Inc., *et al.*, relating to the Midvale Slag Superfund Site.

FOR LITTLESON, INC.



July 29, 2004
DATE

KEVIN R. MURRAY
Counsel to Littleson, Inc.
LeBoeuf, Lamb, Greene & MacRae
136 S. Main, Suite 1000
Salt Lake City, Utah 84101



July 29, 2004
DATE

ROBERT L. SOEHNLEN
President
Littleson, Inc.
2100 East Bengal Blvd. #F203
Salt Lake City, UT 84121

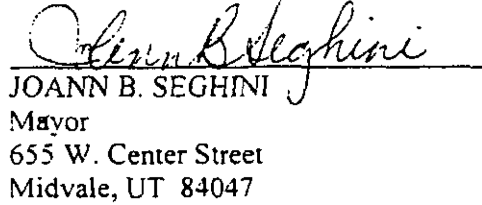
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Kevin R. Murray
1000 Kearns Building
136 South Main Street
Salt Lake City, UT 84101-1685
Ph. Number: (801)320-6700

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleson, Inc., *et al.*, relating to the Midvale Slag Superfund Site.

FOR MIDVALE CITY CORPORATION

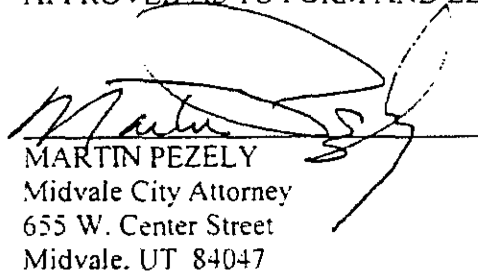
July 28, 2004
DATE



JOANN B. SEGHINI
Mayor
655 W. Center Street
Midvale, UT 84047

July 28, 2004
DATE

APPROVED AS TO FORM AND LEGALITY:



MARTIN PEZELY
Midvale City Attorney
655 W. Center Street
Midvale, UT 84047

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Rori Clark
City Recorder
655 W. Center Street
Midvale, UT 84047

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleson, Inc., et al., relating to the Midvale Slag Superfund Site.

July 30, 2004
DATE

FOR UNION PACIFIC RAILROAD COMPANY

DENNIS C. FARLEY
Lear & Lear, LLP
Attorneys for UPRR
299 South Main, Suite 2200
Wells Fargo Center
Salt Lake City, UT 84111
Fax: (801) 538-5001

August 13, 2004
DATE

LARRY E. WZOREK Lawrence E. Wzorek
Assistant Vice President-Law UPRR
1400 Douglas Street
Omaha, NE 68179

Agent Authorized to Accept Service on Behalf of Above-signed Party:

David P. Young
Counsel to UPRR
1400 Douglas Street
Omaha, NE 68179
Fax: (402) 271-7107

ATTACHMENT 2

Bennion

West Jordan

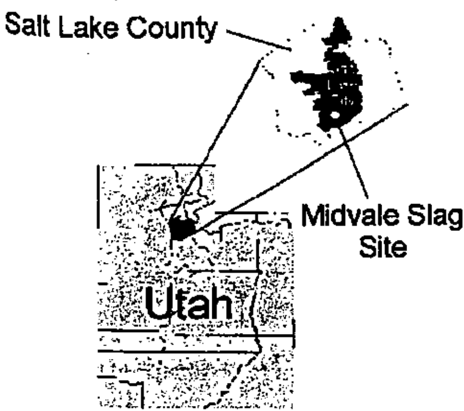
MIDVALE

OU1

OU2

MIDVALE SLAG
SUPERFUND SITE

SOURCE: USGS 7.5 DEGREE QUAD MAPS (DIGITAL RASTER GRAPHIC FILES), MIDVALE QUAD AND SALT LAKE CITY SOUTH QUAD



NOT TO SCALE

Figure 1-1

Site Location Map

Midvale Slag OU2 Superfund Site
Midvale, Utah

CDM

T:\CADD\3280-RACB\086-Midvale\1a_Slag_FFS\Fig1-01.dwg 10/16/02

ATTACHMENT 3

September 17, 2004

Description of Littleson Property in Midvale City Limits

MIDVALE PARCEL "A", FROM 7800 SOUTH, NORTH TO RAILROAD RIGHT OF WAY

BEGINNING South 0°08'36" West along the Section line 345.595 feet and West 670.489 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 1°43'31" West 1016.338 feet; thence South 89°52'31" West 526.000 feet; thence South 0°07'29" East 983.650 feet to the North right of way line of Utah Highway 48 (7800 South); thence North 89°34'30" West along said North right of way line 45.630 feet; thence South.85°46'23" West along said North right of way line 208.990 feet; thence North 33°13'37" East 67.555 feet; thence North 56°46'23" West 50.000 feet; thence South 33°13'37" West 105.857 feet to the North right of way line of Utah Highway 48 (7800 South); thence South 85°46'23" West along said North right of way line 28.720 feet; thence South 84°41'58" West along said North right of way line 149.070 feet; thence South 81°39'53" West along said North right of way line 50.150 feet; thence South 85°21'15" West along said North right of way line 199.020 feet; thence North 85°48'46" West along said North right of way line 103.290 feet to a point on a 2936.900 foot radius curve to the left, the center of said curve to the left being South 6°28'04" East; thence along the arc of said curve, and said North right of way line through a central angle of 8°43'56", 447.601 feet; thence South 74°48'00" West along said North right of way line 559.220 feet to a point which is said to be on the East bank of the Jordan River; thence North 2°17'00" East along said East bank 175.330 feet; thence North 0°51'00" West along said East bank 218.400 feet; thence North 1°40'00" East along said East bank 75.100 feet; thence North 3°47'00" East along said East bank 150.600 feet; thence North 5°44'00" East along said East bank 142.600 feet; thence North 11°16'00" East along said East bank 74.100 feet; thence North 43°20'00"East along said East bank 285.400 feet; thence North 18°52'00" East along said East bank 78.800 feet; thence North 1°48'00" East along said East bank 77.700 feet; thence North 25°02'00" West along said East bank 52.200 feet; thence North 20°02'00" West along said East bank 99.000 feet; thence North 0°50'00" East along said East bank 338.800 feet; thence North 5°12'00" East along said East bank 160.100 feet; thence North 5°34'00" West along said East bank 88.000 feet; thence North 27°04'23" West along said East bank 52.017 feet to the South right of way line of the Union

Pacific Railroad (formerly Denver & Rio Grande Western Railroad) and a point on a 1382.400 foot radius curve to the right, the center of said curve being South 55°09'56" East; thence departing from said East bank of the Jordan River Northeasterly along the arc of said curve to the right, and said South right of way line through a central angle of 49°00'56", 1182.620 feet; thence North 83°51'00" East along said South right of way line 696.511 feet; thence South 7°50'31" West 257.241 feet; thence South 80°29'54" East 369.390 feet; thence South 11°11'23" East 11.600 feet; thence South 84°51'35" East 168.820 feet to the point of BEGINNING. Contains 99.89 acres.

EXCEPTING FROM SAID PARCEL "A" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "B", 7200 SOUTH, SOUTH TO RAILROAD RIGHT OF WAY
BEGINNING on the West right of way line of 700 West Street at a point which is North 0°17'31" East along the Section line 174.467 feet and North 89°42'29" West 53.00 feet from the East quarter corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 86°33'00" West along the Northerly right of way line of the Union Pacific Railroad (formerly Denver & Rio Grande Western Railroad) 311.026 feet to a point of a 2889.79 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line 136.18 feet; and through a central angle of 2°42'00"; thence South 83°51'00" West along said Northerly right of way line 188.153 feet; thence North 6°09'00" West along said Northerly right of way line 25.000 feet; thence South 83°51'00" West along said Northerly right of way line 1193.047 feet; to a point of a 1482.400 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 47°16'49", 1223.27 feet to a point which is said to be on the East bank of the Jordan River; thence South 83°00'00" West along said East bank 40.061 feet; thence North 25°19'00" West along said East bank 38.600 feet; thence North 16°07'00" East along said East bank 62.200 feet; thence North 30°53'00" East along said East bank 101.900 feet; thence North 27°10'00" East along said East bank 175.600 feet; thence North 18°42'00" East along said East bank 35.600 feet; thence North 23°22'00" East along said East bank 96.200 feet; thence North 5°23'00" East along said East bank 96.600 feet; thence North 6°25'00" East along said East bank 234.300 feet; thence North 13°20'00" West along said East bank 131.180 feet; thence North 2°00'00" West along said East bank 14.870 feet; thence departing from the said East bank of the Jordan River, and running thence North 25°00'00" East 132.00 feet; thence North 44°00'00" East 99.000 feet; thence North 37°00'00" West 132.00 feet; thence North 29°00'00" West 131.070 feet to a point which is said to be on the East bank of the Jordan River; thence North 5°54'00" West along said East bank 151.080 feet; thence North 2°42'00" West along said East bank 215.900 feet; thence North 4°40'00" West along said East bank 258.300 feet; thence North 2°28'00" West along said East bank 267.000 feet; thence North 4°31'00" West

along said East bank 129.500 feet; thence North 4°23'00" West along said East bank 3.63 feet; thence North 5°36'01" West along said East bank 211.677 feet; thence North 0°01'31" West along said East bank 40.00 feet; thence North 4°03'48" West along said East bank 362.429 feet to the Southerly right of way line of said 7200 South Street (Jordan River Boulevard) ; thence departing said East bank of the Jordan River, and running thence North 89°20'39" East along said Southerly right of way line 275.460 feet to a point of a 1369.900 foot radius tangent curve to the right; thence Southeasterly along the arc of said curve and said Southerly right of way line, through a central angle of 27°43'14", 662.775 feet; thence South 16°21'22" East along said Southerly right of way line 34.700 feet; thence South 60°18'00" East along said Southerly right of way line 76.00 feet; thence North 75°45'23" East along said Southerly right of way line 34.700 feet to a point on a 1369.900 foot radius curve to the right, the center of said curve being South 32°20'07" West; thence Southeasterly along the arc of said curve to the right, and said Southerly right of way line 369.940 feet; thence South 42°11'31" East 215.550 feet to a point of a 1335.740 foot radius tangent curve to the left; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 12°03'18", 281.038 feet; thence South 10°51'59" East along said Southerly right of way line 36.020 feet; thence South 56°56'59" East along said Southerly right of way line 75.99 feet; thence North 76°58'02" East along said Southerly right of way line 36.010 feet to a point on a 1335.740 foot radius curve to the left, the center of said curve being North 30°20'51" East; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 30°11'59", 704.050 feet; thence South 89°51'08" East along said Southerly right of way line 383.770 feet; thence South 44°46'48" East along said Southerly right of way line 35.310 feet to the West right of way line of 700 West Street; thence South 0°17'31" West along said West right of way line 1158.073 feet to the point of BEGINNING. Contains 115.28 acres.

EXCEPTING FROM SAID PARCEL "B" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "C", FROM 7200 SOUTH, NORTH TO MURRAY CITY LIMITS

BEGINNING on the West right of way line of 700 West Street and the city limit line dividing Midvale and Murray Cities said point being South 0°18'00" West 1312.73 feet along the Section line, and North 89°42'00" West 33.00 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°18'00" West along said West right of way line 1311.77 feet; thence South 0°17'31" West along said West right of way line 312.210 feet; thence North 89°42'29" West along said West right of way line 20.00 feet; thence South 0°17'31" West along said West right of way line 821.401 feet to the Northerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record) ; thence South 45°13'12" West along said Northerly right of way line 35.400 feet; thence

North 89°51'08" West along said Northerly right of way line 384.090 feet to a point of a 1210.740 foot radius tangent curve to the right; thence Northwesterly along the arc of said curve and said Northerly right of way line through a central angle of 29°55'15", 632.27 feet; thence North 13°08'41" West along said Northerly right of way line 34.610 feet; thence North 56°56'59" West along said Northerly right of way line 76.000 feet; thence South 79°14'43" West along said Northerly right of way line 34.610 feet to a point on a 1210.740 foot radius curve to the right, the center of said curve being North 36°01'56"East; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 11°46'33", 248.840 feet; thence North 42°11'31" West along said Northerly right of way line 215.55 feet to a point of a 1494.900 foot radius tangent curve to the left; thence Northwesterly along the arc of said curve, and said Northerly right of way line, through a central angle of 15°41'35", 409.449 feet; thence North 14°19'55" West along said Northerly right of way line 35.950 feet; thence North 60°18'00" West along said Northerly right of way line 76.00 feet; thence South 73°43'56" West along said Northerly right of way line 35.950 feet to a point on a 1494.900 foot radius curve to the left, the center of said curve being South 27°17'07" West; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 27°56'28", 729.010 feet; thence South 89°20'39" West along said Northerly right of way line 301.060 feet to a point said to be on the East bank of the Jordan River; thence North 1°52'25" West along said East bank 304.559 feet; thence North 6°04'00" West along said East bank 75.870 feet; thence North 4°21'00" East along said East bank 76.800 feet; thence North 10°40'00" West along said East bank 83.600 feet; thence North 1°51'00" East along said East bank 102.100 feet; thence North 11°55'00" West along said East bank 81.600 feet; thence North 1°51'00" East along said East bank 145.000 feet; thence North 16°29'00" West along said East bank 61.100 feet; thence North 3°03'00" West along said East bank 25.700 feet; thence North 14°24'00" West along said East bank 27.800 feet; thence North 5°36'00" West along said East bank 108.700 feet; thence North 4°26'00" West along said East bank 128.00 feet; thence North 69°25'00" East along said East bank 16.700 feet; thence North 5°28'00" West along said East bank 22.100 feet; thence North 88°57'00" West along said East bank 13.900 feet; thence North 18°00'00" West along said East bank 28.600 feet; thence North 5°09'00" West along said East bank . 130.02 feet to the city limit line dividing Midvale and MurrayCities; thence departing from said East bank of the Jordan River, and running thence North 89°28'44" East along said limit line 3009.85 feet to the point of BEGINNING. Contains 129.70 acres

EXCEPTING FROM SAID PARCEL "C" any portion lying below the mean high water mark
of the Jordan River.

RBJ:kgb