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 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 LANDMARK TITLE 102
 BY: SBM, DEPUTY - WI 101 P.

WHEN RECORDED MAIL TO:
 Kevin R. Murray, Esq.
 LeBoeuf, Lamb, Greene & MacRae, L.L.P.
 1000 Kearns Building
 136 South Main Street
 Salt Lake City, Utah 84101-3650

Parcel Nos. 21-23-476-002-4001, 21-23-476-002-4002, 21-26-200-014-4001,
 21-26-200-014-4002, 21-26-401-003, 21-23-402-001, 21-23-426-004,
 21-23-426-007, 21-23-426-009 and 21-23-426-011

NOTICE AND GRANT OF EASEMENT

Pursuant to this Notice and Grant of Environmental Easement ("Easement"), Littleton, Inc. ("Littleton"), a Delaware corporation and owner of certain real property located in Salt Lake County, Utah, as further defined on Exhibit A attached hereto and incorporated herein by reference (the "Littleton Property"), hereby (i) provides notice of the matters described herein to all subsequent owners, operators, and other persons who hereafter come to have any interest in the Littleton Property; and (ii) hereby grants to the United States of America ("United States") acting through the United States Environmental Protection Agency ("EPA"), the State of Utah acting through the Department of Environmental Quality ("UDEQ"), and Midvale City, a municipality and political subdivision of the State of Utah, an easement under the terms and conditions described herein.

RECITALS

WHEREAS, the Littleton Property is included in the Midvale Slag Site, as defined and listed by EPA on the National Priorities List ("NPL") as authorized pursuant to the Comprehensive Environmental Response, Compensation and Liability Act or "CERCLA," as amended, and its implementing regulations (the "Site");

WHEREAS, 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 180 acres of the Site.

WHEREAS, on or about April 28, 1995, the Regional Administrator of EPA Region 8 issued a Record of Decision for the OU1 portion of the Site (the "OU1 ROD"), finding that certain response actions would be required with respect to 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.

WHEREAS, on or about October 29, 2002, the Regional Administrator of EPA Region 8 issued a Record of Decision for the OU2 Portion of the Site (the "OU2 ROD"), finding that certain response actions would be required with respect to the OU2 portion of the Site, including the requirement that certain minimum covers and barriers be installed, inspected, and maintained within the OU2 portion of the Site.

WHEREAS, the United States, on behalf of the Administrator of the EPA, filed a complaint in the United States District Court for the District of Utah against Littleton, alleging that it 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 "Litigation");

WHEREAS, Littleton has entered into a Consent Decree to settle the claims brought in the Litigation, which Consent Decree was entered by the United States District Court for the District of Utah on November 16, 2004 in the matter of Littleton, Inc. v. Metals Reserve Company, et al., Case No. 2:99 CV 757 TS and United States v. Littleton, Inc. et al., consolidated. A complete copy of the text of the Consent Decree (excluding all Appendices except for the Institutional Control Process Plans) is attached hereto as Exhibit B.

WHEREAS, pursuant to the Consent Decree, Littleton has agreed to undertake, perform, and finance certain response actions relating to solid media, to the extent described in the OU2 ROD.

WHEREAS, pursuant to the Consent Decree, Littleton has agreed to provide notice of certain matters to successors-in-title to the Littleton Property;

WHEREAS, pursuant to the Consent Decree, future use and development of certain portions of the Littleton Property is and will be subject to certain institutional controls as set forth in the Institutional Control Process Plan for OU1 ("OU1 IC Plan") and the Institutional Control Process Plan for OU2 ("OU2 IC Plan"), attached to the Consent Decree as Appendix J and Appendix K, respectively, and at the time of subdivision (as defined by the Midvale City Code) of all or any portion of the Littleton Property located within the boundaries of Midvale City, Littleton 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 require future landowners to comply with applicable Institutional Controls and take other actions in accordance with Paragraph 22 of the Consent Decree;

WHEREAS, future landowners of all or any portion of the Littleton Property located within Midvale City may contact the Department of Community and Economic Development of Midvale City Corporation regarding applicable Institutional Controls.

NOW, THEREFORE, Littleton hereby grants an easement to the United States, the State of Utah, and Midvale City, and their representatives (including contractors), for access at all reasonable times to the Littleton Property for the purpose of conducting any activity related to the Consent Decree including, but not limited to, the following activities as further described and defined in the Consent Decree:

- 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 the Consent Decree;
- viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Littleton or its agents, consistent with Article XXVI of the Consent Decree;
- ix. Assessing Littleton's compliance with the Consent Decree;
- x. Assessing compliance with the Institutional Control Process Plans for OU1 and OU2; and
- xi. Determining whether the Site or other 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 the Consent Decree.
- xii. Enforcing, in accordance with their respective authorities, applicable Institutional Controls (as defined in the Consent Decree).

This Easement shall run with the land and shall be binding upon Littleton and its successors and assigns and shall inure to the benefit of the United States, the State of Utah, and Midvale City.

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DATED this 7th day of December, 2004.

Littleton, Inc.

By: Robert L. Soehnlen
Robert L. Soehnlen
President

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing Notice and Easement was subscribed, sworn to and acknowledged before me this 7th day of December, 2004 by Robert L. Soehnlen, acting in his capacity as President of LITTLESON, INC., a Delaware corporation.

NOTARY PUBLIC

Jamie Perry
Residing at:
Salt Lake City, Utah

My commission expires:
4/25/07

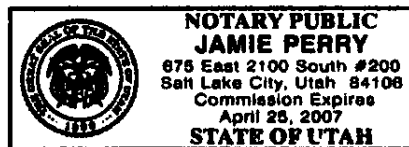


EXHIBIT A

PARCEL 1:

BEGINNING on the West right of way line of 700 West Street at a point which is South 0°18'00" West 1254.00 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 1370.500 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 75.870 feet; thence North 4°21'00" East 76.800 feet; thence North 10°40'00" West 83.600 feet; thence North 1°51'00" East 102.100 feet; thence North 11°55'00" West 81.600 feet; thence North 1°51'00" East 145.000 feet; thence North 16°29'00" West 61.100 feet; thence North 3°03'00" West 25.700 feet; thence North 14°24'00" West 27.800 feet; thence North 5°36'00" West 108.700 feet; thence North 4°26'00" West 128.00 feet; thence North 69°25'00" East 16.700 feet; thence North 5°28'00" West 22.100 feet; thence North 88°57'00" West 13.900 feet; thence North 18°00'00" West 28.600 feet; thence North 5°09'00" West 232.336 feet; thence departing from said East bank of the Jordan River, South 89°42'00" East 1402.262 feet; thence South 89°51'45" East 1112.763 feet, more or less, to the Southwest corner of the tract of land conveyed to MURRAY CITY CORPORATION in that certain Warranty Deed recorded June 5, 1972 as Entry No. 2460813, in Book 3080 at Page 615, of the Official Records of the Salt Lake County Recorder; thence North 89°26'14" East along the South line of said tract of land 75.250 feet; thence South 0°18'00" West 4.290 feet; thence South 89°42'00" East 429.00 feet to the point of BEGINNING.

EXCEPTING FROM SAID **PARCEL 1** the portion lying within the bounds of the following described tract of land:

Beginning at a point on the South right of way line of Winchester Street (6400 South), said point being North 21.02 feet and West 371.01 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 7°17'03" East 65.06 feet; thence South 82°42'57" West 224.08 feet; thence South 7°17'03" East 253.48 feet; thence South 0°18'00" West 267.75 feet; thence North 89°42'00" West 1098.81 feet; thence South 0°18'00" West 710.80 feet; thence South 89°25'15" West 1395.54 feet to a point which is said to be on the East bank of the Jordan River; thence Northerly along said East bank the following courses and distances, North 5°09'00" West 80.603 feet; thence North 6°39'00" West 174.50 feet; thence North 25°31'00" West 139.30 feet; thence North 41°31'00" West 91.80 feet; thence North 45°14'00" West 147.70 feet; thence North 47°54'00" West 147.80 feet; thence North 45°55'00" West 100.20 feet; thence North 39°03'00" West 82.10 feet; thence North 32°26'00" West 76.40 feet; thence North 30°06'00" West 77.49 feet to the South right of way line of Winchester Street (6400 South); thence North 82°42'57" East along said South line 3274.05 feet to the point of beginning.

FURTHER EXCEPTING FROM SAID **PARCEL 1** any portion lying below the mean high water mark of the Jordan River.

PARCEL 2:

BEGINNING on the Southerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record) at a point which is South 0°17'31" West along the Section line 1090.186 feet and West 1195.70 feet from the Northeast Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence West 440.802 feet; thence South 0°25'00" West 590.357 feet; thence West 1161.463 feet to a point which is said to be on the East bank of the Jordan River; thence North 2°42'00" West along said East bank 174.287 feet; thence North 4°40'00" West 258.300 feet; thence North 2°28'00" West 267.000 feet; thence North 4°31'00" West 129.500 feet; thence North 4°23'00" West 3.63 feet; thence North 5°36'01" West 211.677 feet; thence North 0°01'31" West 40.00 feet; thence North 4°03'48" West 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 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 44.490 feet to the point of BEGINNING.

EXCEPTING FROM SAID **PARCEL 2** any portion lying below the mean high water mark of the Jordan River.

PARCEL 3:

BEGINNING on the West right of way line of 700 West Street at a point which is North $0^{\circ}17'31''$ East along the Section line 174.467 feet and North $89^{\circ}42'29''$ 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 $86^{\circ}33'00''$ West along the former Northerly right of way line of the Union Pacific Railroad (formerly the 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 $2^{\circ}42'00''$; thence South $83^{\circ}51'00''$ West along said Northerly right of way line 188.153 feet; thence North $6^{\circ}09'00''$ West along said Northerly right of way line 25.000 feet; thence South $83^{\circ}51'00''$ West along said Northerly right of way line 957.018 feet; thence North $0^{\circ}25'00''$ East 1504.178 feet; thence East 440.802 feet to the Southerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record); thence South $56^{\circ}56'59''$ East along said Southerly right of way line 31.510 feet; thence North $76^{\circ}58'02''$ 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 $30^{\circ}20'51''$ East; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of $30^{\circ}11'59''$, 704.050 feet; thence South $89^{\circ}51'08''$ East along said Southerly right of way line 383.770 feet; thence South $44^{\circ}46'48''$ East along said Southerly right of way line 35.310 feet to the West right of way line of 700 West Street; thence South $0^{\circ}17'31''$ West along said West right of way line 1158.073 feet to the point of BEGINNING.

PARCEL 4:

BEGINNING on the former Northerly right of way line of the Union Pacific Railroad (formerly the Denver & Rio Grande Western Railroad) at a point which is North $0^{\circ}17'31''$ East along the Section line 174.467 feet and North $89^{\circ}42'29''$ West 53.00 feet and South $86^{\circ}33'00''$ West 311.026 feet and South $85^{\circ}12'00''$ West 136.170 feet and South $83^{\circ}51'00''$ West 188.153 feet and North $6^{\circ}09'00''$ West 25.000 feet and South $83^{\circ}51'00''$ West 957.018 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South $83^{\circ}51'00''$ West along said Northerly right of way line 236.029 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 $47^{\circ}16'49''$, 1223.27 feet to a point which is said to be on the East bank of the Jordan River; thence South $83^{\circ}00'00''$ West along said East bank 40.061 feet; thence North $25^{\circ}19'00''$ West 38.600 feet; thence North $16^{\circ}07'00''$ East 62.200 feet; thence North $30^{\circ}53'00''$ East 101.900 feet; thence North $27^{\circ}10'00''$ East 175.600 feet; thence North $18^{\circ}42'00''$ East 35.600 feet; thence North $23^{\circ}22'00''$ East 96.200 feet; thence North $5^{\circ}23'00''$ East 96.600 feet; thence North $6^{\circ}25'00''$ East 234.300 feet; thence North $13^{\circ}20'00''$ West 131.180 feet; thence North $2^{\circ}00'00''$ West 14.870 feet; thence departing from the said East bank of the Jordan River North $25^{\circ}00'00''$ East 132.00 feet; thence North $44^{\circ}00'00''$ East 99.000 feet; thence North $37^{\circ}00'00''$ West 132.00 feet; thence North $29^{\circ}00'00''$ West 131.070 feet to a point which is said to be on the East bank of the Jordan River; thence North $5^{\circ}54'00''$ West along said East bank 151.080 feet; thence North $2^{\circ}42'00''$ West along said East bank 41.613 feet; thence departing from the said East bank of

the Jordan River, East 1161.463 feet; thence South 0°25'00" West 913.821 feet to the point of BEGINNING.

EXCEPTING FROM SAID **PARCEL 4** any portion lying below the mean high water mark of the Jordan River.

PARCEL 5:

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 218.400 feet; thence North 1°40'00" East 75.100 feet; thence North 3°47'00" East 150.600 feet; thence North 5°44'00" East 142.600 feet; thence North 11°16'00" East 74.100 feet; thence North 43°20'00" East 285.400 feet; thence North 18°52'00" East 78.800 feet; thence North 1°48'00" East 77.700 feet; thence North 25°02'00" West 52.200 feet; thence North 20°02'00" West 99.000 feet; thence North 0°50'00" East 338.800 feet; thence North 5°12'00" East 160.100 feet; thence North 5°34'00" West 88.000 feet; thence North 27°04'23" West 52.017 feet to the South right of way line of the Union Pacific Railroad (formerly the 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.

EXCEPTING FROM SAID **PARCEL 5** any portion lying below the mean high water mark of the Jordan River.

"TRAILER PARK PARCEL"

BEGINNING at a point on the South right of way line of Winchester Street (6400 South), said point being North 21.02 feet and West 371.01 feet from the East Quarter Corner of Section 23, Township

2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 7°17'03" East 65.06 feet; thence South 82°42'57" West 224.08 feet; thence South 7°17'03" East 253.48 feet; thence South 0°18'00" West 267.75 feet; thence North 89°42'00" West 1098.81 feet; thence South 0°18'00" West 710.80 feet; thence South 89°25'15" West 1395.54 feet to a point which is said to be on the East bank of the Jordan River; thence Northerly along said East bank the following courses and distances, North 5°09'00" West 80.603 feet; thence North 6°39'00" West 174.50 feet; thence North 25°31'00" West 139.30 feet; thence North 41°31'00" West 91.80 feet; thence North 45°14'00" West 147.70 feet; thence North 47°54'00" West 147.80 feet; thence North 45°55'00" West 100.20 feet; thence North 39°03'00" West 82.10 feet; thence North 32°26'00" West 76.40 feet; thence North 30°06'00" West 77.49 feet to the South right of way line of Winchester Street (6400 South); thence North 82°42'57" East along said South line 3274.05 feet to the point of beginning.

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

PARCEL "A"

BEGINNING on the South line of Winchester Street (6400 South) and the West line of 700 West Street at a point which is South 89°58'48" West 33.00 feet and North 0°20'11" West 64.19 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°20'11" East along said West line 64.19 feet; thence South 0°18'00" West along said West line 593.82 feet; thence North 89°42'00" West 518.19 feet; thence North 0°18'00" East 267.75 feet; thence North 7°17'03" West 253.48 feet; thence North 82°42'57" East 224.08 feet; thence North 7°17'03" West 65.06 feet to the South line of Winchester Street (6400 South); thence North 82°42'57" East along said South line 340.38 feet to the point of BEGINNING.

PARCEL "B"

BEGINNING on the West line of 700 West Street at a point South 0°18'00" West along the Section line 814.18 feet 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 line 66.00 feet; thence West 488.71 feet; thence South 151.26 feet; thence South 89°42'00" East 487.91 feet to the West line of 700 West Street; thence South 0°18'00" West along said West line 220.00 feet; thence North 89°42'00" West 429.00 feet; thence North 0°18'00" East 129.29 feet to the Northeast corner of the tract of land conveyed to MURRAY CITY CORPORATION in that certain Warranty Deed recorded June 5, 1972 as Entry No. 2460813, in Book 3080 at Page 615, of the Official Records of the Salt Lake County Recorder; thence South 89°26'14" West along the North line of said tract of land 75.25 feet to the Northwest corner thereof; thence South 0°18'00" West along the West line of said tract of land 125.00 feet to the Southwest corner thereof; thence North 89°51'45" West 1112.76 feet; thence North 0°18'00" East 431.35 feet; thence East 1617.02 feet to the point of BEGINNING.

EXCEPTING FROM SAID PARCEL "B" the portion lying within the bounds of the following described tract of land:

Beginning at a point South 880.00 feet from the Northeast Corner of the Southeast Quarter of Section 23, Township 2 South, Range 1 West, Salt Lake Base and

Meridian, and running thence South 154.00 feet; thence West 526.316 feet; thence North 154.00 feet; thence East 526.316 feet to the point of beginning.

FOR REFERENCE PURPOSES ONLY

Tax Parcel (Sidwell) Numbers applicable to parcels of land described in this Exhibit "A":

21-23-476-002-4001, 21-23-476-002-4002, 21-26-200-014-4001,
21-26-200-014-4002, 21-26-401-003, 21-23-402-001, 21-23-426-004,
21-23-426-007, 21-23-426-009 and 21-23-426-011

EXHIBIT B

RD/RA Consent Decree for Midvale Slag Site

(excluding all Appendices except the OU1 and OU2 Institutional Control Process Plans)

FILED
CLERK, U.S. DISTRICT COURT
2004 NOV 16 P 2:50

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

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

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.

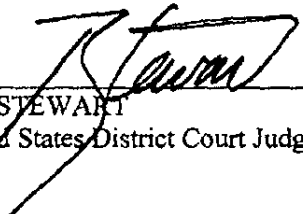
Moreover, the Court finds the United States’ assessment of the adequacy of the proposed settlement to be persuasive. The proposed settlement requires extensive action to remediate the contaminated site. This cleanup has been approved by the EPA, and the State of Utah has concurred with the proposed remedial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

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

jmr

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cv-00757

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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 Littleton, Inc. ("Littleton") filed a complaint in the matter of Littleton, Inc. v. Metals Reserve Co. et al., Civil No. 2:99CV0757ST (the "Littleton 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 Littleton 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 Littleton, 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 Littleton 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 Littleton.

- 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 Littleton Work (as defined herein) will be properly and promptly conducted by Littleton 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. Littleton shall provide a copy of this Consent Decree to the Supervising Contractor and make available to other contractors and subcontractors hired to perform the Littleton Work required by this Consent Decree and to each person representing Littleton with respect to the Site or the Littleton Work and shall condition all contracts entered into hereunder upon performance of the Littleton Work in conformity with the terms of this Consent Decree. Littleton or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Littleton Work required by this Consent Decree. Littleton shall nonetheless be responsible for ensuring, to the extent allowed by law, that its contractors and subcontractors perform the Littleton 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 Littleton within the meaning of Section

107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Littleton shall also provide a copy of this Consent Decree to any Littleton 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 Littleton 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 Littleton's satisfactory completion of the applicable Work Milestone(s) and a financial certification. The invoice shall specify the total amount due to Littleton for the completion of the Work Milestone(s),

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.

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

"Littleton 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.

"Littleton Work Successor" shall mean any person or entity that EPA approves pursuant to Paragraph 9(c) to assume any or all of Littleton'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 Littleton (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, Littleton, 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 Littleton, 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 Littleton 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 Littleton, 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 Littleton 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 Littleton 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 Littleton 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 Littleton, 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 Littleton Work. The Littleton Work is to be financed by Littleton 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 Littleton and the Settling Federal Agencies. Littleton shall finance (subject to Article XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS) and perform the Littleton 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 Littleton 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 Littleton pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws and regulations. Littleton 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.

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 Littleton 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 Littleton Work). Where any portion of the Littleton Work that is not on-site requires a federal, state, or local permit or approval, Littleton shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.
- b) Littleton may seek relief for any delay in the performance of the Littleton Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Littleton 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, Littleton 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. Littleton 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 Littleton Work ("Littleton Work Successor"), Littleton shall have the right to request that EPA accept such Littleton Work Successor's agreement to be bound by and to perform any such obligations under this Consent Decree. The Littleton Work Successor shall comply with the provisions of this Consent Decree, including Paragraph 11(c), below. If EPA approves of the Littleton Work Successor's assumption of all or any portion of the Littleton Work, then upon the Littleton Work Successor's execution and delivery of an agreement providing for the assumption of such obligations, in a form acceptable to EPA and Littleton, 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 Littleton as to the specific aspect of the Littleton Work assumed by the Littleton Work Successor. EPA will not unreasonably withhold its consent to the assumption by any Littleton Work Successor of all or any part of the Littleton Work; provided that the Littleton Work Successor is able to demonstrate to EPA's satisfaction that it is capable of performing the portion of the Littleton Work to be assumed. Upon satisfactory completion of all aspects of the Littleton Work assumed by the Littleton 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 Littleton Work Successor and the Littleton 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 Littleton who does not fall within the definition of a "Littleton Work Successor."

VI. PERFORMANCE OF THE LITTLETON WORK

10. Selection of Supervising Contractor.

- a) All aspects of the Milestone Work pursuant to Articles VI. PERFORMANCE OF THE LITTLETON 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, Littleton proposes to change a Supervising Contractor. Littleton 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 Littleton are not able to agree as to a proposed Supervising Contractor and the failure to agree prevents Littleton from meeting one or more deadlines in this Consent Decree or in a plan approved by EPA pursuant to this Consent Decree, Littleton 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 Littleton 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, Littleton shall implement the activities required under the Remedial Action Work Plan. Littleton 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, Littleton 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 Littleton Work Successor to perform all or part of the remaining Milestone Work pursuant to Paragraph 9(c) of this Consent Decree, the Littleton 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 Littleton Work Successor's obligations and responsibilities with regard to that portion of the Littleton 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.

- b) If Littleton objects to any modification to the RD Work Plan, Remedial Design, or RA Work Plan required by EPA under this paragraph, Littleton 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 Littleton desires to deviate from the approved final RD Work Plan, the Remedial Design, the RA Work Plan, or any schedule or plan relating thereto, Littleton 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. Littleton 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) Littleton 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. Littleton 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 Littleton. Littleton 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, Littleton 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, Littleton 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 Littleton 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. Littleton 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. Littleton 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 Littleton 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, Littleton 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. Littleton shall allow EPA personnel and its authorized representatives access at reasonable times to all laboratories utilized by Littleton in implementing this Consent Decree. In addition, Littleton shall take reasonable measures to ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Littleton 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, Littleton may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Littleton 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. Littleton 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. Littleton 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, Littleton shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Littleton 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 Littleton to take split or duplicate samples of any samples it takes as part of EPA's oversight of Littleton's implementation of the Littleton Work.
19. Littleton 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 Littleton 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

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 Littleton, Littleton 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 Littleton or its agents, consistent with Article XXVI. ACCESS TO INFORMATION;
 - ix) Assessing Littleton'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 Littleton or its activities.

22. Restrictive Covenants.

- a) Within thirty (30) days of the Effective Date, Littleton 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, Littleton 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 Littleton, 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 Littleton 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, Littleton, 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 Littleton 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 Littleton 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 Littleton 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, Littleton 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 Littleton obtains a Certification of Construction Work Completion pursuant to Paragraph 49(b). After such notification, Littleton shall provide quarterly reports to EPA until EPA notifies Littleton of completion of Milestone Work pursuant to Paragraph 50. If requested by EPA, Littleton shall also provide briefings for EPA to discuss the progress of the Littleton 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 Littleton 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 Littleton 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 Littleton 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. Littleton 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 Littleton Work that Littleton 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, Littleton shall, within twenty-four (24) hours of Littleton'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, Littleton shall furnish to EPA a written report, signed by Littleton'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, Littleton shall submit a report summarizing all actions taken in response thereto.
32. Littleton 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, Littleton shall submit in electronic form all portions of any report or other deliverable Littleton is required to submit pursuant to the provisions of this Consent Decree.
33. All reports and other documents submitted by Littleton to EPA (other than the monthly progress reports referred to above) which purport to document Littleton's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Littleton.

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 Littleton 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 Littleton with written notice of the deficiency and shall provide Littleton with the right to cure the deficiency or satisfy the condition. Upon receipt of such notice, Littleton 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, Littleton 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 Littleton submitted a deliverable with a material defect as provided above, Littleton shall be deemed to have failed to submit an adequate deliverable on a timely basis, unless Littleton 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) Littleton 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. Littleton hereby designates, and EPA approves, Liz Scaggs of ENTACT Services, LLC, as its Project

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 Littleton shall be subject to approval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Littleton Work. Littleton's Project Coordinator shall not be an attorney for Littleton in this matter. Littleton'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 Littleton 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 Littleton's Project Coordinator will meet (in person or by telephone call), at a minimum, monthly.

XIII. ASSURANCE OF ABILITY TO COMPLETE LITTLETON WORK

40. Within thirty (30) days of the Effective Date, Littleton 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 Littleton 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 Littleton Work Successor assumes responsibility for any or all of the Littleton 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 Littleton 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 Littleton Work Successor; or
 - e) A demonstration that the Littleton Work Successor satisfies the requirements of 40 C.F.R. Part 264.143(f).
42. If any Littleton Work Successor seeks to demonstrate the ability to complete the Littleton Work through a guarantee by a third party pursuant to Paragraph 41(d) of this Consent Decree, such Littleton 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 Littleton 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 Littleton Work shall not excuse performance by Littleton of any activities required under this Consent Decree.
43. Any Littleton Work Successor approved under Paragraph 9(c) to take over all or any portion of the Littleton 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 Littleton 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

Littleton. EPA and Littleton 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 Littleton 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 Littleton. 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 Littleton in writing of the activities that must be undertaken by Littleton 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 Littleton to submit a schedule to EPA for approval pursuant to Article XI. **EPA APPROVAL OF DELIVERABLES.** Littleton 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 Littleton's obligations under this Consent Decree with respect to any other Work Milestone.
49. Completion of Construction Work.
 - a) When Littleton concludes that all Construction Work has been completed, Littleton 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, Littleton still believes that the Construction Work has been fully performed, Littleton 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 Littleton or Littleton'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 Littleton 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 Littleton in writing of the activities that must be undertaken by Littleton pursuant to this Consent Decree to complete the Construction Work; provided, however, that EPA may only require Littleton 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 R.A Work Plan or require Littleton to submit a schedule to EPA for approval pursuant to Article XI. EPA APPROVAL OF DELIVERABLES. Littleton 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, Littleton 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 Littleton 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, Littleton 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, Littleton shall notify the EPA Region 8 hotline at 1-800-227-8914. Littleton 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 Littleton's liabilities relating to Past and Future Response Costs, Littleton 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 Littleton for the sale or transfer of any interest in land at the Site, net of the cash (or cash equivalents) expended by Littleton to prepare or market the land for sale. In calculating Littleton's Net Development Cash Flows, Littleton 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 Littleton 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 Littleton'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 Littleton further agree that Littleton'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 Littleton'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, Littleton will be entitled to treat, as though they were incurred during 2004, certain development expenses incurred by Littleton 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 Littleton 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. Littleton's obligation to provide audited statements under this subparagraph will terminate upon (i) Littleton'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 Littleton 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 Littleton 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 Littleton. 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 Littleton to accomplish Littleton Work as set forth in this Article. An additional amount of up to Fifty Thousand Dollars (\$50,000) will be made available to Littleton 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 Littleton, 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) Littleton 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 Littleton 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, Littleton 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 Littleton's documentation of costs incurred and paid for Littleton 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, Littleton 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 Littleton 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 Littleton in writing.

- e) If EPA finds that a Disbursement Request contains an error, is not complete, or includes costs previously reimbursed, it will notify Littleton and provide a reasonable opportunity to cure the deficiency by submitting a revised Disbursement Request. If Littleton fails to cure the deficiency within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Littleton's costs eligible for disbursement for that submission and disburse the corrected amount to Littleton in accordance with the procedures set forth in this Paragraph. Littleton 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 Littleton 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 Littleton for, disbursement from the Midvale Slag Disbursement Special Account: (a) costs incurred by Littleton 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 Littleton performs that are not required under, or approved by EPA pursuant to, this Consent Decree; (d) costs related to the Littleton Litigation, settlement, or development of potential contribution claims or identification of other potentially responsible parties; (e) internal costs of Littleton, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Littleton directly performing the Littleton Work; (f) costs solely attributable to the construction of development improvements; (g) costs solely attributable to Littleton's efforts to obtain necessary approvals from Midvale City; or (h) any costs incurred by Littleton 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 Littleton 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 Littleton'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 Littleton Work pursuant to Paragraph 97 when such assumption of performance of the Littleton Work is not challenged by Littleton or, if challenged, is upheld under Article XXI. DISPUTE RESOLUTION. Littleton may dispute EPA's termination of Midvale Slag Disbursement Special Account disbursements under Article XXI. DISPUTE RESOLUTION.

58. Recapture of Midvale Slag Disbursement Special Account Disbursements. 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 Littleton 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 Littleton. Within thirty (30) days of receipt of EPA's invoice, Littleton 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. Littleton 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, Littleton 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 Littleton pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Littleton 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.

XIX. INDEMNIFICATION AND INSURANCE

62. Littleton'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 Littleton as EPA's authorized representative under Section 104(e) of CERCLA. Littleton 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 Littleton, 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 Littleton as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, Littleton 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 Littleton, 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 Littleton in carrying out activities pursuant to this Consent Decree. Neither Littleton nor any such contractor shall be considered an agent of the United States.
- b) The United States shall give Littleton written notice of any claim for which the United States plans to seek indemnification pursuant to this Paragraph and shall consult with Littleton prior to settling such claim.

63. Littleton 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 Littleton and any person for performance of Littleton Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Littleton 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 Littleton and any person for performance of Littleton 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 Littleton Work, Littleton 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

duration of this Consent Decree. Littleton 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 Littleton Work on behalf of Littleton in furtherance of this Consent Decree. Prior to commencement of the Littleton Work under this Consent Decree, Littleton shall provide to EPA certificates of such insurance and a copy of each insurance policy. Littleton shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Littleton 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, Littleton 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 Littleton, of any entity controlled by Littleton, or of Littleton's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Littleton's best efforts to fulfill the obligation. The requirement that Littleton 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 Littleton 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, Littleton 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 Littleton first knew that the event might cause a delay. Within twenty (20) days thereafter, Littleton 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 Littleton'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 Littleton, such event may cause or contribute to an endangerment to public health, welfare or the environment. Littleton 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 Littleton from asserting

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 Littleton in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Littleton in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.
68. If Littleton 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, Littleton 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 Littleton complied with the requirements of this Article. If Littleton carries this burden, the delay at issue shall be deemed not to be a violation by Littleton 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. Littleton 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 Littleton 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 - Littleton 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:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1 st through 14 th day
\$ 500	15 th through 30 th day
\$ 1000	31 st 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:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 125	1 st through 14 th day
\$ 250	15 th through 30 th day
\$ 500	31 st 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 Littleton'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 Littleton has failed to comply with a requirement of this Consent Decree, EPA shall give Littleton written notification of the same and describe the noncompliance. EPA may send Littleton 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 Littleton of a violation.
80. All penalties accruing under this Article shall be due and payable to the United States within thirty (30) days of Littleton's receipt from EPA of a written demand for payment of the penalties, unless Littleton 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 Littleton's obligation to complete the performance of the Littleton 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, Littleton 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, Littleton 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 Littleton to the extent that they prevail.

83. If Littleton fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Littleton 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 Littleton'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. Littleton. In consideration of Littleton's performance of the Littleton 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 Littleton 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 Littleton 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. Littleton's Successors and Assigns. The covenants, releases, and agreements set forth in this Article shall inure to the benefit of Littleton (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 Littleton 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 Littleton, 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 Settling 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 Littleton 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 Littleton 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 Littleton 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 Littleton (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. Littleton Work Takeover. In the event EPA determines that Littleton has ceased implementation of any portion of the Littleton Work, is seriously or repeatedly deficient or late in its performance of the Littleton Work, or is implementing the Littleton 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 Littleton Work as EPA determines necessary. Littleton may invoke the procedures set forth in Article XXI. DISPUTE RESOLUTION, Paragraph 72 to dispute EPA's determination that takeover of the Littleton Work is warranted under this Paragraph. Should EPA take over the Littleton Work, EPA shall use funds from Littleton's financial assurance pursuant to Paragraph 40 towards completing the Littleton Work. Any unreimbursed costs incurred by the United States in performing the Littleton Work pursuant to this Paragraph shall be considered Future Response Costs that Littleton 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, Littleton, 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 Littleton'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:

- 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 Minimis 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 Littleton 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 Minimis 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 Littleton, 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 Littleton 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 Littleton Work, and/or implementation or enforcement of the Institutional Controls, as applicable.

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 Littleton'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 Littleton 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 Littleton 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, Littleton, 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

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 Littleton:

Robert Soehnlen
Littleton, 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 Littleton 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).

"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. Littleton shall propose to EPA their participation in the Community Relations plan to be developed by EPA. EPA will determine the appropriate role for Littleton under the Plan. Littleton shall also cooperate with EPA in providing information regarding the Littleton Work to the public. As requested by EPA, Littleton 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 Littleton Work may be modified by agreement of EPA and Littleton. 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 Littleton, 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 Littleton).
- 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

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

July 20 2004
DATE

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

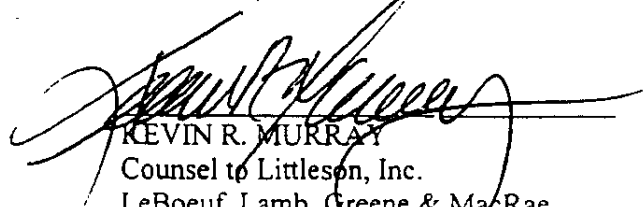
July 16 2004
DATE

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

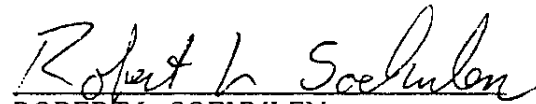
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleton, Inc., et al., relating to the Midvale Slag Superfund Site.

FOR LITTLESON, INC.

July 29, 2004
DATE


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

July 29, 2004
DATE


ROBERT L. SOEHNLEN
President
Littleton, 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. Littleton, Inc., et al., relating to the Midvale Slag Superfund Site.

July 28 . 2004
DATE

FOR MIDVALE CITY CORPORATION

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

July 28 . 2004
DATE

APPROVED AS TO FORM AND LEGALITY:

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

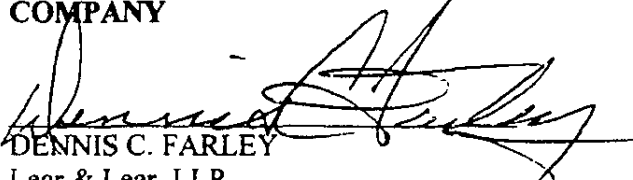
Agent Authorized to Accept Service on Behalf of Above-signed Party:

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

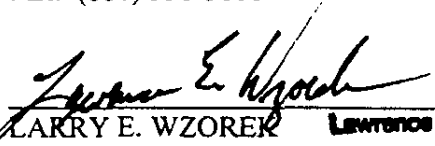
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Littleton, Inc., et al., relating to the Midvale Slag Superfund Site.

**FOR UNION PACIFIC RAILROAD
COMPANY**

July 30 . 2004
DATE


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:

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INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 1
Midvale Slag Site
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public institutional controls for the Operable Unit No. 1 ("OU1") portion of the Midvale Slag Site (the "Site"). This Plan does not supercede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purpose of the controls described in this Plan is to prevent unacceptable human and environmental exposure to contaminants that may be present on the surface or subsurface within OU1. Institutional controls relating to (i) water management over an arsenic plume area located within a portion of OU1; and (ii) organic vapor mitigation controls over another plume area within a portion of OU1 are both addressed in the OU2 Institutional Control Plan. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except pertaining to certain aspects of residential uses, as described below. All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU1. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of City Ordinance, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale Ordinances, an information packet will be developed for potential land and business owners. The information provided will include a history of the site, the remedy

implemented and any restrictions on or additional requirements of the land owner related to a location on a former Superfund site.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU1 ROD.
- To establish controls on the handling and disposal of OU1 soils and wastes, as necessary, during and after Site development.
- To establish controls on groundwater use.
- To establish the requirements through which residential uses will be allowed.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers, as applicable, that may be installed as part of residential development.
- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, deed restrictions, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

Remedial actions on the OU1 portion of the Site were initiated in 1996 and construction completion was achieved in 1998. The statutory five-year review was initiated in 2003, but focused on OU1, since the OU2 ROD has yet to be implemented. EPA recently issued a final Five-Year Review Report. The primary purpose of the Report was to determine whether the remedy at the Site is protective of human health and the environment. The Five Year Review Report indicated that the OU1 ROD (i) may have to be modified to require, among other things, additional work within the Jordan River riparian area within OU1; and (ii) may have to be clarified to permit residential uses in the area within the limits of Midvale City. In response to the Five-Year Review Report, EPA may issue an Explanation of Significant Differences or other form of modification to the OU1 ROD ("ESD"). It is anticipated that through the ESD and the related administrative record (e.g., technical memoranda and related documents), specific standards and procedures will be identified through which unrestricted residential use may be achieved within OU1. For purposes of this Plan, these

standards and procedures are referred to generally as the "Unrestricted Use Protocol". In areas where the requirements of the Unrestricted Use Protocol, if adopted through the ESD process, have not been implemented, residential use may still be achieved by implementing the institutional controls set forth in Section III of this Plan.

II. GROUNDWATER MONITORING WELL MANAGEMENT

The shallow aquifer beneath a portion of OU1 is contaminated, primarily with arsenic and perchloroethylene (PCE). The sources for arsenic originate on OU2 and the source for PCE originates east of OU2 and certain specific institutional controls relating to these plumes are addressed in the OU2 IC Plan.

In addition to the institutional controls identified in the OU2 IC Plan, in order to monitor these contamination plumes, a number of groundwater monitoring wells are located within OU1. In the future, these wells may be replaced and new wells constructed.

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To protect existing and future groundwater monitoring wells.

A. Description of Specific Institutional Controls:

1. Prohibit all new water wells on OU1, (except for groundwater monitoring wells, Murray City Municipal Well, and the well owned by Littleton, Inc.).
2. Prohibit the disturbance of existing groundwater monitoring wells without the prior approval of EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.

B. Mechanism of Implementation:

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II. A. 1 and 2 of this Plan.

III. MATERIALS MANAGEMENT

With respect to the Midvale portion of OU1, the OU1 ROD includes a prohibition on residential use without additional property remediation to residential soil cleanup levels (a contingency addressed pursuant to this Plan)

and the requirement that waste soils, if any, transported off-Site would be disposed in a RCRA Subtitle D facility.

Soil management requirements for commercial or industrial development are limited to requiring that if any waste soils generated in the Midvale City portion of OU1 are to be disposed of off-Site, they will be taken to a RCRA Subtitle D facility. The requirements of the receiving facility must also be satisfied. No soils management requirements exist for the Murray City portion of OU1. Limited quantities of slag are also present in certain areas of OU1. This Plan requires that all visible slag encountered during construction activities on OU1 be managed in accordance with this Plan, as described below.

The objective of the institutional control relating to soils management is to ensure that in areas where residential uses will occur, soils that may have contaminant concentrations above residential clean-up goals are appropriately managed. The objective of slag management is to limit exposures to human and ecological receptors.

Specific soil management requirements for residential development of the Midvale City portion of OU1 are discussed in Section III.

A. Description of Specific Institutional Controls:

2. All excess excavated soils, not otherwise relocated within non-residential areas of OU1, that the landowner or developer elects to haul off-Site for disposal, will be disposed of in a RCRA Subtitle D facility, as provided in the OU1 ROD.
3. Slag visible at the surface either prior to or after site grading will be excavated and handled by one of the following methods: (i) placed under roadways constructed in City rights-of-way, in parking lots, or in similar areas; (ii) relocated to OU2 if practicable, in accordance with the requirements of the OU2 Institutional Control Process Plan; (iii) covered with a minimum of 2-feet of clean soil; or (iv) disposed in a RCRA Subtitle D landfill.
4. Contractors performing earthwork on OU1 will be informed of the presence of contamination and provided access to the administrative record for OU1. Contractors would be required to comply with applicable environmental laws and regulations, including OSHA.

B. Mechanism of implementation:

1. Midvale City Construction Specifications provide for project review, soils testing and disposal requirements for excavations within the Sharon Steel OU2 area. Because contaminants of concern and proposed controls are similar at the Midvale Slag Superfund Site,

Section 12.12.150 of the Midvale City Municipal Code will be amended by Ordinance of the City Council to include Midvale Slag OU1 within the control area currently identified as Sharon Steel OU2. Section 12.12.150 of the Midvale City Municipal Code and Midvale City Construction Specifications will be amended by Ordinance of the City Council to include the controls identified in Section III. A. 1-3 of this Plan.

IV. RESIDENTIAL USE

Unrestricted residential use is permitted within the portion of OU1 located within Murray City. In the area of OU1 located within Midvale City, certain areas of the native surface contain lead and arsenic above the residential clean-up goals adopted in the OU1 ROD. However, the native surface on most of OU1 was modified significantly in the mid-1980s when a large amount of fill was brought onto OU1. Fill soil was placed in a wedge across the eastern $\frac{3}{4}$ of the Midvale City portion of OU1. Fill thickness ranges from 18-feet tapering gradually to the fill limits on the western side of OU1. Placement of additional fill is contemplated under a development plan for OU1. The cleanup standards for residential use within OU1 are as follows: Arsenic (73 parts per million); cadmium (49 parts per million); and lead (650 parts per million).

As explained in the Introduction, it is anticipated that through the ESD process and the associated administrative record (*e.g.*, technical memoranda and related documents), unrestricted residential use may be achieved within the portion of OU1 located in Midvale City through the "Unrestricted Use Protocol." In areas of OU1 within Midvale City where the requirements of the Unrestricted Use Protocol (if adopted through the ESD process), have been implemented, the Institutional Controls identified in this Section III will not apply. In areas of OU1 within Midvale City where the Residential Use Protocol has not been implemented, residential use may still be achieved through compliance with the institutional controls set forth in Section III of this Plan. These institutional controls focus on excavation and grading restrictions. The restrictions differ based on the depth of clean fill placed over potentially contaminated soils.

The objectives of the institutional controls relating to restricted residential use within the portion of OU1 located within Midvale City are as follows:

- To minimize human exposure to contaminants in soils at levels that result in an unacceptable risk to human health (*e.g.*, contaminants that occur at concentrations above the relevant residential cleanup goals).
- To effectively manage excavated material, including wastes, during construction.

- To insure that appropriate final covers are installed, inspected, and maintained during and after development of residential uses, if a two-foot minimum cover method is utilized.

With respect to any and all residential development within OU1, developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. These requirements will be enforced generally through the building permit process, by requiring building permit applicants to provide independent compliance certification through a special inspector. The special inspector will certify to Midvale City that the requirements of this Plan have been satisfied in connection with residential uses in areas subject to institutional controls.

The special inspector will also certify whether the depth of clean cover on residential lots subject to institutional controls is in excess of or less than four feet. On residential lots where the depth of cover exceeds four feet, Midvale City's building permit process will function as the enforcement mechanism for excavation and materials management controls after initial home construction. With respect to residential lots where the depth of cover is less than four feet, Midvale City's building permit process will apply but in addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). With respect to residential development within OU1 in areas that are subject to institutional controls, Midvale City will require, as part of the planned development review process, that new residential developments provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within the OU1 boundaries that are subject to institutional controls, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and that the POA follow, implement, and enforce the specific institutional controls described below.

A. Description of Specific Institutional Controls:

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
 - (i) Grading plans which indicate the depth of clean fill on residential and recreational lots. At the time that the Conditional Use Permit ("CUP") for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the

specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.

- (ii) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below

2. Activities Subject to Building Permit

- (a) Special Inspector. All building permit applicants for construction work within residential areas will be required to retain, at their sole cost, a special inspector with appropriate experience and knowledge to oversee the implementation of this Plan. The special inspector will certify to the City that the institutional controls set forth in this Plan (as then applicable to such property and activity) have been followed in connection with such construction activities.
- (b) Excavation and Materials Management. For all activities after initial home construction that require a building permit and involve excavations below the CUP Approved Depth, a materials management plan and a special inspector will be required as part of the Midvale City Building Permit and Inspection process. The Special Inspector will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the Special Inspector will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (c) All materials from excavations deeper than the CUP Approved Depth ("Restricted Materials") will be segregated to prevent mixing with the clean barrier soils; except that any excavated materials that the special inspector certifies do not contain contaminants at levels above residential cleanup levels applicable to OU1 will not be considered "Restricted Materials."
- (d) All Restricted Materials will be (i) placed back in the excavation (where feasible) at or below the applicable depth, compacted as appropriate, and the clean cover replaced at an elevation not less than the original CUP Approved Depth;

(ii) relocated to areas within OU1 intended for uses other than residential; or (iii) disposed of in a RCRA Subtitle D landfill.

3. Activities Not Subject to Building Permits

(a) In residential areas subject to institutional controls where the CUP Approved Depth is equal to or greater than four feet, no additional institutional controls will apply with respect to activities not otherwise subject to building permits. In residential areas subject to institutional controls where the CUP Approved Depth is less than four feet, the following institutional controls will apply to certain activities that do not otherwise require a building permit:

(i) All property owners must submit a landscape and, if applicable, grading plan to the POA prior to beginning any landscaping or grading activities. The POA shall ensure that the CUP Approved Depth is maintained and preserved through the landscaping process.

(ii) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.

B. Mechanism of Implementation:

1. Section 17-7-9 of the Midvale City Zoning Ordinance, and Title 16, Subdivisions, will be amended by Ordinance of the City Council to include the provisions of Section III of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES;
AMENDMENT OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, contractors and subcontractors working within OU1.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council.

Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

A. Midvale City Responsibilities:

- Develop and process required ordinance changes to implement provision of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments, including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

B. EPA and UDEQ Responsibilities:

- Perform monitoring of groundwater quality to assess performance of remedial action as required by the OU1 and OU2 RODs.
- Perform oversight of unrestricted residential use option under the Unrestricted Use Protocol, if adopted through the ESD process.

C. Landowner / POA Responsibilities:

- Relocating excess soils within OU1 in a manner consistent with the OU1 ROD and this Plan.
- Compliance with disposal facility requirements for off-Site soil disposal.
- Compliance with OU2 IC Plan (as applicable).

- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan (owner/developer).
- Oversight and enforcement of regulated excavation activities and other landscaping and grading controls (POA).

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.

INSTITUTIONAL CONTROL PROCESS PLAN

Operable Unit No. 2
Midvale Slag Site
Midvale, Utah

I. INTRODUCTION

This Institutional Control Process Plan ("Plan") has been prepared to document the requirements and procedures for the public Institutional Controls ("ICs") for the Operable Unit No. 2 ("OU2") portion of the Midvale Slag Site (the "Site") as illustrated in Figure 1. This Plan does not supersede any federal, state, or local statutes, regulations, or ordinances pertaining to the environment and current and future holders of interests of property within the Site will remain obligated to comply with the same. The primary purposes of these controls are (i) to prevent unacceptable human exposure to contaminants that will remain within OU2 after completion of remedial action by ensuring the protection, maintenance, and improvement of physical barriers that have been or will be placed on the Site; and (ii) to prevent or limit activities in certain areas of OU2 that may increase or exacerbate groundwater contamination. Public controls may be imposed, for example, through building permits, subdivision regulations, excavation permits, or zoning ordinances. Private controls are typically imposed through covenants, deed restrictions on the land, or contractual agreements between property owner or lessee. This Plan is not intended to impose or require private controls, except as pertaining to certain aspects of residential uses, as described below. The public controls outlined in this Plan will not apply until after the completion of the initial cover system selected as the remedy for OU2 in the Record of Decision (October 29, 2002) ("OU2 ROD"). All construction and development activities must be performed in accordance with this Plan.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

Implementation of this Plan will be through the City of Midvale's development review, excavation permit, and construction specifications processes. Midvale City will add the criteria referenced in this Plan to each of the governing ordinances for the process in question. Staff will review the application in question to verify that it meets the provisions of all applicable City Ordinances, including the requirements set forth in this Plan and added to the Midvale City Code. In addition to adding the requirements of this Plan to Midvale

Ordinances, an information packet will be developed for potential land and business owners. The information provided will include an history of the site, the remedy implemented and any restrictions or additional requirements of the land owner related to a location on a former Superfund site.

This Plan has been prepared as a mechanism to assure that consistent and effective inspection and maintenance and enforcement activities are occurring and will occur in the future throughout OU2. These objectives and those detailed below will be achieved primarily through the implementation of institutional controls defined in this Plan. Future owners of any portion of the Site will be bound by the provisions of this Plan that are relevant to property they own or control.

The specific objectives of this Plan are as follows:

- To describe the process through which binding and enforceable public ICs will be developed and implemented that will facilitate future construction activities on the Site while at the same time maintaining the short-term and long-term effectiveness of the remedy established in the OU2 ROD.
- To establish controls relating to the management and disposal of OU2 soils and wastes during and after Site development.
- To establish controls on the replacement of the vegetated soil cover system with other types of development-oriented covers and barriers.
- To provide for the long-term operation and maintenance of development-oriented covers and barriers that are installed in lieu of the vegetated soil cover system.
- To establish water management controls to minimize adverse effects on the groundwater remedy selected in the OU2 ROD. These water management ICs will apply to storm water, irrigation, and wet utilities within certain defined areas of OU2 (and a portion of OU1).
- To establish controls on future construction-related activities (deep excavations, borings, or foundations) to prevent cross-contamination between aquifers within a defined area of OU2.
- To establish controls on groundwater use.
- To establish the requirements through which single family residential uses will be allowed.
- To establish vapor mitigation controls relating to buildings within defined areas of OU2 (and a portion of OU1).

- To identify the specific mechanisms (such as City ordinance(s), building permit and inspection requirements, etc.) that will be used to establish and enforce the institutional controls established in this Plan.
- To identify the roles and responsibilities that private parties and federal, state, local, and municipal entities will perform and undertake in order to implement this Plan, including oversight and enforcement.

II. COVERS AND MATERIALS MANAGEMENT

To reduce the risk of exposure to contaminants present at OU2, a vegetated soil cover system designed to achieve positive surface water drainage will be constructed over existing smelter wastes, native soils, and slag located on OU2. Operation and maintenance activities associated with this soil cover system will be provided for in a separate Operation and Maintenance Plan. If and when redevelopment occurs within the boundaries of OU2, it is anticipated that in certain redeveloped areas, the cover system will be replaced with other forms of development-oriented covers, such as structures (*i.e.*, building footprints), hardscape (*i.e.*, sidewalks, parking lots, roads, etc.), and vegetated landscaped areas. This Plan establishes the process through which the final vegetated soil cover system will be replaced and modified as necessary for redevelopment and describes how long-term operation and maintenance will be accomplished on redeveloped parcels of land within the Site.

In order to facilitate materials management in relation to any future excavation activities, a demarcation layer, consisting of a minimum of 24-inches of slag or other bright, geotextile fabric, will be installed beneath all barriers and covers. This demarcation layer marks the interface between the barriers and covers and materials that is potentially impacted from historic smelter operations. In any future excavation operations, excavated materials must be managed appropriately and any disturbed demarcation materials must be replaced at the appropriate level to ensure that all potentially impacted materials remain beneath a permanent demarcation layer.

The objectives of the institutional controls relating to cover systems and solid media left at the site are as follows:

- To minimize human exposure during and after construction to wastes remaining in place.
- To effectively manage excavated material, including wastes, during construction.
- To ensure that appropriate final covers are installed, inspected and maintained during and after Site development (except that the vegetated soil cover is not required to be installed within the Union Pacific or UTA Property).

- To prevent cross-contamination from the shallow perched aquifer to the upper sand and gravel and deep principal aquifers through future construction or investigation activities (such as deep excavations, borings, or foundations) within the Source Area defined on Exhibit A.
- To prevent cross-contamination from the upper sand and gravel aquifer to the deep principal aquifer within the Plume Area defined on Exhibit A.

A. Description of Specific Institutional Controls:

1. Cover Maintenance. The individual landowners will be responsible for maintenance and repair of covers and barriers upon their property. The City shall have the right to make necessary repairs to covers and barriers if the landowner fails to do so in a timely or appropriate manner. In that event, the City shall have the right to recover its costs from the landowner. The City shall also have the right, in its sole discretion, to charge the landowner a surcharge for the costs of the City's work related to the property, in an amount established by ordinance. This requirement does not apply to the Union Pacific or UTA Property.
2. Storage of Excavated Materials. Materials excavated from beneath final covers or other barriers must be segregated from clean cover and barrier materials. Slag materials must also be segregated from materials underlying the slag. Materials excavated from below the demarcation layer may be stored on plastic and covered with plastic or cloth tarp for a single 8-hour work shift. Storage for up to 24 hours adjacent to the work area is permitted if the storage area is secured by temporary fencing. Storage beyond 24 hours must be in roll off bins with secured tops or equivalent. Storage of slag materials must limit or prevent human and environmental exposure (e.g. limited access, dust suppression, etc.). Storage and management of excavated materials must be described in reasonable detail and performed in accordance with the Materials Management Plan discussed below.
3. Replacement of Excavated Materials. Reasonable efforts should be used to return excavated materials to the original excavation. If excavated materials are returned to the excavation, any materials beneath the demarcation layer must be placed first, with the demarcation layer being replaced to the excavation and compacted as appropriate, followed by restoration of an appropriate final barrier or cover. To the extent practicable, any new demarcation layers must tie into existing demarcation layers prior to the placement of covers or barriers. If the demarcation layer consists of slag, the minimum thickness must be 24-inches; otherwise a

brightly-colored geotextile fabric must be used. Worn or damaged geotextile demarcation material in an excavated area must be replaced with new material. Any left over waste material must be managed in accordance with this Plan.

4. Relocation of Excavated Materials. Reasonable efforts should be used to appropriately re-distribute excess excavation materials within the impacted property, in accordance with the requirements of this Plan. However, except for calcine wastes (described below), excess excavation materials may also be relocated to any area within OU2. In connection with any material relocation activities, a demarcation layer consisting of a minimum 24-inch layer of slag or other appropriate demarcation material shall be placed on top of any potentially impacted materials, followed by an appropriate cover consistent with the OU2 ROD. Worn or damaged geotextile demarcation material must be replaced with new material. Any new demarcation layers shall tie into existing demarcation layers prior to placement of final covers and barriers. Compaction requirements from the City of Midvale must be satisfied. If the final barrier consists of a vegetated soil cover, the minimum depth must be 18-inches (24-inches for residential use) and the area must be re-seeded and vegetation re-established. Relocation of materials to undeveloped areas of OU2 must not result in slopes exceeding the maximum slope established in the Remedial Design for OU2 or otherwise adversely affect storm water management systems.
 - (a) Calcine Material. Calcine waste materials consist of dense, fine-grained, purple-colored material. Calcine wastes will generally be consolidated in areas to the immediate north and west of the Pioneer Cemetery and will be covered with a minimum 24-inch layer of slag or other demarcation material. Calcine waste materials may not be relocated within OU-2 without the approval of EPA and DEQ, except that calcine waste materials may be relocated, subject to the requirements of this Plan, within the original Calcine Waste Area designated in the OU2 ROD and the Remedial Design without further approval.
5. Off-Site Disposal. Any soils or smelter waste that must be disposed off-site must be disposed in a permitted landfill. Wastes must be characterized in accordance with the requirements of the permitted disposal facility. Off-site disposal of Waste Material in excess of 10 cubic yards must also comply with Paragraph 13 of the Consent Decree. "Waste Material," as defined under the Consent Decree, includes any hazardous substances, any pollutant or contaminant, or any solid waste.

6. Plans and Approvals. Site plan approval as defined and required by chapter 17-7-3 and regulated by 17-7-9 of the Midvale City Zoning Ordinance shall be obtained before initial site development, future redevelopment or change in land use. Applications shall be made available through the City Community and Economic Development Department. The application shall disclose the presence of hazardous substances on the Site and identify the type and location of reports pertaining to the location and type of hazardous substances on the Site. In conjunction with the submittal of the preliminary site plan application, the applicant shall submit documentation that shall include an attestation that the applicant is aware of the current Site condition and will comply with all Institutional Controls. Applicant submittals and requirements under the site plan approval process are summarized below which are in addition to and in conjunction with the requirements identified in 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance:
- (a) Applicant shall submit a plan illustrating the proposed construction and development. Preliminary and final site plans of development shall be submitted for review and approval. Preliminary and final development plans must designate the type and location of final barriers.
 - (b) A materials management plan must be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The materials management plan must demonstrate that all such construction activities will be in compliance with this Plan.
 - (c) An air quality monitoring and dust suppression plan shall be provided with respect to any construction activities that involve the management of potentially contaminated materials (e.g., slag or underlying materials). The plan will ensure that National Ambient Air Quality Standards are met for site contaminants at the boundary between the construction area and the developed areas in addition to State or local air quality requirements. Applicant may request a waiver of the air monitoring requirements by submitting relevant data demonstrating compliance with all air quality standards under similar circumstances (similar weather conditions, construction operations, site materials).
 - (d) Grading and drainage plans will be required and shall specifically demonstrate the protection of final barriers from erosion and ensure that drainage patterns are appropriate

and consistent with the groundwater remedy adopted by EPA.

- (e) A proposed monitoring and maintenance plan must be provided by applicant to ensure that all barriers on the proposed development site will be maintained in accordance with this Plan.
 - (f) A road cut permit shall be required for any work in the public right-of-way that breaches final site covers, per ordinance 12.12.150 of the Midvale City Municipal Code.
7. Intrusive Activities. If any intrusive exploratory activities (such as excavations, borings, CPT soundings) or foundations (such as piles or drilled shafts) are proposed for the Source or Plume Areas (as defined on Exhibit A) at depths greater than 20 feet, approval must first be obtained from the City of Midvale. The request for approval must include a detailed description of the proposed exploration or construction activity as well as the mechanism(s) that will be used to prevent cross contamination between the two aquifers. The request must be approved by the City of Midvale prior to implementation of the work. An application process will be established to enforce these restrictions.

B. Mechanism of implementation:

- 1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section II.A.1 and 6 of this Plan.
- 2. Section 12.12.150 of the Midvale City Municipal Code, which addresses excavations within the public right of way, will be amended by Ordinance of the City Council to include Midvale Slag OU2 within the control area currently identified as Sharon Steel OU2.
- 3. Midvale City's Construction Specifications will be amended to include the provisions of Section II.A.2-5 and 7 of this Plan.

III. WATER MANAGEMENT

The shallow aquifer beneath a portion of the OU2 and OU1 areas of the Site is contaminated, primarily with arsenic, as well as other substances. Significant arsenic source areas are located in certain areas of OU2. Water management on a portion of OU2 will focus on preventing new sources of water from infiltrating water over and near the Source Areas depicted in Exhibit A. Water management on portions of OU2 and OU1 will also focus on preventing new sources of water from affecting the extent, direction, and flow of the arsenic

plume within the Source and Plume Areas depicted on Exhibit A. The Source and Plume Areas depicted on Exhibit A are merely illustrative.¹ At the time that Subdivision (as defined by the Midvale City Code) occurs on any property within a Source or Plume Area, the boundaries of these areas will be further defined, surveyed, and demarcated on the small scale master plan, subdivision plat, and/or other permanent record maintained by Midvale City for purposes of enforcement. These institutional controls are in part based upon the conclusions reached in a document prepared for EPA entitled: Technical Memorandum Evaluation of Impact of Residential Irrigation on Arsenic Plume, Midvale Slag Superfund Site, Operable Unit 2 (CDM 2004).

The objectives of the institutional controls relating to water management are as follows:

- To minimize human exposure to contaminated groundwater.
- To effectively manage contaminated construction wastewater (pumped groundwater).
- To minimize adverse impacts to the groundwater remedy selected in the OU2 ROD by minimizing potential infiltration of water through Source and Plume Areas.

A. Description of Specific Institutional Controls:

1. Prohibit all water wells on OU2 (excluding groundwater monitoring wells).
2. Prohibit the disturbance of any groundwater monitoring wells without prior approval by EPA and UDEQ. A rehabilitation or well replacement plan must accompany any request to disturb a monitoring well.
3. Prohibit unlined storm water detention basins within the boundaries of or within 100 feet of a Source or Plume Area (Exhibit A). Liners of detention basins must be impervious (detention basins will be shown on construction plans relative to source area boundaries and will be included in site plan applications).

¹A more specific description of the "Source Area" is the point beginning at the north east corner of the intersection of 7800 South and Bingham Junction Boulevard (to be constructed), thence north along the eastern edge of the right-of-way for the Bingham Junction Boulevard to the Union Pacific right-of-way, thence east along the Union Pacific right-of-way to the western edge of the right-of-way for Holden Street, thence south along such right-of-way to the southern edge of the public railroad dock property, thence west to the eastern edge of the right-of-way for Bingham Junction Boulevard; and also including the Calcine Waste Area as defined in the Remedial Design. A more specific description of the "Plume Area" will be developed through the subdivision process.

4. Prohibit the bedding of wet utilities in slag.
5. Require that all wet utilities traversing Source and Plume Areas be bedded in flowable concrete (flowfil). (Wet utility locations will be shown on construction plans relative to source area boundaries and will be included in site plan applications.)
6. Require low-permeability collars for all wet utilities within 100-feet of the Source Area or Plume Area and that traverse a Source Area or Plume Area somewhere along the utility alignment. Collars will be installed at 50-foot intervals. Collar designs will be submitted with the construction permit and site plan application discussed in Section II.
7. Require a mechanism to limit infiltration of irrigation water within Source Areas. Minimum measures for Source Areas may include installing a buried impermeable barrier with drain system beneath irrigated areas (or alternative with equivalent performance); large trees or shrubs may be placed in sealed planter boxes (*the location of irrigated areas and piping will be shown on construction plans relative to source areas and will be included in site plan applications*).
8. For non-residential development within Source Areas, all building permit applicants will be required to submit to the City an irrigation plan in compliance with the provisions of this Plan. The City will have the responsibility of approving and overseeing the implementation of the irrigation plan. For residential development within Source Areas, Property Owners' Associations will have the responsibility of reviewing, approving, and overseeing the implementation of irrigation plans, as described more fully in Section IV, below.
9. Prohibit the use of concrete rubble as fill material below the historic high water table within 100-feet of a Source or Plume Area (except as may be done during remedial action).
10. Require disposal of contaminated construction wastewater in accordance with applicable environmental regulations (*to be included in site plan application*).

B. Mechanism of implementation:

1. Sections 17-7-3 and 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section III.A. 1, 7, and 8 of this Plan. This provision will also include a requirement that private covenants and deed

restrictions will acknowledge this Plan and require compliance therewith.

2. The Midvale City Standard Construction Specifications will be amended by Ordinance of the City Council to include the provisions of Section III.A.2-6, 9 and 10 of this Plan.
3. All subdivision plats and site plans for development within the Source and Plume areas identified on Exhibit A shall be created and managed in accordance with the Midvale City Zoning Ordinance and enforced through existing laws.

IV. MEASURES TO ALLOW SINGLE FAMILY RESIDENTIAL USES

The OU2 ROD permits residential development in the form of multi-family dwellings. Such development requires the placement of two-feet of clean soils as a final cover. Although the OU2 ROD does not anticipate single-family residential homes, it does not prohibit this type of development. The following controls have been developed to permit single-family residential development on OU2. This Section IV does not apply to the Union Pacific or UTA Property.

With respect to any and all single-family housing that will be constructed on OU2 (including traditional detached units, twin homes, duplexes, triplexes, and townhouses), developers will be required to comply with this Plan in connection with any such development, including specifically the materials management requirements described above. The clean fill barrier portion of the materials must be at least 24 inches for single-family residential use. The City will also impose restrictions on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes. These ICs will generally be enforced through the City's building permit process.

Midvale City's building permit process will function as the primary enforcement mechanism for excavation and materials management controls after initial home construction. In addition, excavation and grading activities not otherwise requiring a City building permit performed after initial home construction will be managed through Property Owners' Associations ("POAs") and private Covenants, Conditions, and Restrictions ("CC&Rs"). Midvale City will require, through the planned development review process, that new residential developments within OU2 provide CC & Rs governing maintenance of common areas, private roads, and other amenities. CC&Rs are implemented and enforced through POAs. As an added requirement to residential developments within OU2, the City will require that CC&Rs will include information concerning the property's status as a former Superfund site and the restrictions concerning excavations identified in Section II of this Plan are disclosed to and followed by the POA. All landscape plans as to all residential properties within OU2 shall be reviewed and approved by the POA to ensure that applicable landscaping

limitations are met as well as that covers and barriers are maintained and that excavated materials are managed in accordance with the requirements of Section II of this Plan.

In addition to materials management issues, the presence of chlorinated organic contaminants including perchloroethylene in the Upper Sand & Gravel Aquifer creates the potential for migration of contaminant vapors into future structures. Mitigation measures to address potential vapor intrusion will be required only for buildings within the area designated on Exhibit B, unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA. Mitigation measures may include vapor barriers or other engineering methods commonly employed to reduce risks from radon. The areas of OU2 (and part of OU1) subject to this requirement are illustrated on Exhibit B.

A. Specific Institutional Controls:

1. New Residential Developments

- (a) As part of the City's Small Area Master Plan process, residential developments which are required to comply with this Plan will be required to submit the following information:
- (b) Grading plans which indicate the depth of clean fill on residential and recreational lots. The OU2 ROD requires a minimum two-foot depth but developers may install additional cover. At the time that the Conditional Use Permit for the Small Scale Master Plan is granted, the City will identify the depth of clean fill for the specific development ("CUP Approved Depth"). The CUP Approved Depth will be a uniform depth of fill number equal to the most shallow fill area located within the relevant development area.
- (c) Conditions, Covenants and Restrictions to be filed with the Subdivision Plat which include the creation of a Property Owners Association and non-building permit excavation and grading restrictions as identified below.
- (d) The City will develop limitations on permissible landscaping within OU2, which will be designed to minimize the potential breaching of final barriers and to minimize contact with underlying smelter wastes.
- (e) Unless risks are demonstrated to be below a level of concern to the satisfaction of Region 8 EPA, for all buildings within the area depicted in Exhibit B, appropriate vapor mitigation measures will be implemented, including vapor barriers or other engineering methods, such as venting systems, commonly employed to reduce risks from radon.

2. Activities Subject to Building Permit

- (a) For all activities after initial home construction that require a building permit which involve excavations exceeding the CUP Approved Depth, a materials management plan will be required as part of the Midvale City Building Permit and Inspection process. The City will oversee implementation of the materials management plan. Prior to issuance of a Certificate of Occupancy by the Midvale City Building Official, the owner or developer will submit a certification that final depth of clean fill meets or exceeds the CUP Approved Depth.
- (b) All materials from excavations deeper than the CUP Approved Depth will be segregated to prevent mixing with the clean barrier soils and will be managed, and demarcation materials and covers replaced, in accordance with Section II of this Plan.

3. Activities Not Subject to Building Permits

- (a) All property owners must submit a landscape and excavation plan to the POA prior to beginning any excavation or grading activities.
- (b) All property owners within any Source Area as depicted on Exhibit A will be required to submit to the POA an irrigation plan in compliance with the provisions of Section III of this Plan. The POA will have the responsibility of approving and overseeing the implementation of the irrigation plan.
- (c) All grading activities which result in a final area with less than the CUP Approved Depth are prohibited. Importation of clean fill will be required to achieve desired landscaping elevations.
- (d) All excavations deeper than the cover soil layer (minimum 24-inches) will be prohibited except through the POA. All such excavation activities must be performed in compliance with the requirements of Section II of this Plan.

B. Mechanism of Implementation:

- 1. Section 17-7-9 of the Midvale City Zoning Ordinance will be amended by Ordinance of the City Council to include the provisions of Section IV A of this Plan.

**V. OVERSIGHT AND ENFORCEMENT ROLES AND RESPONSIBILITIES:
MODIFICATION OF PLAN**

Midvale City (the City) Department of Community and Economic Development will be the primary enforcement and oversight agency. Compliance with the ICs is the responsibility of the landowner, property owners associations, contractors and subcontractors working within the Site. The type and frequency of inspections and required maintenance of remedy components and related Site security, will be detailed in an O&M Plan to be developed in connection with the remedial action.

This Plan and the rules, regulations, ordinances, and covenants adopted hereunder may be revised from time to time as may be necessary or desirable to clarify its provisions or to incorporate new or modified requirements, as follows. The affected landowner(s), Midvale City, DEQ, or EPA may propose changes to this Plan. All proposed changes will be reviewed by the affected landowner(s), Midvale City, DEQ, and EPA prior to adoption by the Midvale City Council. Copies of revised documents will be delivered to all entities with oversight and enforcement roles and responsibilities listed below.

A. Midvale City responsibilities:

- Develop and process required ordinance changes to implement the provisions of this Plan.
- Undertake appropriate enforcement action to include repair of covers and barriers, if the landowner is unresponsive. City will enforce repair and collection of costs through Title 7 – Administrative Code Enforcement Program of the Midvale City Municipal Code.
- Review of site plan applications and issuance of final site plan approval.
- Review of road cut permit applications and issuance of permits.
- Initial site development and post-development inspections to ensure compliance with construction permit will include assessment of compliance with this plan.
- Verify compliance with requirements to allow single family residential uses in accordance with this plan will occur as part of the City's standard conditional use permit process.
- Verify that private covenants and deed restrictions are in place and contain applicable ICs for single family residential developments including the requirements of this Plan relating to homeowners association (or similar entity) responsibilities concerning landscaping, irrigation and excavation.

B. EPA and UDEQ Responsibilities:

- Review proposed provisions of Midvale City Code implementing this plan.
- Review groundwater pumping and discharge plan if construction pumping is necessary.

- Perform monitoring of groundwater quality to assess performance of remedial action.

C. Landowner/POA Responsibilities:

- Control Site access.
- Implement the operation and maintenance plan for OU2.
- Repair covers and barriers as necessary.
- Comply with provisions of construction permit, including air quality monitoring requirements.
- Comply with disposal facility requirements for off-Site waste disposal.
- Comply with appropriate regulations for disposition of construction wastewater.
- Establish private covenants and deed restrictions requiring that future land owners comply with applicable requirements set forth in this Plan.
- Prohibit disturbances of monitoring wells.
- Oversee and enforce excavation, irrigation, and landscaping controls.
- Oversee maintenance of landscaped areas.
- Provide access to EPA, UDEQ, Midvale City relating to environmental issues, including institutional controls and groundwater monitoring.

A summary of the oversight and enforcement roles and responsibilities may be prepared to facilitate the implementation of this Plan.