

(insert name of mine)

COVER SYSTEM CONSTRUCTION, IMPLEMENTATION, AND MONITORING

MEMORANDUM OF UNDERSTANDING

among

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

(Insert Name) DISTRICT

and

(Insert Name of Lessee)

Lessee

(Insert Date)

I. INTRODUCTION

The Bureau of Land Management (BLM) approved the (insert name of mine) Phosphate Mine Plan, including amendments, in a (insert date ROD signed) Record of Decision (ROD). In granting this approval, the BLM specified several conditions that the operator, (insert name of operator), must follow to ensure appropriate mitigation of environmental impacts. A primary feature of the approved Mine Plan is the use of a Geosynthetic Clay Liner Laminate (GCLL) cover system over seleniferous waste materials in backfill and external overburden disposal areas. The BLM's decision to approve the Mine Plan is largely dependent upon this mitigation feature, making the proper construction, Quality Assurance/Quality Control (QA/QC) and monitoring of the GCLL cover system of utmost importance to ensure compliance with the approved Mine Plan.

Condition of Approval #(insert COA No.) in the ROD states:

“...to ensure that the various required mine features are constructed and implemented properly, as required by the Final Environmental Impact Statement (FEIS) and this ROD, BLM will require additional resources. In particular, oversight of cover system construction, QA/QC and cover system monitoring fall into this category of requiring additional resources.”

The BLM has elected to use an independent, third party engineering contractor to provide the necessary oversight of cover system construction, QA/QC, and cover system monitoring (Project). BLM has selected (insert contractor name) as that third party engineering contractor.

II. AUTHORITIES

This Memorandum of Understanding (MOU) is authorized by the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701, et seq.) and the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and appurtenant regulations found at 43 CFR Part 3590.

III. PURPOSE

The purpose of this MOU is to set forth the agreement between (insert name of lessee) (hereafter referred to as “Proponent”) and the BLM concerning: 1) the use of an independent, third party engineering contractor (Contractor) to provide oversight of both test and production cover implementation on behalf of the BLM; 2) clearly define the roles and responsibilities of the involved parties; and 3) outline the reporting structure, including points of contact. This MOU shall be included by reference in the contract between the Proponent and the Contractor.

IV. PROVISIONS

a. General

- i. It is possible that other governmental entities may become cooperating agencies for this Project. Details regarding how additional agencies might be included in this MOU shall be determined at the time of need but may require a modification to this MOU. A modification of this MOU would require approval of the BLM and the Proponent.
- ii. Any information furnished to the BLM under this MOU is subject to release under the Freedom of Information Act (FOIA) (5 U.S.C. 552), and its exceptions. The Proponent must clearly mark "Confidential" such information submitted to the Contractor or the BLM that it deems confidential. Information so designated shall be withheld from release to the public to the extent allowed by the FOIA, and other established requirements pertaining to proprietary and confidential data.
- iii. The BLM and the Proponent shall coordinate development of timelines and establish key milestones for completion of all deliverables. All parties agree to make reasonable efforts to meet the time frame specified in the mutually agreed upon project schedule.
- iv. The monitoring recordation and reporting structure for this Project is outlined in the approved Construction Quality Control (CQC) plan, Construction Quality Assurance (CQA) Plan, and Scope of Work.
- v. Modifications to the GCLL design document, CQC plan, or CQA plan will be documented as outlined in each of the respective documents with copies provided to signatories of the MOU.
- vi. This MOU in no way restricts BLM or the Proponent from participating in similar activities with other public and private agencies, organizations, and individuals.
- vii. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

b. BLM

- i. The BLM will ensure that communication between the BLM, the Contractor, and the Proponent are consistent with the provisions of the MOU.
- ii. The BLM shall have sole control to oversee and direct the Contractor to do work as necessary. Direction shall be made promptly in order to facilitate

the work of the Contractor. The BLM shall first consult with the Proponent when establishing schedules. The Contractor's work product will be considered a United States Government work product, owned by the United States Government, because it will be prepared under BLM supervision and is intended to meet requirements required by the BLM through approval of the Project.

- iii. If the Contractor's performance does not meet the BLM requirements, the BLM will require the Proponent to terminate and replace the Contractor.
- iv. The BLM will determine the extent of the Contractor's authority, and may consider delegating authority to the Contractor to approve non-substantial deviations from the approved cover system design.
- v. The BLM Project Lead shall cooperate, coordinate, and consult with the Proponent's Point of Contact (POC) to provide accurate information regarding the BLM progress, technical information, or data needs, and issues requiring the Proponent's attention as they arise during Project implementation.
- vi. The BLM shall require that the Contractor, the Contractor's professional personnel, and the Contractor's subcontractors, provide signed statements stating that they have no financial interest or other interest in the outcome of the Project pursuant to this MOU.

c. Proponent

- i. The Proponent shall contract with (insert name of contractor) (BLM's selected contractor) to assist and advise the BLM with oversight of the construction, implementation, and monitoring of the geosynthetic cover.
- ii. The Proponent's POC shall coordinate and facilitate the timely exchange of Project-related information between its employees, the BLM Project Lead, and Contractor.
- iii. The Proponent shall provide a copy of its contract with the Contractor to the BLM Project Lead for review to ensure the contract is consistent with provisions in this MOU.
- iv. The Proponent may not enter into a new contract or modify the existing contract with the Contractor without prior consent of the BLM.

d. Contractor

- i. The Contractor will act on behalf of the BLM to assure compliance with the Conditions of Approval, mitigation measures, and approved designs at all

times. The Contractor shall immediately notify the BLM Project Lead of a violation and provide written documentation of the violation to the BLM as specified by the BLM Project Lead.

- ii. The Contractor will provide the BLM with expertise related to construction and monitoring of the approved GCLL and Simple 1 cover systems at the Project. Listed below are specific objectives of the Contractor:
 1. Review GCLL and Simple 1 cover system detail designs to determine that these designs are consistent with the approved conceptual designs provided in the FEIS and other supporting documents.
 2. Thoroughly review the CQC plan to confirm that the CQC program proposed and implemented by the Proponent will ensure that the GCLL and Simple 1 cover systems are constructed consistent as stipulated in the design and specifications.
 3. Review the lysimeter design and other cover monitoring strategies prepared by the Proponent to ensure that the monitoring strategies are sufficient to meet the monitoring commitments stipulated in the FEIS, ROD, and other supporting documents.
 4. Provide on-site contractor oversight during installation of the lysimeters.
 5. Provide QA/QC assessment on data collected from lysimeters, and other cover monitoring systems to confirm that the data are sufficient to assess percolation through the cover.
 6. Provide on-site contractor oversight during construction and implementation of the GCLL and Simple 1 cover system.
 7. Provide QA/QC assessment implementation of the GCLL and Simple 1 cover system.
- iii. In order to meet the aforementioned objectives, the Contractor will complete those tasks outlined in the CQA plan and Scope of Work developed for the Project.

V. FINANCIAL OBLIGATIONS

a. BLM

- i. With the exception of the Project Lead as provided below in Section IV.b.ii., the BLM shall pay for all costs associated with the BLM employees working in connection with the Project.

b. Proponent

- i. The Proponent shall pay costs and expenses incurred by the Contractor pursuant to the contract. The BLM anticipates the use of the Contractor's services up through final construction of the GCLL cover system and review of first year of cover monitoring data. The use of the Contractor's services beyond final construction of the GCLL cover system will depend on future cover monitoring results.
- ii. In accordance with ROD Condition of Approval #(insert COA No.), the Proponent will be responsible to contribute the necessary funding for BLM oversight efforts that are above and beyond that of typical quarterly mine inspections". The BLM Project Lead will be reviewing design documentation and coordinating the Contractor's work associated with the Project. The Proponent shall pay for all costs associated with the BLM Project Lead's document review and Contractor coordination.
- iii. The Proponent shall pay its own costs and expenses incurred during Project design and implementation.

VI. PROJECT MANAGEMENT

a. Representatives and Points of Contact

- i. The following individuals have been designated as POC to accomplish coordination and consultation as necessary.

1. Bureau of Land Management

BLM Project Lead

Presently: (Insert contact name)

4350 S. Cliffs Drive

Pocatello, ID 83204

(208) 478-6368

email: @blm.gov

2. (Company Name)(Proponent)

Title (Insert Contact Person's Title)

Presently: (Insert contact name)

Address

Phone Number

Email Address:

These persons shall serve as the POCs for all matters relating to the Project. Notice to the designated POC shall constitute notice to that party/agency. A secondary point of contact may be established in the event the primary contact is unavailable for designated periods of time. The BLM and the Proponent may assign another person as the contact for this Project and shall indicate such changes in writing. The BLM Project Lead shall:

1. Devote sufficient time and effort to coordinating, managing, and reviewing all Contractor work.
2. Ensure Project is in compliance with decisions and conditions outlined in the ROD.
3. Ensure coordination among all parties for exchange of data and information.
4. Ensure the representative of each party, as appropriate, is notified of all meetings between the Contractor, the BLM, or Proponent where issues relevant to the Project are discussed.

The Proponent's representative named above shall:

1. Devote sufficient time and effort to coordinating, managing and reviewing all work associated with the Project.
 2. Have its respective experts and appropriate Company management provide Project-specific information to the BLM in a timely manner.
 3. Cooperate with the BLM to facilitate the exchange of data and information. Coordinate and disseminate information to appropriate company staff and management.
 4. Attend necessary meetings associated with the Project.
- b. Any information and data to be released shall be at the discretion of the BLM Project Lead. See Section III.a.ii regarding the FOIA and confidential information.

VII. DISPUTE RESOLUTION

Issues and concerns will normally be addressed and resolved by the BLM Project Lead and Proponent Project Lead. If the issue or concern cannot be resolved at this level, either party may elevate the issue or concern to the BLM Minerals Branch Chief and Proponent Mine Superintendent for assistance, advice or resolution.

VIII. MODIFICATION AND TERM

- a. Unless specified otherwise in Section VIII below, this MOU may only be modified or amended in writing by the mutual agreement of all parties hereto.
- b. The terms of this MOU shall begin on the date of the last signature hereon by the BLM and the Proponent unless specified otherwise in this MOU. The BLM will determine the expiration date of this MOU as future cover monitoring results become available and the BLM can determine how the GCLL cover system is performing. This MOU may be extended upon written concurrence from all parties.

IX. TERMINATION

The BLM or the Proponent may terminate those portions of this MOU applicable to them upon 30 days written notice to the other parties. During the notice period, the parties shall actively attempt to resolve any disagreement.

X. MANAGEMENT ACKNOWLEDGEMENT AND ACCEPTANCE

By signature below, the Proponent and the BLM certify that individuals listed in this document as Representatives of the Proponent and the BLM are authorized to act in their respective areas for matters related to this MOU.

Proponent Name

Bureau of Land Management
U.S. Department of the Interior

By:

By:

Title:

Title:

Dated this ___ day of _____, 2014.

Dated this ___ day of _____, 2014.