

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
SETTLEMENT AGREEMENT AND
ADMINISTRATIVE ORDER ON CONSENT

BMI Common Areas

Phase 3

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1 **NEVADA DIVISION OF ENVIRONMENTAL PROTECTION**
2 **SETTLEMENT AGREEMENT AND ADMINISTRATIVE ORDER ON CONSENT**

3 This Settlement Agreement and Administrative Order on Consent ("Settlement
4 Agreement") is made and entered into this _____ day of _____, 2006,
5 by and among (i) the State of Nevada, Department of Conservation and Natural
6 Resources, Division of Environmental Protection (the "Division"), and (ii) Basic
7 Remediation Company LLC, a Nevada limited liability company ("BRC"); Basic
8 Management, Inc. ("BMI") (BMI was formerly known as Basic Investments, Inc., a Nevada
9 Corporation); Basic Environmental Company LLP, a Nevada limited liability company
10 ("BEC") (BEC was formerly known as Basic Management, Inc. and was formerly a
11 Nevada corporation); Tronox LLC, a Delaware limited liability company ("Tronox")
12 (Tronox was formerly known as Kerr-McGee Chemical LLC, a Delaware limited liability
13 company ("Kerr-McGee"); Tronox Worldwide LLC, (formerly known as Kerr-McGee
14 Chemical Worldwide LLC, (and successor by merger to Kerr-McGee Corporation));
15 Montrose Chemical Corporation of California, Inc., a Delaware corporation ("Montrose");
16 Pioneer Americas LLC, a Delaware limited liability company ("Pioneer") (Pioneer was
17 formerly known as Pioneer Chlor Alkali Company, Inc., a Delaware corporation
18 ("PCAC")); Titanium Metals Corporation, a Delaware corporation ("TIMET"); and Bayer
19 CropScience Inc., (formerly Rhone-Poulenc Ag Co., Inc.), a New York corporation
20 (individually, a "Company" and collectively the "Companies"). The Division and the
21 Companies are referred to collectively as the "Parties."

22 **I. BACKGROUND**

23 1. The legislature of the State of Nevada has designated the Division as the
24 agency empowered to administer and enforce Nevada's Environmental Laws, including
25 but not limited to, water pollution control laws, NRS §§ 445A.300 to 445A.730, inclusive,
26 Nevada's hazardous waste disposal laws, NRS §§ 459.400 to 459.600 inclusive, and
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1 Nevada's air pollution control laws, NRS §§ 445B.230 to 445B.640, inclusive. The
2 Division has previously entered into several agreements with certain of the Companies or
3 their predecessors regarding the BMI Common Areas.

4 2. The BMI Common Areas are within a larger industrial complex in Clark
5 County, Nevada known as the Basic Magnesium, Inc. Industrial Complex, (the "BMI
6 Complex"). The BMI Complex was originally owned and built by the United States during
7 World War II. After the war, the United States sold the BMI Complex to the State of
8 Nevada, via the Colorado River Commission. The State leased, and in the 1950s sold,
9 portions of the BMI Complex to various private entities. The BMI Common Areas include
10 former waste disposal areas within the BMI Complex.

11 3. On April 25, 1991, the Division and Chemstar, Inc., Kerr-McGee Chemical
12 Corporation, Montrose Chemical Corporation of California, Pioneer Chlor Alkali
13 Company, Inc., Stauffer Management Company, Inc., and Titanium Metals Corporation
14 entered into a Consent Agreement ("Phase 1 Consent Agreement") regarding the first
15 phase of a contemplated phased approach to the assessment and remediation of certain
16 environmental conditions at or associated with the BMI Common Areas. The following
17 three phases were anticipated: Phase 1 – the development of an environmental
18 conditions assessment report detailing information regarding the BMI Common Areas,
19 common disposal areas and any off-site waste management areas (as defined in the
20 Phase 1 Consent Agreement); Phase 2 – the performance of environmental
21 investigations to fill in any data gaps identified by the Phase 1 reports; Phase 3 –
22 identification and implementation of appropriate remedial actions to address
23 environmental conditions identified in Phases 1 and 2. Pursuant to the Phase 1 Consent
24 Agreement, the Companies investigated and reported historic operations and waste
25 disposal practices at the BMI Common Areas.

26 4. On February 23, 1996, the Division and the Kerr-McGee Chemical
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1 Corporation, Montrose Chemical Corporation of California, Pioneer Chlor Alkali
2 Company, Inc., Stauffer Management Company, Titanium Metals Corporation and Basic
3 Management, Inc. entered into a second Consent Agreement ("Phase 2 Consent
4 Agreement") regarding performing additional environmental investigation to fill in data
5 gaps identified in the Phase 1 reports regarding the BMI Common Areas. Pursuant to
6 the Phase 2 Consent Agreement the Companies performed characterization activities at
7 the BMI Common Areas and following completion of this work, the Division issued a
8 Record of Decision with respect to soils in the BMI Common Areas.

9 5. The Division and certain of the Companies signing this Settlement
10 Agreement entered into the BMI et al. Liability Transfer and Assumption Agreement
11 ("Soils LTA"), dated December 30, 1999, related to the assumption by BRC of
12 responsibility for "conditions resulting from the discharge, dispersal, release or escape of
13 Pollutants at any time in, at, above, on, into, or under or upon land, soil, sediments,
14 structures and atmosphere, and excluding conditions in or as a direct result of Ground
15 Water" regarding the BMI Common Areas.

16 6. The Division and certain of the Companies signing this Settlement
17 Agreement entered into The Groundwater Liability Transfer and Assumption Agreement
18 ("Groundwater LTA"), dated December 30, 2002, related to the assumption by BRC of
19 responsibility for "conditions resulting from the discharge, dispersal, release or escape of
20 Pollutants at any time in, at, above, on, into, or under or upon all natural or artificial
21 waters including but not limited to: (1) all rivers, streams, lakes, ponds, washes,
22 impounding reservoirs, seeps, springs, wetlands, marshes, watercourses, waterways,
23 wells, irrigation systems and drainage systems; (2) all bodies or accumulations of water
24 whether on the surface or undergrounds (sic), and (3) Groundwater" regarding the BMI
25 Common Areas.

26 7. BRC is a subsidiary of BMI, and has assumed liability under the LTAs for
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1 Soil Pollution Conditions and Water Pollution Conditions. BRC is acting as remediation
2 contractor and is performing the Work pursuant to the applicable agreements, including
3 this Settlement Agreement.

4 8. Under the Phase 2 Consent Agreement and the Soils and the Groundwater
5 LTAs, BRC has delivered to the Division, *inter alia*, a document entitled draft Closure
6 Plan (October 2004), a document entitled draft Corrective Action Plan (April 2005) and a
7 document entitled draft Remedial Action Plan/CAMU Permit Application (January 2000).
8 The Division has reviewed these documents and has required revisions and resubmittal.

9 9. This Settlement Agreement governs the performance and/or completion of
10 Environmental Contaminant characterization, the screening and selection of Remedial
11 Actions, and the implementation and long-term Operation and Maintenance of Division-
12 approved Remedial Actions, each and all as necessary to implement the Existing ROD
13 and Future ROD(s) concerning Soil Pollution Conditions and Water Pollution Conditions
14 at the Site. This Settlement Agreement is the third phase in a multi-phased approach
15 contemplated to assess and remediate certain environmental conditions at or associated
16 with the BMI Common Areas.

17 10. The Division has informed EPA of its oversight activities performed under
18 the Phase 1 and Phase 2 Consent Agreements and will continue to update the EPA
19 during oversight of the Phase 3 Settlement Agreement.

20 11. The Division alleges that the Companies are each "covered persons" as
21 defined in section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), and that the
22 Companies are liable to the State of Nevada under such section for response actions at
23 the Site described in this Settlement Agreement.

24 12. The Division alleges that the Companies are each liable, under NRS and
25 CERCLA for, *inter alia*, response costs and response actions.

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II. JURISDICTION

The Division is exercising its jurisdiction over this matter pursuant to Nevada Revised Statutes (NRS) Chapters 445A, 445B and 459, and CERCLA, 42 U.S.C. Sections 9601 *et seq.* The signing Companies have consented to the Division's jurisdiction, pursuant to NRS and CERCLA, over the Companies and its jurisdiction to enter Settlement Agreements. The Companies shall not challenge the terms of this Settlement Agreement or the Division's jurisdiction to enter and enforce this Settlement Agreement; however, the Companies do not waive their right to challenge the Division's interpretation of any terms or conditions of this Settlement Agreement through Dispute Resolution in Section XXIII (Dispute Resolution).

III. PARTIES BOUND

1. The provisions of this Settlement Agreement shall apply to and be binding upon the Parties, their successors, and assigns.

2. Any change in ownership or corporate status of any Company including, but not limited to, any transfer of assets of real or personal property, or a portion of the Site, shall in no way alter such Company's responsibilities under this Settlement Agreement.

IV. DEFINITIONS

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

"Administrator" means the Administrator of the Nevada Division of Environmental Protection.

1 “BMI Common Areas” means those portions of the Basic Magnesium, Inc.
2 Industrial Complex located in Clark County, Nevada, including the land, structures, other
3 appurtenances and improvements on the land owned or operated as of April 15, 1993 by
4 the BMI Companies or any of them, as further described in Appendix A.

5 “BMI Companies” means BRC, BMI, BEC, and The LandWell Company, a
6 Delaware limited partnership.

7 “CEM” means a Certified Environmental Manager certified by the State of Nevada.

8 “CERCLA” means the Comprehensive Environmental Response, Compensation,
9 and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

10 “Contractor” means any entity or person, including any contractor, subcontractor,
11 consultant, firm or laboratory, retained by the Companies or the Division to conduct or
12 monitor any portion of the Work performed pursuant to this Settlement Agreement.

13 “Day” means a calendar day; however, if the day falls on a Saturday, Sunday, or a
14 State or federal holiday, the date for compliance shall be the next calendar day, that is
15 not a Saturday, Sunday, or a State or federal holiday.

16 “Deliverable” means, without limitation, any Work plan, report, progress report,
17 plan, data, document, information, or submittal, which the Companies are required to
18 submit to the Division under the terms of this Settlement Agreement or other document
19 further defined by the Division as a Deliverable.

20 “Division” means the State of Nevada, Department of Conservation and Natural
21 Resources, Division of Environmental Protection, or its successor department or agency
22 of the State of Nevada.

23 “Documents” means any and all written, recorded (by tape, video or otherwise),
24 graphic or photographic matter, however produced or reproduced, relating to the Work
25 and includes, without limitation, all agreements, analytical results, blueprints,
26 cablegrams, chain of custody records, charts, computer data, computer hard copy,
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1 computer printout, contracts, correspondence, data, electronic mail (including
2 attachments thereto), invoices, journals, letters, logs, manifests, maps, memoranda,
3 memorials of telephone conversations, microfilm, minutes, notes, notices, papers,
4 purchase orders, receipts, recordings (in any medium), records, reports, slides,
5 statements, telegrams, telexes, webpages, including all originals and non-identical
6 copies thereof. The term "Documents" includes all Documents in electronic form. The
7 term "Documents" does not include: (1) Deliverables, and (2) any document that is
8 privileged under the attorney-client, work-product, joint defense or other applicable
9 privileges, internal drafts (including of Deliverables), duplicates, deliberative
10 communications between or within any Company and its attorneys, consultants or
11 contractors regarding the Work or other obligations under this Settlement Agreement or
12 documents relating to non-substantive matters under this Settlement Agreement
13 (including without limitation, scheduling of meetings or conference calls, and similar
14 materials).

15 "Effective Date" means the date determined by Section XXXIX (Effective Date).

16 "Effective Period" means the period of time between the Effective Date and the
17 date upon which this Settlement Agreement terminates as specified in Section XL
18 (Termination).

19 "Engineering Controls" means any designed, installed and/or constructed
20 component or facility required by the Division that minimizes the potential for human and
21 environmental exposure to Environmental Contaminants and that is necessary to achieve
22 the Performance Standards associated with a selected Remedial Action.

23 "Environment" means air, land (including subsurface strata), and water (including
24 groundwater) or any combination or part thereof.

25 "Environmental Commission" means the Nevada State Environmental Commission
26 as defined by NRS 445B.200 to 445B.245, inclusive.

1 “Environmental Contaminant(s)” means any solid, liquid, gaseous, or thermal
2 irritant, contaminant, substance, waste or any other material, whether hazardous or not,
3 including, but not limited to, smoke, vapor, dust, soot, fumes, alkalis, asbestos,
4 chemicals, hazardous constituents, petroleum products or constituents, metals, medical
5 or pathological wastes or radioactive materials, wastewater, debris and Waste Material,
6 regulated under applicable Environmental Law (including the definitions at NRS §§
7 444.490, NRS §§ 445A.810, NRS §§ 445A.400, NRS §§ 445A.405, NRS §§ 445B.110,
8 NRS §§ 445B.140, NRS §§ 459.429, NRS §§ 459.430 and NRS §§ 459.448).

9 “Environmental Law(s)” means each federal and state law and regulation relating
10 in any way to Environmental pollution or the protection of the Environment or the
11 Release of any Environmental Contaminant into the Environment including, without
12 limitation, the Nevada Water Pollution Control Law, NRS §§ 445A.010 to 445A.730,
13 inclusive, the Nevada Solid Waste Disposal Law, NRS §§ 444.440 to 444.645, inclusive,
14 the Nevada Hazardous Waste Disposal Law, NRS §§ 459.400 to 459.652, inclusive, the
15 Nevada Air Pollution Control Law, NRS §§ 445B.230 to 445B.640, inclusive, the Nevada
16 Underground Storage Tank Law, NRS §§ 459.800 to 459.856, inclusive, the Nevada
17 Radiation Control Law, NRS §§ 459.010 to 459.290, inclusive, the Clean Air Act, 42
18 U.S.C. §§ 7401 to 7671q, inclusive, the Federal Water Pollution Control Act, 33 U.S.C.
19 §§ 1251-1387, the Solid Waste Disposal Act, as amended by the Resource Conservation
20 and Recovery Act, 42 U.S.C. §§ 6901-6992k, the Comprehensive Environmental
21 Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601- 9675, and the Toxic
22 Substances Control Act, 15 U.S.C. §§ 2601-2692, each as may be amended from time to
23 time, and including the implementing regulations, promulgated respectively thereunder.

24 “EPA” means the United States Environmental Protection Agency or its successor
25 department or agency.

26 “Escrow Agreements” means (i) the Escrow Agreement made as of June 30, 1999
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1 among Kerr-McGee, Montrose, PCAC, SMC, TIMET, BEC (collectively the “HISSC
2 Companies”), Victory Valley Land Company, a Delaware limited partnership, which
3 subsequently changed its name to The LandWell Company (“LWC”), Basic Land
4 Company, a Nevada corporation (“BLC”), Basic Water Company, a Nevada corporation
5 (“BWC”), Basic Power Company, a Nevada corporation (“BPC”), TRECO, LLC, a Nevada
6 limited liability company (“TRECO”), Rhone-Poulenc Ag Co. Inc., a New York corporation
7 (“R-P”), Kerr-McGee Corporation, a Delaware corporation (“KMC”), (collectively the
8 “1999 Escrow Parties”), and Nevada Title Company, a Nevada corporation, as escrow
9 agent (the “Escrow Agent”) (the “Soils Escrow Agreement”), and (ii) The Escrow
10 Agreement made as of February 22, 2002 among Montrose, BEC, LWC, BLC, BWC,
11 BPC and BMI (collectively the “2002 Escrow Parties”) and the Escrow Agent (the
12 “Groundwater Escrow Agreement”).

13 “Existing Soils and Sediments Record of Decision” or “Existing ROD” means the
14 Division’s Record of Decision entitled “Remediation of Soils and Sediments in the Upper
15 and Lower Ponds at the BMI Complex” Henderson, Nevada, signed on November 2,
16 2001 by the Administrator of the Division, and all attachments thereto, and as may be
17 revised. The Existing ROD is attached as Appendix D.

18 “Future Record of Decision” or “Future ROD” means the Division’s Record of
19 Decision relating to the remediation of any Soil Pollution Conditions or Water Pollution
20 Conditions at the Site not covered by the Existing ROD. Any Future ROD shall be
21 subject to the definition of “Work” herein.

22 “Groundwater” means subsurface water that occurs beneath the water table in
23 soils and geologic formations that are fully saturated.

24 “Institutional Control” means any non-engineered measure or instrument such as
25 an administrative and/or legal control (e.g., covenant, easement, well drilling prohibition,
26 deed restriction, title recordation, servitude) required by the Division that minimizes the
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1 potential for human and environmental exposure to Environmental Contaminants by
2 limiting land or resource use and that is necessary to achieve the Performance
3 Standards associated with a selected Remedial Action. Institutional controls include
4 environmental covenants as created by Senate Bill 263 (2005).

5 “Interest” means the Prime Rate plus two percent (2%), compounded monthly, but
6 in no case will be less than five percent (5%) nor greater than twelve percent (12%).

7 “Las Vegas Wash” means that approximately 12-mile long drainage commencing
8 in the eastern portion of the Las Vegas Valley into which urban runoff, reclaimed water,
9 stormwater, and groundwater from the Las Vegas Valley is collected and ultimately
10 drains into the Las Vegas Bay of Lake Mead. The lateral boundaries of the Las Vegas
11 Wash shall be 200 feet beyond the furthest extent of the outermost slope or bench
12 extending laterally to either side of the central channel of the drainage, and shall extend
13 vertically from ground surface to the lower of the bottom of the drainage gravels, if any,
14 or the aquitard underlying the drainage bottom. To the extent that the outermost slope or
15 bench of the Las Vegas Wash is intersected, interrupted, or otherwise meets any
16 tributary, stream, wash, outfall, road crossing, or any other water course or manmade
17 structure, then the boundaries of the Las Vegas Wash shall extend 200 feet beyond
18 where the furthest extent of the slope or bench would be absent such intersection,
19 interruption, or meeting, thereby forming a straight line with the furthest extent of the
20 anterior and posterior portion of the existing slope or bench. The lateral boundaries of
21 the Las Vegas Wash as they are currently understood and intended to be described in
22 this definition are highlighted in blue on the aerial photographs dated December 2005,
23 attached as Appendix C. In the event of material changes to the Las Vegas Wash
24 boundaries, the Parties may modify Appendix C by mutual agreement pursuant to
25 Section XXXIV (Modification). The Las Vegas Wash shall not include any portion of the
26 Site, and shall not include Las Vegas Bay or any waters of Lake Mead or the Colorado

1 River. In the event of any conflict between the text of this definition and the depiction of
2 the Las Vegas Wash in Appendix C, the text of this definition shall control.

3 “NAC” means the Nevada Administrative Code or its successor codification of
4 rules and regulations.

5 “NRS” means the Nevada Revised Statutes or its successor codification.

6 “Operation and Maintenance” means all activities, including long-term monitoring,
7 necessary to maintain the effectiveness of the Remedial Action as required under the
8 Operation and Maintenance Plan approved or developed by the Division pursuant to this
9 Settlement Agreement and the Scope of Work (SOW).

10 “Performance Standards” means the cleanup standards and other measurements
11 that, when met, reflect achievement of the goals of a Remedial Action, as may be further
12 described in Section XVI (Remedial Action Performance Standards), which shall be
13 consistent with applicable Environmental Law. Performance Standards shall be
14 established to achieve human health and environmental goals. In no event shall a
15 Performance Standard require Remedial Action to reduce any Environmental
16 Contaminant concentration to below the higher of its demonstrated background or off-
17 Site upgradient concentration.

18 “Policies” means two manuscripted environmental insurance policies from
19 American International Specialty Lines Insurance Company to pay certain clean-up
20 costs; (i) one of which is held by the Escrow Agent under the Soils Escrow Agreement
21 (the “Soils Policy”), and (ii) the other of which is held by the Escrow Agent under the
22 Groundwater Escrow Agreement (the “Groundwater Policy”).

23 “Qualified Settlement Funds” or “QSFs” means the qualified settlement funds
24 established under the Escrow Agreements under which the Escrow Agent acquired the
25 Policies to fund the remediation of Soil Pollution Conditions and Water Pollution
26 Conditions.

1 “Scope of Work or SOW” means the statement of Work as set forth in Appendix E
2 to this Settlement Agreement and any modifications made in accordance with this
3 Settlement Agreement. Any SOW or modification thereto shall be subject to the
4 definition of “Work” herein.

5 “Soil Pollution Conditions” means conditions resulting from the Release of
6 Environmental Contaminants at any time in, at, above, on, into, or upon land, soil,
7 sediments, structures, and atmospheres.

8 “State” means the State of Nevada, including, as appropriate, its agencies,
9 departments, political subdivisions, agents, and employees.

10 “Waste Material” means (a) any “hazardous substance” under Section 101(14) of
11 CERCLA, 42 U.S.C. § 9601(14) and NRS 459.429; (b) any pollutant or contaminant
12 under Section 101(33) 42 U.S.C. § 9601(33) and NRS 445A.325, 445A.400; (c) any
13 “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) and NRS 444.490;
14 (d) any “hazardous material” under NRS 459.428; (e) remediation waste under 40 CFR
15 260.10, (f) CAMU-eligible waste under 40 CFR 264.552, and (g) any material generated
16 as a result of environmental characterization investigations.

17 “Water Pollution Conditions” means conditions resulting from the Release of
18 Environmental Contaminants at any time in, at, above, on, into, under or upon, natural or
19 artificial waters, including but not limited to (a) all rivers, streams, lakes, ponds, washes,
20 impounding reservoirs, seeps, springs, wetlands, marshes, watercourses, waterways,
21 wells, irrigation systems and drainage systems; (b) all bodies or accumulations of water
22 whether on the surface or underground; and (c) Groundwater.

23 “Work” shall mean all activities regarding Soil Pollution Conditions and Water
24 Pollution Conditions the Companies are required to perform under this Settlement
25 Agreement, including but not limited to an Interim Measure(s), except those required by
26 Section XXIX (Retention of Records), subject to the following clarifications:

1 a) Work shall include investigation and characterization of Soil
2 Pollution Conditions and Water Pollution Conditions (i) on-Site, and (ii) off-Site, solely to
3 the extent that off-Site conditions result, to a reasonable degree of scientific certainty,
4 from the emanation of Environmental Contaminants from the Site;

5 (b) Work shall include Remedial Action (i) on-Site, and (ii) off-Site,
6 solely to the extent that off-Site conditions result, to a reasonable degree of scientific
7 certainty, from the emanation of Environmental Contaminants at or from the Site (or
8 otherwise resulting from the Companies' performance of Work);

9 (c) Work shall include the investigation or Remedial Action of
10 perchlorate and Total Dissolved Solids (TDS) if and only to the extent that (i) any such
11 investigation or Remedial Action is incidental to investigation or Remedial Action
12 otherwise being performed under this Settlement Agreement; and (ii) with respect to
13 Remedial Action, there are applicable Environmental Laws that establish Performance
14 Standards for perchlorate or TDS; and

15 (d) Work shall specifically exclude any activity, including without
16 limitation investigation, characterization, Remedial Action, Operation and Maintenance,
17 Engineering Controls and Institutional Controls, in, on, under, or adjacent to the Las
18 Vegas Wash, including its receiving waters: Lake Mead and the Colorado River.

19 **V. STATEMENT OF PURPOSE**

20 1. The objectives of the Parties in entering into this Settlement Agreement are
21 to protect human health or welfare and the Environment at the Site by the design and
22 implementation of response actions at the Site by the Companies, to reimburse the
23 Division's Response Costs, and to resolve the potential claims of the State against the
24 Companies as provided in this Settlement Agreement. The Parties intend to comply with
25 applicable Environmental Laws and this Settlement Agreement. The Parties intend that
26 the Work to be performed in accordance with Section VII (including all approved Work
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1 plans), and accepted by the Division, will be consistent with the National Contingency
2 Plan, 40 CFR 300.1 et seq.

3 2. This Settlement Agreement governs the performance and/or completion of
4 Environmental Contaminant and Release and threatened Release characterization, the
5 screening and selection of Remedial Actions, the implementation and long-term
6 Operation and Maintenance of Division-approved Remedial Actions, each and all as
7 necessary to implement the Existing ROD and Future ROD(s) concerning Soil Pollution
8 Conditions and Water Pollution Conditions at the Site. However, this Settlement
9 Agreement does not supersede the Existing ROD.

10 3. This Settlement Agreement constitutes, *inter alia*, an administrative
11 settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §
12 9613(f)(3)(B), (i) which resolves the liability of the Companies to the State of Nevada and
13 the Division for the payments, remedial investigations, removal and/or remedial actions
14 on-Site and off-Site, as described in this Settlement Agreement, that the Companies
15 perform, have performed or will perform to the satisfaction of the Division as provided in
16 this Settlement Agreement, (ii) which releases the Companies from liability under NRS
17 Chapters 445A, 445B and 459 and CERCLA, as provided in this Settlement Agreement,
18 (iii) by which the Division covenants not to sue the Companies for Soil Pollution
19 Conditions or Water Pollutions Conditions covered by this Settlement Agreement and (iv)
20 provides protection from contribution actions or claims against the Companies under
21 CERCLA as a result of releases or threatened releases of hazardous substances at or
22 from the Site as described in this Settlement Agreement.

23 4. The Parties recognize that there are unique site-specific issues with
24 respect to perchlorate, and site-specific and regional issues concerning TDS in the Las
25 Vegas Valley. The Parties intend to work cooperatively over the long term with one
26 another and other appropriate agencies and stakeholders on perchlorate and TDS
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1 issues.

2 **VI. GENERAL PROVISIONS**

3 1. Commitments by the Parties.

4 a. BRC shall finance and perform the Work in accordance with this
5 Settlement Agreement, the Existing ROD or any Future RODs, the SOW, and all Work
6 plans and other plans, standards, specifications, and schedules set forth herein or
7 developed by BRC and approved by the Division pursuant to this Settlement Agreement.
8 BRC shall also reimburse the Division for Response Costs as provided in this Settlement
9 Agreement.

10 b. The Division hereby accepts and consents to BRC's assumption of
11 responsibility to perform the Work under this Settlement Agreement and agrees, so long
12 as BRC fulfills its obligations, to negotiate exclusively with BRC regarding the Work.

13 c. The Companies' obligations to perform the Work and to fulfill any
14 other obligations arising under this Settlement Agreement shall be, in the first instance,
15 the sole obligation of BRC; provided however that the information and document
16 retention provisions herein (Sections XXVII (Access to Information), XXVIII (Confidential
17 Business Information) and XXIX (Retention of Records)) are applicable to each
18 Company.

19 d. In the event that BRC fails to perform the Work under this Settlement
20 Agreement, the Companies shall finance and perform the Work as described herein and
21 reimburse the Division for any unpaid Response Costs incurred thereafter.

22 e. If the Division determines that BRC has failed to perform the Work,
23 the Division shall provide written notification to the Companies of its determination, the
24 basis therefore, and a description of the Work which BRC failed to perform. Upon such
25 notification, the Companies agree to perform the Work described in the notification. In
26 no event shall any such notification expand the responsibilities of the Companies under
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1 this Settlement Agreement. The Companies shall not be liable for any penalties arising
2 from BRC's failure to perform. If BRC cures its failure to perform in a time acceptable to
3 the Division, the Division shall notify the Companies of the cure, and the Companies'
4 remaining obligation under this Settlement Agreement shall terminate solely as to such
5 responsibility. Any such termination of responsibility shall not relieve the Companies of
6 their obligations under this Settlement Agreement for any subsequent BRC failure to
7 perform.

8 f. To the extent required by this Settlement Agreement, the obligations
9 of the Companies to finance and perform the Work and to pay amounts owed the
10 Division under this Settlement Agreement are joint and several. In the event of a failure
11 by bankruptcy or otherwise by any one or more of the Companies to perform the Work or
12 Efficacy Review under Section XVIII or pay amounts owed to the Division, the remaining
13 Companies shall complete all such Work and/or Efficacy Review and pay all such
14 delinquent amounts.

15 2. Compliance with Applicable Law. All activities undertaken by the
16 Companies pursuant to this Settlement Agreement shall be performed in accordance with
17 the requirements of all applicable Environmental Laws. The Companies must also
18 comply with all applicable or relevant and appropriate requirements of all Environmental
19 Laws as set forth in the Existing and Future ROD(s) and the SOW.

20 3. Permits.

21 a. Where any portion of the Work requires a federal or State permit or
22 approval, the Companies shall submit timely and complete applications and take all other
23 actions necessary to obtain all such permits or approvals.

24 b. The Companies may seek relief under the provisions of Section XXII
25 (Force Majeure) of this Settlement Agreement for any delay in the performance of the
26 Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the
27

1 Work.

2 c. This Settlement Agreement is not, and shall not be construed to be,
3 a permit issued pursuant to any federal or State statute or regulation.

4 4. Notice to Successors-in-Title.

5 a. With respect to any property that comprises a part of the Site, within
6 thirty (30) Days after the Effective Date of this Settlement Agreement, the relevant
7 Company shall submit to the Division for review and approval a notice to be filed with the
8 Recorder's Office, Clark County, State of Nevada, in form and substance reasonably
9 satisfactory to the Division, which shall provide notice to all successors in title that the
10 property(ies) is(are) part of the Site, that the Division has approved Remedial Action, or
11 will approve Remedial Action for the Site which may include future Institutional Controls
12 on the Site and that potentially responsible parties have entered into a Settlement
13 Agreement requiring implementation of Remedial Action. Such notice(s) shall identify
14 where a copy of this Settlement Agreement may be obtained. The relevant Company
15 shall record the notice(s), within thirty (30) Days of the Division's approval of the
16 notice(s) and shall provide the Division with a certified copy of the recorded notice(s)
17 within thirty (30) Days of recording such notice(s).

18 b. In the event of any conveyance of any property interest within the
19 Site, including but not limited to fee interest, leasehold interests, and mortgage interests,
20 the Company's(ies)' obligations under this Settlement Agreement, including, but not
21 limited to, its (or their) obligation to provide or secure access, for itself (or themselves)
22 and the Division, and Institutional Controls, as well as to abide by such Institutional
23 Controls, pursuant to Section XII (Site Access and Institutional Controls) of this
24 Settlement Agreement, shall continue to be met by the Company(ies). In no event shall
25 the conveyance, release or other transfer of any interest in the Site affect the liability of
26 any Company(ies) to comply with all provisions of this Settlement Agreement, absent the
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1 prior written consent of the Division.

2 5. Effect on Existing Agreements. This Settlement Agreement supersedes
3 and terminates the Phase 1 Consent Agreement, the Phase 2 Consent Agreement, the
4 Soils LTA and the Groundwater LTA, except for those provisions set forth herein and
5 solely as to those parties signing this Settlement Agreement. To the extent that certain
6 of the Companies' obligations under these prior agreements remain outstanding, this
7 Settlement Agreement incorporates such outstanding obligations.

8 6. Approval of Escrow Agreements and QSFs. The Division hereby confirms
9 and continues its approval of the Escrow Agreements and the Qualified Settlement
10 Funds as to form and content. The QSFs shall be subject to the continuing jurisdiction of
11 the Division. Pursuant thereto, with respect to each QSF, until such time as the Division
12 shall issue a Statement of Final Completion which applies to all of the Insured Property
13 (as that term relates to such QSF), the parties to the respective Escrow Agreement (other
14 than the Escrow Agent) confirm and continue their irrevocable instruction to the Escrow
15 Agent not to commute the Policy held under such Escrow Agreement, without the prior
16 written consent of the Division.

17 7. Limited Release of the Companies. The Division hereby confirms and
18 continues its release and covenant not to sue the Companies (other than BRC), their
19 respective past, present and future parents, subsidiaries, predecessors, successors,
20 associated and affiliated companies, and their respective past, present and future
21 directors, officers, shareholders, agents and representatives, from and for any
22 responsibilities and liabilities they otherwise may have had that were released under the
23 Soils LTA or the Groundwater LTA. This release and covenant not to sue is conditioned
24 on performance of the Work hereunder and subject to the Division's reservations set
25 forth in Section XXV.

26 **VII. PERFORMANCE OF THE WORK BY THE COMPANIES**

1 1. The Companies shall submit, receive approval for, and implement, as
2 appropriate, Deliverables consistent with the requirements of the Scope of Work (SOW)
3 attached as Appendix E and incorporated by reference.

4 2. Upon approval by the Division, Deliverables shall be incorporated into and
5 become enforceable under this Settlement Agreement.

6 3. Modification of the SOW or Related Deliverables.

7 a. If the Division determines that modification to the Work specified in
8 the SOW and/or in other Deliverables developed pursuant to the SOW is necessary to
9 achieve and maintain the Performance Standards the Division may require that such
10 modification be incorporated in the SOW and/or such Deliverables. Provided, however,
11 that a modification may only be required pursuant to this paragraph to the extent that it is
12 consistent with the scope of the remedy selected in the Existing or Future ROD(s).

13 b. If the Companies object to any modification determined by the
14 Division to be necessary pursuant to this paragraph, they may seek dispute resolution
15 pursuant to Section XXIII (Dispute Resolution). The SOW and/or related Deliverables
16 shall be modified in accordance with final resolution of the dispute.

17 c. The Companies shall implement any Work required by any
18 modifications incorporated in the SOW and/or in Deliverables developed pursuant to the
19 SOW in accordance with this paragraph.

20 d. Nothing in this paragraph shall be construed to limit the Division's
21 authority to require performance of further response actions as otherwise provided in this
22 Settlement Agreement.

23 4. All Work shall be performed in compliance with the Health and Safety Plan
24 required in the SOW.

25 5. The Companies shall continue to implement the Remedial Action and
26 Operation and Maintenance until the Performance Standards are achieved.

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1 the Environment, the Division may notify the Companies in writing of the measure(s)
2 (“Interim Measure”) the Division has determined need to be developed and implemented
3 by the Companies to mitigate the imminent and substantial endangerment. If deemed
4 appropriate by the Division, the implementation of such Interim Measure(s) may be
5 deferred pending the collection by the Companies of additional data or information
6 requested by the Division. Upon receiving such written notice, the Division and the
7 Companies shall promptly confer whether and to what extent such Interim Measure(s)
8 are required.

9 2. The following factors, among others, may be considered by the Division in
10 determining whether any Interim Measure(s) should be required:

11 a. The time required to develop and implement a final Remedial Action
12 for Soil Pollution Conditions or Water Pollution Conditions;

13 b. actual or potential exposure to Receptors;

14 c. actual or potential contamination of drinking water supplies or
15 sensitive ecosystems by Soil Pollution Conditions or Water Pollution Conditions;

16 d. further degradation of the Environment which may occur because of
17 Soil Pollution Conditions or Water Pollution Conditions if an Interim Measure is not
18 implemented expeditiously;

19 e. the presence of Environmental Contaminants in drums, barrels,
20 tanks, or other bulk storage or disposal containers or facilities at the Site that pose a
21 threat of Release;

22 f. weather conditions affecting the Site that may cause a Release of
23 Environmental Contaminants;

24 g. risks of fire or explosion, or potential for exposure to Environmental
25 Contaminants as a result of an accident or failure of a container, facility, or handling
26 system used in connection with the Work that may cause a Release; or

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1 approval; and (k) regular progress reporting during the development and implementation
2 of the Interim Measure(s).

3 5. Interim Measure(s) shall, to the extent practicable, be consistent with the
4 objectives of, and contribute to the performance of, any long term solution at the Site.

5 6. A Division decision regarding an Interim Measure(s) Work Plan and any
6 Work undertaken by the Companies pursuant thereto shall be governed by the other
7 provisions of this Settlement Agreement, including without limitation, the provisions of
8 Section XXIII (Dispute Resolution). In the case of a dispute related to an Interim
9 Measure(s), the timeframes outlined in Section XXIII (Dispute Resolution) shall be
10 shortened by one-half of the time allowed. In the event the Companies fail to perform the
11 Interim Measure(s) pursuant to this Settlement Agreement, the Division may perform
12 such Interim Measure(s) pursuant to the terms of paragraph 11 (Work Takeover) of
13 Section XXV (Covenants by the Division and Reservation of Rights).

14 **IX. ADDITIONAL, ALTERNATIVE, OR ACCELERATED WORK**

15 1. The Companies may propose that certain response actions, including,
16 without limitation, investigation, characterization, engineering evaluation, remediation or
17 procedure/methodology modifications, are necessary in addition to, in lieu of, or on an
18 accelerated schedule relative to this Settlement Agreement in order to address
19 appropriately the investigation, characterization, evaluation, abatement, minimization,
20 stabilization, mitigation, or elimination of Soil Pollution Conditions or Water Pollution
21 Conditions at or associated with the Site. If the Division agrees with the Companies'
22 additional, alternative, or accelerated Work proposal, the Division will notify the
23 Companies in writing. Thereafter, the Companies shall perform the additional Work
24 according to a Work plan prepared by the Companies and approved by the Division (or a
25 modification to an existing Division-approved Work plan). All additional Work performed
26 by any Company under this paragraph shall be performed in a manner consistent with
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1 this Settlement Agreement. Nothing in this Section shall affect the reserved rights under
2 Section XXV (Covenants by the Division and Reservation of Rights) of this Settlement
3 Agreement.

4 2. If the Division determines that additional Work, including, without limitation,
5 investigation, characterization, engineering evaluation, or modification to the
6 remediation, which does not otherwise meet the requirements for an Interim Measure
7 under Section VIII herein, but is necessary in order to address appropriately the
8 investigation, characterization, evaluation, abatement, minimization, stabilization,
9 mitigation, or elimination of Soil Pollution Conditions or Water Pollution Conditions at or
10 associated with the Site the Division shall notify the Companies in writing of such Work
11 required to be performed by the Companies, and shall provide an accompanying
12 statement of the reasons and determinations therefor. The Companies and the Division
13 shall promptly confer regarding whether and to what extent such additional Work shall be
14 undertaken.

15 3. Division approval of a Work plan with respect to any additional, alternative,
16 or accelerated Work, and any Work undertaken by the Companies pursuant thereto shall
17 be governed by the other relevant provisions of this Settlement Agreement, including
18 without limitation, the provisions of Section XXIII (Dispute Resolution). The Division is
19 entitled to take over performance of any alternative or accelerated Work pursuant to
20 Section XXV (Covenants by the Division and Reservation of Rights).

21 **X. PROJECT COORDINATORS AND KEY PERSONNEL**

22 1. Key Personnel. For the purposes of this Section, the term "Key Personnel"
23 is defined to mean those individuals who have primary responsibility for the direction of
24 employees or subcontract personnel for major project tasks, outputs, or Deliverables
25 including, but not limited to, data collection, data interpretation, and report writing.

26 2. Designation of Project Coordinator. The Companies and the Division shall
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1 each designate a Project Coordinator and Alternate Project Coordinator for the Site and
2 will notify the Parties in writing of the name, address, and telephone number of such
3 coordinators. The Project Coordinator shall be a representative of a team of individuals
4 who have expertise to oversee the Site. The Companies' Project Coordinators shall not
5 be an attorney for any Company and shall be the CEMs designated by the Companies to
6 have responsible control of the Work. Each Project Coordinator shall be responsible for
7 overseeing the implementation of this Settlement Agreement and for designating a
8 person to act in his/her absence. The Division's Project Coordinator will be the Division's
9 designated representative for the Site. If a Project Coordinator or Alternate Project
10 Coordinator initially designated is changed, the identity of the successor will be given to
11 the other Parties at least seven (7) Days before the changes occur, unless impracticable,
12 but in no event later than the actual day the change is made. The Companies' Project
13 Coordinator shall have the technical expertise sufficient to adequately oversee all
14 aspects of the Work, or shall retain Key Personnel who have such expertise. He or she
15 may assign other representatives, including other Contractors, to serve as a Site
16 representative for oversight of performance of daily operations during Site activities.

17 3. Actual Designation of Coordinator(s). Unless the Division notifies the
18 Companies otherwise, the Division's Project Coordinator and Alternate Project
19 Coordinator shall be:

20 Project Coordinator

21 Special Projects Branch Supervisor
22 Nevada Division of Environmental Protection
23 1771 E. Flamingo Rd., Suite 121-A
24 Las Vegas, NV 89119
TL: 702-486-2850
FX: 702-486-2863

Alternate Project Coordinator

Remediation Branch Supervisor
Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701
TL: 775-687-3968
FX: 775-687-8335

25 4. Unless the Companies notify the Division otherwise, the Companies'
26 Project Coordinator and Alternate Project Coordinator shall be:

27 Project Coordinator

Alternate Project Coordinator

1 Basic Remediation Company LLC
2 NAME: Ranajit Sahu
3 POSITION: Program Manager
4 ADDRESS: 875 West Warm Springs Rd.
5 Henderson, NV 89015
6 TELEPHONE: 702-567-0400
7 FACSIMILE: 702-567-0475

Basic Remediation Company
NAME: Richard Kellogg
POSITION: Chairman
ADDRESS: 875 West Warm Springs Rd.
Henderson, NV 89015
TELEPHONE: 702-567-0400
FACSIMILE: 702-567-0475

5 5. The absence of the Division's Project Coordinator from the Site shall not be
6 cause for the stoppage of Work.

7 6. To the maximum extent practicable, all communications from the
8 Companies to the Division, and all Deliverables, documents, reports, approvals and
9 other correspondence concerning the activities performed pursuant to this Settlement
10 Agreement, shall be in writing and shall be directed to the Division's Project Coordinator.
11 Copies shall also be provided to the Division's Alternate Project Coordinator, the City of
12 Henderson's Environmental Programs Manager, and from any Company to the other
13 Companies. Communications from the Division to the Companies shall be directed to the
14 property Owner or responsible corporate officer discussed in Section XIII (Reporting
15 Requirements) or Section XXX (Notices and Deliverables), and copied to the Companies'
16 Project Coordinator.

17 7. Authority of the Division's Project Coordinators.

18 a. The Division's Project Coordinator or Alternate Project Coordinator
19 shall have the authority to halt any Work required by this Settlement Agreement and to
20 take any necessary response action when s/he determines that conditions at the Site
21 constitute an imminent and substantial endangerment to human health or welfare or the
22 Environment due to Release or threatened Release of Waste Material.

23 b. The Division may designate other representatives, including, but not
24 limited to, State employees, and State Contractors and consultants, to observe and
25 monitor the progress of any activity undertaken pursuant to this Settlement Agreement.

26 8. Within thirty (30) Days following the Effective Date of this Settlement
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1 Agreement, and before the required Work begins, the Companies shall notify the
2 Division's Project Coordinator in writing of the names, titles, and qualifications of any
3 other Key Personnel, Contractors, and their personnel proposed to be used in carrying
4 out the terms of this Settlement Agreement. If Key Personnel or Contractors to be used
5 to carry out the terms of the Settlement Agreement are not known within the initial thirty
6 (30) Days of the Effective Date, the Companies shall provide such notification of Key
7 Personnel and Contractors to the Division at least thirty (30) Days prior to their
8 incorporation into performance of any Work, unless circumstances reasonably warrant
9 shorter notice.

10 9. The qualifications of the Companies' Project Coordinator, Alternate Project
11 Coordinator, and Key Personnel shall be subject to the Division's review and approval,
12 for verification that such persons meet minimum technical background and experience
13 requirements. The Division reserves the right to disapprove the Companies' Project
14 Coordinator, Alternate Project Coordinator, or Key Personnel for good cause shown at
15 any time during the Effective Period of this Settlement Agreement. If the Division
16 disapproves any Project Coordinator, Alternate Project Coordinator, or Key Personnel
17 proposed by the Companies to perform Work pursuant to this Settlement Agreement,
18 then the Companies shall, within thirty (30) Days after receipt from the Division of written
19 notice of such disapproval, notify the Division in writing of the name, title, and
20 qualifications of any replacement. The Division's disapproval under this section shall be
21 subject to review in accordance with Section XXIII (Dispute Resolution) of this Settlement
22 Agreement.

23 10. During the Effective Period of this Settlement Agreement, the Companies
24 shall notify the Division in writing of any changes or additions in the Key Personnel used
25 to carry out the Work required by the Settlement Agreement, providing their names,
26 titles, and qualifications. The Division shall have the same right to approve changes and
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1 additions to such persons as it has hereunder regarding the initial notification.

2 **XI. QUALITY ASSURANCE, SAMPLING, DATA ANALYSIS, AND DATA AVAILABILITY**

3 1. The Companies shall use quality assurance, quality control, and chain of
4 custody procedures for all characterization, treatability, design, compliance, monitoring
5 and risk assessment/closure samples in accordance with current EPA guidance which
6 may include, "EPA Requirements for Quality Assurance Project Plans for Environmental
7 Data Operation," (EPA QA/R5); "Preparing Perfect Project Plans," (EPA /600/9-88/087),
8 and subsequent amendments to such guidelines. Amended guidelines shall apply only
9 to procedures conducted after such amendment or publication.

10 2. Within one hundred eighty (180) Days of the Effective Date, the Companies
11 shall submit to the Division for approval, a Quality Assurance Project Plan ("QAPP") for
12 the Site that is consistent with the SOW and applicable guidance documents. In the
13 event that a QAPP exists, it shall be evaluated in accordance with the stated guidance,
14 and revised and re-submitted as warranted. Work plans shall reference and incorporate
15 the Site QAPP and, as applicable, contain Work plan-specific quality assurance/quality
16 control (QA/QC) and chain of custody procedures for all sampling, monitoring and
17 analytical activities associated with the Work plan. Any deviations from the approved
18 Site QAPP and/or Work plan QA/QC procedures must be approved by the Division; must
19 be documented, including reasons for the deviations; and must be reported in any
20 applicable Deliverable.

21 3. If relevant to a proceeding, the Parties agree that validated sampling data
22 generated in accordance with the QAPP(s) and reviewed and approved by the Division
23 shall be admissible as evidence, without objection, in any proceeding under this
24 Agreement.

25 4. The Companies shall ensure that all samples are collected and analyzed
26 using approved Division procedures, accepted laboratory methods, and laboratories
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1 certified under State law. The Companies shall require that laboratories used for
2 analysis, perform such analysis according to the latest approved edition of "Test
3 Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), or other
4 methods deemed satisfactory by the Division. The Companies shall submit any
5 deviations from the protocols proposed in any Work plan to the Division for its approval
6 thirty (30) Days prior to the commencement of analyses, except in extraordinary
7 circumstances. The Division may reject any data that does not meet the requirements of
8 the approved Work plan or EPA analytical methods and may require re-sampling and
9 additional analysis. In the event there are no certified and available laboratories to
10 analyze a certain Environmental Contaminant, the Parties will cooperatively work to get
11 the data analyzed.

12 5. The Companies shall ensure that laboratories they or their Contractor(s)
13 use, or have used, for analyses participate in a QA/QC program equivalent to that
14 required by EPA under the Contract Laboratory Program (CLP), unless another program
15 is deemed acceptable to the Division. As part of such a program, and upon request by
16 the Division, the Companies shall ensure that Division personnel and their authorized
17 representatives are allowed access at reasonable times to all laboratories utilized by the
18 Companies in implementing this Settlement Agreement. In addition, the Companies shall
19 ensure that such laboratories shall analyze all samples submitted by the Division for
20 quality assurance monitoring. Such laboratories shall perform analyses of samples
21 provided by the Division to demonstrate laboratory performance and the quality of
22 analytical data. If the audit reveals deficiencies in a laboratory's performance or QA/QC,
23 the Division may require re-sampling and additional analysis of any samples affected by
24 the deficiencies.

25 6. Any deviations from the QAPP must be approved in advance by the
26 Division, must be documented, including reasons for the deviations, and must be
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1 reported in the applicable Deliverable.

2 7. The name(s), addresses, and telephone numbers of the analytical
3 laboratories the Companies propose to use must be submitted to the Division for review
4 and approval prior to Work being performed.

5 8. Upon request, the Companies shall allow split or duplicate samples to be
6 taken by the Division or its authorized representatives. The Companies shall notify the
7 Division not less than fourteen (14) Days in advance of any sample collection activity,
8 unless the Division approves a shorter notice period, which approval shall not be
9 unreasonably withheld. In addition, the Division shall have the right to take any
10 additional samples that the Division deems necessary. Upon request, the Division shall
11 allow the Companies to take split or duplicate samples of any samples the Division takes
12 as part of the oversight of the Companies' implementation of the Work.

13 9. All final results of sampling, tests, modeling and other data generated by
14 the Companies, or on the Companies' behalf, pursuant to this Settlement Agreement (not
15 including raw data that has not been subject to QA/QC procedures) shall be submitted to
16 the Division. The Companies shall submit to the Division two (2) copies of the results of
17 all sampling and/or tests or other data obtained or generated by or on behalf of the
18 Companies with respect to the Site and/or the implementation of this Settlement
19 Agreement unless the Division agrees otherwise. The Division will provide to the
20 Companies validated data generated by the Division unless it is prohibited from
21 disclosure by any federal or State law or regulation, or is privileged.

22 10. Notwithstanding any provision of this Settlement Agreement, the Division
23 hereby retains all of its information gathering and inspection authorities and rights,
24 including enforcement actions related thereto, under any applicable statutes or
25 regulations.

26 **XII. SITE ACCESS, INSTITUTIONAL CONTROLS, AND ENGINEERING CONTROLS**

1 1. The Division, its Contractors, employees, and/or any duly designated
2 Division representatives carrying out the authority of the Division shall have the
3 Companies' permission, at all reasonable times, upon notice and in conformance with
4 any health and safety requirements at the Site, to enter and freely move about all
5 property at the Site relating to the Work for the purposes of, *inter alia*: (a) discussing the
6 Work with the relevant Companies or Contractor personnel, (b) inspecting conditions,
7 activities, the results of activities, records, operating logs, and contracts related to the
8 Site or the Companies and their Contractors pursuant to this Settlement Agreement, (c)
9 reviewing the progress of the Companies in carrying out the terms of this Settlement
10 Agreement, (d) conducting such tests, sampling, or monitoring as the Division or its
11 authorized representatives deem necessary, (e) using a camera, sound recording device
12 or other documentary type equipment, (f) verifying the records submitted to the Division
13 by the Companies, and (g) inspecting and copying all non-privileged records, files,
14 photographs, documents, sampling and monitoring data, and other writings or materials
15 related to Work undertaken in carrying out the requirements of this Settlement
16 Agreement. Nothing herein shall be interpreted as limiting, waiving, or otherwise
17 affecting: (a) the Division's right of entry or inspection under state or federal laws, (b) the
18 Division's rights to require, or enforcement authority related to, Institutional Controls or
19 Engineering Controls, (c) any attorney-client, work-product, joint defense or other
20 privilege with respect to any matter affecting the Companies or, (d) the Companies' right
21 to seek confidential treatment of any matter pursuant to applicable law.

22 2. To the extent that any property other than the Site to which access is
23 required for the performance of Work required under this Settlement Agreement is
24 owned or controlled by persons or entities other than the Companies, the Companies
25 shall use commercially reasonable efforts to obtain access to such property for the
26 Companies, and the Division and its authorized representatives, within thirty (30) working
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1 Days after the date that the need for access becomes known to the Companies. The
2 Division may provide reasonable assistance to the Companies in the event that any third-
3 party property owner refuses to provide access.

4 3. The Companies agree to indemnify, defend and hold harmless the Division
5 as provided in Section XXI (Indemnification and Insurance), for any and all claims arising
6 from the Companies', or their officers', employees', agents' or Contractors' activities on
7 such property.

8 4. Nothing in this Section shall be construed to limit or otherwise affect the
9 Companies' liability and obligations with respect to any Release at or associated with the
10 Site.

11 5. Notwithstanding any other paragraph in this Section, upon receipt of a
12 written request from the Division specifying the need for access, each Company shall
13 grant any other Company identified in such request, the authority to enter and move
14 about the other Companies' property at all reasonable times for the purpose of
15 conducting Work. No Company shall require payment of compensation in consideration
16 of granting such access, which does not include access to equipment, buildings,
17 facilities, or other structures. However, granting access may be conditioned upon
18 receiving from any Company seeking access hereunder written assurances that: such
19 access will be reasonable in scope and will be at the sole risk and expense of the
20 Company seeking access; the Company seeking access will comply with the granting
21 Company's confidentiality and safety rules and regulations and will have (and make
22 reasonable efforts to ensure its Contractors have) reasonable levels of liability insurance
23 in place and will agree to hold the granting Company harmless from loss, damage or
24 injury caused by its entry.

25 6. The Relevant Company(ies) shall:

26 a. Commencing on the Effective Date of this Settlement Agreement,
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1 refrain from using the Site or such other property on which Work is being performed in
2 any manner that would adversely affect the integrity or protectiveness of the Remedial
3 Actions, including associated Institutional Controls, Engineering Controls, and Operation
4 and Maintenance activities, to be implemented pursuant to this Settlement Agreement.

5 b. Subject to sub-paragraphs c, d, and e of this paragraph 6, execute
6 and record in the Recorder's Office of Clark County, State of Nevada, a written
7 Institutional Control instrument, in a form approved in advance by the Division. The
8 instrument shall prohibit any future action from being conducted which would interfere
9 with the protectiveness of the Remedial Actions; provided, however, that any instrument
10 so imposed shall be tailored to minimize the impact on the owner's use and enjoyment of
11 the property and its current and planned development of the property. The instrument
12 shall also grant the Division and its representatives, or other appropriate grantees, the
13 right to enforce the Institutional Controls or Engineering Controls required by this
14 Settlement Agreement.

15 c. Within forty-five (45) Days after the Effective Date of this Settlement
16 Agreement, submit a draft instrument to the Division for its approval pursuant to this
17 paragraph, and the instrument shall be recorded within fifteen (15) Days after the
18 Division's approval of the form of instrument. Within thirty (30) Days of the recording of
19 the instrument, provide the Division with satisfactory title evidence, and a certified copy
20 of the original recorded instrument showing the clerk's recording stamps.

21 d. After the recordation contemplated by sub-paragraph 3, for any
22 portion of the Site that is not a NFAD Property pursuant to Section XVII, within forty-five
23 (45) Days after a Division determination of a requirement for a future Institutional Control
24 or Engineering Control, submit a draft instrument to the Division for its approval pursuant
25 to this paragraph, and the instrument shall be recorded within fifteen (15) Days after the
26 Division's approval of the form of the instrument. Within thirty (30) Days of the recording
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1 of the instrument, provide the Division with satisfactory title evidence and a certified copy
2 of the original recorded instrument showing the clerk's recording stamps.

3 e. With respect to any portion of the Site that is a NFAD Property
4 pursuant to Section XVII, an Institutional Control or Engineering Control may be required
5 solely as to Water Pollution Conditions. If the Division subsequently determines that an
6 Institutional Control or Engineering Control is required to a NFAD Property, solely as to
7 Water Pollution Conditions, then such Institutional Control or Engineering Control shall
8 be located on or under the public right-of-way. Within forty-five (45) Days after a
9 Division determination of a requirement for an Institutional Control or Engineering
10 Control, submit a draft instrument to the Division for its approval pursuant to this
11 paragraph, and the instrument shall be recorded within fifteen (15) Days after the
12 Division's approval of the form of the instrument. Within thirty (30) Days of the recording
13 of the instrument, provide the Division with satisfactory title evidence and a certified copy
14 of the original recorded instrument showing the clerk's recording stamps.

15 7. For purposes of this Section, "commercially reasonable efforts" shall
16 include, at a minimum: (a) a certified letter from the Companies to the present owners of
17 such property requesting access agreements to permit the Companies and the Division,
18 including its authorized representatives, to access such property, or (b) compliance with
19 federal and state laws, regulations and policies addressing access, easements or
20 agreements, including but not limited to such actions as are contemplated by NRS
21 459.930 (Immunity from liability for certain persons for response actions and cleanup
22 with respect to certain real property at which a hazardous substance has been or may
23 have been released). Any such access agreement(s) or control(s) shall be incorporated
24 by reference into this Settlement Agreement upon execution. The Companies shall
25 provide to the Division's Project Coordinator a copy of each such access agreement or
26 control. In the event that any necessary agreement for access is not obtained within
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1 thirty (30) Days following approval of any Work plan for which access is required, or
2 following the date that the need for access became known to the Companies, the
3 Companies shall notify the Division thereafter regarding both the efforts undertaken to
4 obtain access and their failure to obtain such access agreement. In the event the
5 Companies are unable to obtain such access, they shall report to the Division their
6 efforts to obtain the same. The Division shall assist the Companies in obtaining access
7 agreements or controls. In the event that the Division obtains access, the Companies
8 shall undertake Division approved Work on such property. The Division may, as it
9 deems appropriate, assist the Companies in obtaining Institutional Controls or
10 Engineering Controls, either in the form of contractual agreements or in the form of
11 easements running with the land. The Companies shall reimburse the Division in
12 accordance with the procedures in Section XX (Reimbursement of Division Oversight
13 and Response Costs), for all reasonable costs incurred, direct or indirect, by the Division
14 in assisting in obtaining such access or Institutional Controls or Engineering Controls
15 including, but not limited to, the cost of attorney time.

16 **XIII. REPORTING REQUIREMENTS**

17 1. Beginning with the first full calendar quarter following the Effective Date,
18 and throughout the Effective Period of this Settlement Agreement, and in addition to any
19 other requirement of this Settlement Agreement, the Companies shall submit to the
20 Division a written quarterly progress report. The report shall: (a) describe the actions
21 which have been taken toward achieving compliance with this Settlement Agreement
22 during the previous quarter; (b) include a summary of all results of sampling and tests
23 and all other data related to the Work received or generated by the Companies or their
24 Contractors or agents that are required to be obtained and reported under this
25 Settlement Agreement in the previous quarter; (c) identify all Work plans, plans and
26 other Deliverables required by this Settlement Agreement completed and submitted
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1 during the previous quarter; (d) describe all actions, including, but not limited to, data
2 collection and implementation of Work plans, which are scheduled for the next quarter
3 and provide other information relating to the progress of construction, including, but not
4 limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information
5 regarding percentage of completion, unresolved delays encountered or anticipated that
6 may affect the future schedule for implementation of the Work, and a description of
7 efforts made to mitigate those delays or anticipated delays; (f) include any modifications
8 to the Work plans or other schedules that the Companies have proposed to the Division
9 or that have been approved by the Division; (g) describe planned modifications to any
10 Remedial Action either during development, construction or after completion; and (h)
11 describe all activities undertaken in support of the Community Relations Plan during the
12 previous quarter and those to be undertaken in the next quarter.

13 2. The Companies shall submit quarterly progress reports to the Division by
14 the fifteenth (15th) day of the month following the end of each calendar quarter. If
15 requested by the Division, the Companies shall also provide briefings for the Division,
16 upon reasonable notice, to discuss the progress of the Work.

17 3. The Companies shall promptly notify the Division of any material change in
18 the schedule described in the quarterly progress report for the performance of any
19 activity, including, but not limited to, data collection and implementation of Work plans.

20 4. The Companies are required to report any unexpected occurrence at the
21 Site. Unexpected occurrences include, but are not limited to, interruption of remediation,
22 unusual or unanticipated malfunctions, upsets, interruptions, delay, slowdowns,
23 accelerations, and other discoveries that are not subject to other reporting requirements
24 in this Settlement Agreement.

25 5. Upon the occurrence of any event or unexpected occurrence that the
26 Companies are required to report, the Companies shall, within twenty-four (24) hours of
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1 such event or unexpected occurrence, orally notify the Division's Project Coordinator or
2 Alternate Project Coordinator if the Division's Project Coordinator is unavailable of such
3 event. If neither the Division's Project Coordinator nor Alternate Project Coordinator is
4 available, then the Division's Chief of the Bureau of Corrective Actions shall be the point
5 of contact. In no case will this paragraph relieve any Company from complying with
6 State reporting requirements contained in NAC 445A.347 (Notice Required) when any
7 such reportable event or unexpected occurrence occurs.

8 6. Within twenty (20) Days of the onset of such an event or unexpected
9 occurrence, the Companies shall furnish to the Division a written report, signed by the
10 Companies' Project Coordinator, setting forth the events or unexpected occurrence and
11 the response, and any proposed further response. Within thirty (30) Days of the
12 conclusion of such an event, the Companies shall submit a report setting forth all actions
13 taken in response thereto.

14 7. The Companies shall submit an original and at least two (2) copies of all
15 Deliverables required by the SOW, or any other data or approved plans, to the Division
16 in accordance with the schedules set forth in such plans or the SOW pursuant to the
17 terms and conditions of this Settlement Agreement. Deliverables shall be hand
18 delivered; sent by certified mail, return receipt requested; sent by overnight parcel
19 delivery service; or sent by verified facsimile transmission to the Division's Project
20 Coordinator in accordance with Section XXX (Notices and Deliverables).

21 8. All Deliverables and other documents submitted by the Companies to the
22 Division (other than the quarterly progress reports referred to above) which purport to
23 document the Companies' compliance with the terms of this Settlement Agreement shall
24 be signed by the Companies' Project Coordinator. An annual certification regarding the
25 Companies' compliance with the terms of this Settlement Agreement shall be signed and
26 certified by a responsible corporate officer of each of the Companies or BRC, as the
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1 case may be depending upon which party(ies) are then performing the Work hereunder.
2 Such a certification will be submitted to the Division by January 31 of any year following
3 a year in which Deliverables are submitted to the Division. A responsible corporate
4 officer means: a president, secretary, treasurer, general manager, or vice-president of
5 the corporation in charge of a principal business function, or any other person who
6 performs similar policy or decision making functions for the corporation.

7 9. The annual certification required above, shall be executed before and
8 notarized by a notary public and shall be in the following form:

9 I certify that this document and all documents or attachments submitted to
10 the Division in the year just ended were prepared under the direction or
11 supervision of the Company(ies) in accordance with a system designed to
12 evaluate the information submitted. I certify that to the best of my
13 knowledge and belief, formed after due and appropriate inquiry and
14 investigation, the information contained in or accompanying the
15 submittals and provided by the Company that I represent is true,
16 accurate, and complete in all material respects. I certify that the
17 submittals and all attachments were prepared in accordance with
18 procedures designed to assure that qualified personnel properly gathered
19 and evaluated the information submitted. Based on my inquiry of the
20 person or persons who manage the system, or those directly responsible
21 for gathering the information, or the immediate supervisor of such
22 person(s), the information submitted and provided by the Company that I
23 represent is, to the best of my knowledge and belief, true, accurate, and
24 complete in all material respects. I am aware that there are significant
25 penalties for submitting false information, including the possibility of fine
26 and imprisonment for knowing violations.

19 Signature: _____
20 Name: _____
21 Title: _____
22 Company: _____
23 Date: _____

24 10. In addition, all Deliverables and other documents submitted by the
25 Companies to the Division that are required under Nevada Law to be prepared or
26 submitted by the Companies' Certified Environmental Manager shall be signed and
27 certified by the CEM responsible for the project. These Deliverables shall include the
28 Jurat required by NAC 459.97285 and shall be in the following form:

1 I hereby certify that I am responsible for the services described in this
2 document and for the preparation of this document. The services
3 described in this document have been provided in a manner consistent
4 with the current standards of the profession and to the best of my
5 knowledge comply with all applicable federal, state and local statutes,
6 regulations and ordinances. I hereby certify that all laboratory analytical
7 data was generated by a laboratory certified by the NDEP for each
8 constituent and media presented herein.

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Signature: _____
Name: _____
Title: _____
Company: _____
Date: _____
EM Certificate Number: _____
EM Expiration Date: _____

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XIV. APPROVAL OF DELIVERABLES

1. After review of any Deliverable which is required to be submitted for approval pursuant to this Settlement Agreement, the Division within a reasonable time shall provide written comments which will: (a) approve the Deliverable; (b) approve the Deliverable with specified conditions; (c) direct the Companies to revise and resubmit the Deliverable pursuant to written comments provided by the Division; (d) disapprove, in whole or in part, the Deliverable, directing that the Companies resubmit the Deliverable by a specified date; or (e) any combination of the above.

2. Upon the Companies' request, the Division agrees to confer with the Companies to develop a schedule to review and respond to the Deliverable.

3. In the event of approval with conditions pursuant to paragraph 1 (b), the Companies shall proceed to take any action required by the Deliverable, as approved by the Division subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the conditions made by the Division.

4. Upon receipt of a notice of disapproval or direction to revise and resubmit, pursuant to paragraph 1, the Companies shall, within thirty (30) Days or such longer time

1 as specified by the Division in such notice, revise the Deliverable and resubmit for
2 approval.

3 5. Notwithstanding the receipt of a notice of disapproval pursuant to
4 paragraph 1, the Companies shall proceed, at the direction of the Division, to take any
5 action required by any approved portion of the Deliverable. Implementation of any
6 approved portion of a Deliverable shall not relieve the Companies of any liability for
7 stipulated penalties under Section XXIV (Stipulated Penalties).

8 6. In the event that a resubmitted Deliverable, or portion thereof, is
9 disapproved by the Division, the Division may again require the Companies to revise the
10 Deliverable, in accordance with the preceding paragraphs or the Division retains the right
11 to develop the Deliverable. The Companies shall implement any such Deliverable as
12 developed by the Division, subject only to their right to invoke the procedures set forth in
13 Section XXIII (Dispute Resolution) as to the portions developed by the Division.

14 7. If, upon the first resubmission, a Deliverable is disapproved by the Division,
15 the Companies shall be deemed to have failed to submit such Deliverable timely and
16 adequately unless the Companies invoke the Dispute Resolution procedures set forth in
17 Section XXIII (Dispute Resolution) and the Division's action is overturned pursuant to
18 that Section. The provisions of Section XXIII (Dispute Resolution) and Section XIV
19 (Stipulated Penalties) shall govern the implementation of the Work and accrual and
20 payment of any stipulated penalties during Dispute Resolution.

21 8. In approving any Deliverable, the Division will continue to inform the EPA.

22 9. All Deliverables required to be submitted to the Division under this
23 Settlement Agreement shall, upon approval by the Division, be enforceable under this
24 Settlement Agreement. In the event the Division approves a portion of a Deliverable
25 required to be submitted to the Division under this Settlement Agreement, the approved
26 portion shall be enforceable under this Settlement Agreement.

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XV. ASSURANCE OF ABILITY TO COMPLETE WORK

1. BRC and certain Companies have secured environmental insurance policies to fund the Work. As of the date of the Soils LTA and Groundwater LTA, respectively, the Division determined that it was willing to rely on the Policies to fund, on behalf of the respective insureds, the Work, based on the information then available to the Division. The Division will continue to rely on the Policies to fund the Work.

2. In the event the Work is not funded by the Policies, BRC shall so notify the Parties in writing. Within one hundred eighty (180) Days following the receipt of such notice, BRC or the Companies, as applicable, shall identify and maintain financial security in one or more of the following forms, in an amount sufficient to perform the Work required herein:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund; or
- d. An insurance policy.

3. The Companies may change the form of financial assurance after approval by the Division, provided that the new form of assurance is sufficient to perform the Work.

4. In the event that the Companies are required to maintain financial security pursuant to paragraph 2, the Companies may, at a time agreed to by the Parties, including the Division, request to reduce the amount of the financial security provided under this Section. The Companies shall submit a proposal for such reduction to the Division in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by the Division. In the event of a dispute, the Companies may reduce the amount of the security in accordance with the final administrative or

1 judicial decision resolving the dispute.

2 5. The Companies shall provide the Division an annual summary of payments
3 made and remaining cleanup limits under the Policies by April 30, for the preceding
4 calendar year. The Division may request additional evidence of the payments made and
5 remaining limits under the Policies.

6 **XVI. REMEDIAL ACTION PERFORMANCE STANDARDS**

7 1. All Work shall provide for design, construction, and implementation of the
8 Remedial Action(s) for Soil Pollution Conditions or Water Pollution Conditions.
9 Performance Standards approved by the Division shall be incorporated into and become
10 enforceable under this Settlement Agreement.

11 2. The Companies shall continue to implement the Remedial Action and
12 Operations and Maintenance until the Performance Standards are achieved.

13 **XVII. DETERMINATION OF COMPLETION**

14 1. No Further Action Determination.

15 a. The Division acknowledges that discrete portions of the Site may be
16 issued a No Further Action Determination (“NFAD”) as Remedial Actions are completed
17 for select environmental media. The Parties agree that such a determination may be
18 subject to continuing Work regarding Water Pollution Conditions, Operation and
19 Maintenance, maintenance of existing Institutional Controls, and/or Efficacy Review.

20 b. The Companies may at any time submit to the Division a request for
21 an NFAD, for all or any discrete portion of the Site (“NFAD Property”). Any such request
22 shall identify the Remedial Actions and other Work completed at the NFAD Property, the
23 results of such Remedial Actions and other Work, the proposed land use(s), a
24 description of any remaining Work necessary to achieve the Performance Standards and
25 the reasons supporting the eligibility of the NFAD Property for an NFAD.

26 c. The Division shall review each request for NFAD as a Deliverable
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1 pursuant to Section XIV.

2 d. The Division's approval shall constitute a determination that the
3 NFAD Property may be used for any purpose consistent with the Remedial Action
4 performed; provided however, that

5 (i) Issuance of a NFAD does not constitute a representation or
6 warranty by the Division of the fitness of any NFAD Property for any particular use or
7 development; and,

8 (ii) NFAD Properties may be subject to continuing Work,
9 Operation and Maintenance, maintenance of existing Institutional Controls, future
10 Institutional Controls and Engineering Controls and Efficacy Review, subject to Sections
11 XII (Site Access, Institutional Controls and Engineering Controls) and XVIII (Efficacy
12 Review), respectively.

13 2. Completion.

14 a. The Parties agree that completion of Remedial Action at the Site
15 regarding Soil Pollution Conditions and/or Water Pollution Conditions may qualify the
16 Site for a Notice of Completion ("NOC").

17 b. The Companies may at any time submit to the Division a request for
18 a NOC determination for the Site. The request shall identify the Remedial Action, the
19 results of such Remedial Action, and the justifications supporting the eligibility of the Site
20 for a NOC determination.

21 c. The Division shall review the request for NOC determination as a
22 Deliverable pursuant to Section XIV.

23 d. The date of the Division's approval or approval with conditions of the
24 NOC determination shall establish the date for calculation of the commencement of
25 Efficacy Review.

26 3. Final Completion. After completion of all Work, Efficacy Review, and any
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1 actions required therefrom, the Companies shall submit to the Division a Statement of
2 Final Completion, which certifies that the Companies have completed all Work, Efficacy
3 Review, and any other actions required therefrom, including the performance of any
4 additional Work and the payment of any costs and stipulated penalties to the Division.
5 Within a reasonable time after the receipt of the Statement of Final Completion, but not
6 to exceed ninety (90) Days, the Division shall issue a written notice to the Companies
7 that either (i) all Work under this Settlement Agreement has been fulfilled, or (ii) all Work
8 has not been completed. Such notice shall specify the obligations the Division believes
9 must be fulfilled in order to satisfy this Settlement Agreement and any monies the
10 Division believes are due and payable.

11 **XVIII. EFFICACY REVIEW**

12 1. On the five (5) and ten (10) year anniversary of the Division's approval of
13 the Companies' Notice of Completion, the Companies shall perform a review of the
14 efficacy of a Remedial Action ("Efficacy Review") and shall submit the Efficacy Review to
15 the Division within one hundred eighty (180) Days.

16 2. If the Division determines that the results of any Efficacy Review under
17 paragraph 1 demonstrate that prior Remedial Action is not protective of Performance
18 Standards under Section XVI herein, the Division may require additional Remedial
19 Action. The Division and the Companies shall promptly confer regarding whether and to
20 what extent additional Remedial Action may be required.

21 3. If at any time following Efficacy Review under paragraphs 1 and 2 herein,
22 the Division determines that Soil Pollution Conditions and Water Pollution Conditions do
23 not meet Performance Standards under Section XVI, the Division may require additional
24 Remedial Action. The Division and the Companies shall promptly confer regarding
25 whether and to what extent additional Remedial Action may be required.

26 **XIX. EMERGENCY RESPONSE**

1 1. In the event of any action or occurrence during the performance of the
2 Work which causes or threatens a Release of Waste Material from the Site which may
3 present an imminent and substantial endangerment to human health or welfare or the
4 Environment, the Companies shall, subject to paragraph 2 of this Section, immediately
5 take all appropriate action to prevent, abate, or minimize such Release or threat of
6 Release, and shall immediately notify the Division's Project Coordinator, or, if the Project
7 Coordinator is unavailable, the Division's Alternate Project Coordinator. If neither of
8 these persons is available, the Companies shall notify the Chief of the Bureau of
9 Corrective Action. In no case will this paragraph relieve any Company from complying
10 with State reporting requirements contained in NAC 445A.347 (Notice Required) when
11 any such reportable event occurs. The Companies shall take such actions in
12 consultation with the Division's Project Coordinator or other available authorized Division
13 officer and in accordance with all applicable provisions of the Health and Safety Plans,
14 the contingency plans, and any other applicable plans or documents developed pursuant
15 to the SOW. In the event that the Companies fail to take appropriate response action as
16 required by this Section, and the Division takes such action instead, the Companies shall
17 reimburse the Division all costs of the response action pursuant to Section XX
18 (Reimbursement of Division Oversight and Response Costs) and the Companies will, if
19 applicable, be subject to the penalties set forth in Section XIV (Stipulated Penalties). In
20 the event that the Division is required to take action pursuant to this paragraph, the
21 Companies may not dispute the Division's actions under the dispute resolution
22 provisions of this Settlement Agreement prior to the Division taking such actions;
23 however, the Companies may later dispute the Division's determination of imminent and
24 substantial endangerment.

25 2. Nothing in the preceding paragraph or in this Settlement Agreement shall
26 be deemed to limit any authority of the Division to (a) take all appropriate action to
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1 protect human health and the Environment or to prevent, abate, respond to, or minimize
2 an actual or threatened Release of Waste Material on, at, or from the Site, or to (b) direct
3 or order such action, or seek an order from the Court, to protect human health and the
4 Environment or to prevent, abate, respond to, or minimize an actual or threatened
5 Release of Waste Material on, at, or from the Site, subject to Section XXVI (Covenants
6 by the Companies and Companies' Reservation of Rights).

7 **XX. REIMBURSEMENT OF DIVISION OVERSIGHT AND RESPONSE COSTS**

8 1. Following the Effective Date and for the Effective Period of this Settlement
9 Agreement, the Companies shall reimburse the Division for costs reasonably incurred for
10 oversight of this Settlement Agreement. The Companies shall advance the Division
11 \$400,000 within forty-five (45) Days after the Effective Date of this Settlement
12 Agreement. The Companies shall remit to the Division payment on a quarterly basis the
13 amount necessary to restore the advanced funds to \$400,000. Such funds shall be
14 placed in an interest-bearing account by the Division. All accrued interest shall be
15 credited to the Companies. Amounts due hereunder shall be paid within forty-five (45)
16 Days of receipt of the Division's invoice. Such payments shall cover all costs incurred by
17 the Division in overseeing, administering, enforcing, or performing Work regarding the
18 Companies' implementation of the requirements of this Settlement Agreement. Such
19 reimbursable costs incurred may also include costs associated with conducting
20 discussions regarding disputes that may arise under this Settlement Agreement (except
21 where the Division's actions are not upheld in the Dispute Resolution process).

22 2. The Division shall submit to the Companies copies of all invoices and
23 supporting documentation on a quarterly basis, following the last invoice generated
24 under the Phase 2 Consent Agreements. Submittals shall be made promptly after the
25 Division's preparation and internal review. Such invoices shall contain reasonable detail
26 regarding the Work performed. To the extent practicable, the Division will, and will
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1 require its consultants and Contractors to, identify in reasonable detail the costs and
2 expenses incurred by the task to which such items were incurred.

3 3. All payments due by the Companies hereunder shall be received by the
4 Division within forty-five (45) Days of the Companies' receipt of the invoice, shall
5 reference the name of the Site, the Companies' name and address, the progress billing
6 number identified in the Division invoice and shall be by a check payable to the "State of
7 Nevada Hazardous Waste Fund" for the full amount due and owing to:

8 Nevada Division of Environmental Protection
9 Attn: Chief, Bureau of Corrective Actions
10 901 South Stewart Street, Suite 4001
11 Carson City, Nevada 89701

12 4. The Companies may contest payment of any Response Costs under this
13 Section if they determine that the Division has made an accounting error or if they allege
14 that a cost item that is included represents costs that are unreasonable or inconsistent
15 with the Work. Such objection shall be made in writing within thirty (30) Days of receipt
16 of the invoice and must be sent to the Division pursuant to Section XXX (Notices and
17 Deliverables). Any such objection shall specifically identify the contested Response
18 Costs and the basis for objection. In the event of an objection, the Companies shall,
19 within the forty-five (45) Day period, pay all uncontested Response Costs to the State in
20 the manner described in paragraph 3. The Companies shall initiate the Dispute
21 Resolution procedures in Section XXIII (Dispute Resolution). If the Division prevails in
22 the dispute, within five (5) Days of the resolution of the dispute, the Companies shall pay
23 the sums due (with accrued Interest) to the Division in the manner described in
24 paragraph 3. If the Companies prevail concerning any aspect of the contested costs, the
25 Companies shall pay that portion of the costs (plus associated accrued Interest) for
26 which they did not prevail to the Division. The dispute resolution procedures set forth in
27 this paragraph in conjunction with the procedures set forth in Section XXIII (Dispute

1 Resolution) shall be the exclusive mechanisms for resolving disputes regarding the
2 Companies' obligation to reimburse the Division for their Response Costs.

3 5. In the event that the payments required by this Section are not made within
4 forty-five (45) Days of the Companies' receipt of the invoice, the Companies shall pay
5 Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue
6 on the due date of the invoice. The Interest shall accrue through the date of the
7 Companies' payment. Payments of Interest made under this paragraph shall be in
8 addition to such other remedies or sanctions available to the Division by virtue of the
9 Companies' failure to make timely payments under this Section, including the
10 assessment of stipulated penalties. The Companies shall make all payments required by
11 this paragraph in the manner described in paragraph 3.

12 6. In the event that this Settlement Agreement terminates, in accordance with
13 Section XL (Termination), any remaining monies advanced to the Division under
14 paragraph 1, against which no invoiced costs are chargeable under paragraph 2 of this
15 Section, shall be refunded to the Companies within six (6) months after the date of such
16 termination.

17 **XXI. INDEMNIFICATION AND INSURANCE**

18 1. The Companies' Indemnification of the Division. The Division does not
19 assume any liability by entering into this Settlement Agreement. The Division preserves
20 all limitations on liability as provided by NRS Chapter 41. The Companies shall
21 indemnify, save and hold harmless the State, and its officials, agents, employees,
22 Contractors, subcontractors, or representatives for or from any and all claims or causes
23 of action arising from, or on account of, negligent or other wrongful acts or omissions of
24 the Companies, their officers, directors, employees, agents, Contractors, subcontractors,
25 and any persons acting on their behalf or under their control, in carrying out activities
26 pursuant to this Settlement Agreement, including, but not limited to, any claims arising
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1 from any designation of the Companies as the Division's authorized representatives
2 under Section 104(e) of CERCLA. BRC shall not be considered an agent, contractor, or
3 subcontractor of the Division. Further, the Companies agree to pay the Division all
4 reasonable costs it incurs including, but not limited to, attorneys fees and other expenses
5 of litigation and settlement arising from, or on account of, such claims made against the
6 State based on negligent or other wrongful acts or omissions of the Companies, their
7 officers, directors, employees, agents, Contractors, subcontractors, and any persons
8 acting on their behalf or under their control, in carrying out activities pursuant to this
9 Settlement Agreement. The Division shall seek indemnification from the Company(ies)
10 whose acts or omissions gave rise to the claims against the State, prior to seeking
11 indemnification from the other Companies. Accordingly, the Companies agree to toll
12 applicable limitations periods for a period of one year after notice under paragraph 2 of
13 this Section XXI. This indemnity shall not apply to the extent the acts or omissions of the
14 State, or any of its employees, agents, Contractors, subcontractors and any persons
15 acting on its behalf or under its control, gave rise to such claims. The Companies'
16 liability to the Division under this indemnity shall be limited to the amount represented by
17 the Companies' proportionate fault with respect to such claim as determined by a court of
18 competent jurisdiction or pursuant to Section XXIII (Dispute Resolution). The State shall
19 not be held out as a party to any contract entered into by or on behalf of the Companies
20 in carrying out activities pursuant to this Settlement Agreement. Neither the Companies
21 nor any such Contractor shall be considered an agent of the State.

22 2. The Division shall give the Companies notice of any claim for which the
23 State plans to seek indemnification pursuant to paragraph 1 promptly but in all events
24 not later than sixty (60) Days of service of a complaint (or receipt of any other written
25 notice of claim), and shall not settle any such claims without the prior written consent of
26 the Companies, which consent shall not be unreasonably withheld. The Companies
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1 shall select counsel for and control the defense of any such claims that are subject to
2 indemnification under this section of the Settlement Agreement.

3 3. The Companies waive all claims against the State for damages or
4 reimbursement or for set-off of any payments made or to be made to the State, arising
5 from or on account of any contract, agreement, or arrangement between any one or more
6 of the Companies and any person for performance of Work on or relating to the Site,
7 including, but not limited to, claims on account of construction delays. In addition, the
8 Companies shall indemnify and hold harmless the Division with respect to any and all
9 claims for damages or reimbursement arising from or on account of any contract,
10 agreement, or arrangement between any one or more of the Companies and any person
11 for performance of Work on or relating to the Site, including, but not limited to, claims on
12 account of construction delays. This indemnity shall not apply to the extent the acts or
13 omissions of the State, or any of its employees, agents, Contractors, subcontractors and
14 any persons acting on its behalf or under its control, gave rise to such claims. The
15 Company(ies)' liability to the Division under this indemnity shall be limited to the amount
16 represented by the Company(ies)' proportionate fault with respect to such claim as
17 determined by a court of competent jurisdiction or pursuant to Section XXIII (Dispute
18 Resolution).

19 4. Insurance. BRC, or in the event that BRC defaults and the Companies are
20 obligated to assume the Work under Section VI, the Companies, or their respective
21 contractors, shall procure and maintain insurance covering claims for injuries to persons
22 or damage to property arising from or in connection with the performance of the Work by
23 the Companies, their employees, subconsultants, agents, and other representatives.
24 The Companies or their contractors or agents, as appropriate, shall provide and maintain
25 the following insurance coverage at no cost to the Division, provided that it is available
26 on commercially reasonable terms:

1 a. Worker's compensation insurance covering persons performing the
2 Work in a form acceptable to the Insurance Commissioners of the State of Nevada and,
3 with limits as required by applicable laws or regulations of the State of Nevada, and
4 employer's liability insurance with limits of \$1,000,000 per employee and per accident
5 covering bodily injury and disease and subject to the following: The Companies agree
6 that neither the Division nor any of its officials, employees or agents will be responsible
7 for any claims or suits in law or equity occasioned by the failure of the Companies to
8 comply with the provisions of this Section and;

9 b. Comprehensive general and automobile liability insurance with limits
10 of \$2,000,000 per occurrence and in the aggregate covering bodily injury, personal injury
11 and property damage, which limits may be satisfied in part by excess general liability
12 coverage in a form following the underlying policy;

13 c. Contractor's pollution liability insurance including coverage for clean
14 up costs with limits of at least \$2,000,000 per claim and in the aggregate to be
15 maintained until the Settlement Agreement is terminated.

16 5. The insurance coverage required by this Section shall be written by a
17 company that is licensed to do business in the State of Nevada.

18 6. All policies required by this Section IX shall contain, or be endorsed to
19 contain, a provision naming the Division as an additional insured. Each such policy shall
20 be endorsed to state that coverage shall not be suspended, voided, cancelled, non-
21 renewed or reduced in coverage or limits unless thirty (30) Days prior written notice has
22 been provided to the Division by certified mail, return receipt requested.

23 7. On the annual anniversary of the Effective Date the relevant Company(ies)
24 shall provide certificates of insurance evidencing the continued renewal of such
25 insurance.

26 **XXII. FORCE MAJEURE**

1 1. The Companies shall perform the requirements of this Settlement
2 Agreement within the time limits prescribed, unless the performance is prevented or
3 delayed by events that constitute a force majeure. The Companies shall have the
4 burden of proving such a force majeure. A force majeure, for purposes of this Settlement
5 Agreement, is defined as any event arising from causes not reasonably foreseeable or
6 beyond the reasonable control of the Companies, or of any person or entity controlled by
7 the Companies, which delays or prevents the timely performance of any obligation under
8 this Settlement Agreement despite the Companies' commercially reasonable efforts to
9 fulfill such obligation. A force majeure may include, without limitation: extraordinary
10 weather events, natural disasters, strikes and lockouts, national emergencies, wars, acts
11 of terror, delays in obtaining access or use of property not owned or controlled by the
12 Companies despite timely commercially reasonable efforts to obtain such access or use
13 approval, and delays in obtaining any required approval or permit from the Division or
14 any other public agency that occur despite the Companies' complete, timely and
15 appropriate submission of all information and documentation required for approval or
16 applications for permits within a timeframe that would allow the Work to proceed in a
17 manner contemplated by the schedule of the Settlement Agreement. A force majeure
18 does not include (i) increased costs of the Work to be performed under the Settlement
19 Agreement, (ii) financial inability to complete the Work or (iii) normal weather events.

20 2. If any event occurs or has occurred that may delay the performance of the
21 Companies' obligations under this Settlement Agreement, whether or not caused by a
22 force majeure event, the Companies shall notify the Division orally within five (5) Days of
23 when the Companies first knew that the event might cause a delay. If the Companies
24 wish to claim a force majeure event, then within twenty (20) Days thereafter, the
25 Companies shall provide to the Division a written explanation and description of the
26 obligation(s) delayed or affected by the force majeure event; the reasons for the delay;

1 the anticipated duration of the delay; a schedule for implementation of any measures to
2 be taken to prevent or mitigate the delay or the effect of the delay; the Companies'
3 rationale for attributing such delay to a force majeure event; and a statement as to
4 whether, in the opinion of the Companies, such event may cause or contribute to an
5 imminent and substantial endangerment to human health, welfare, or the Environment.
6 The Companies shall include with any notice all available documentation supporting their
7 claim that the delay was attributable to a force majeure. Failure to comply with the above
8 requirements shall preclude the Companies from asserting any claim of force majeure for
9 that event.

10 3. The Division shall notify the Companies in writing of its force majeure
11 determination within ten (10) Days after receipt of the written notice from the Companies.
12 If the Division determines that the delay has been or will be caused by circumstances
13 constituting a force majeure event, the time for performance of the obligations under this
14 Settlement Agreement that are affected by the force majeure event will be extended by
15 the Division in writing for such time as the delay that was occasioned by that force
16 majeure event. An extension of the time for performance of the obligations affected by
17 the force majeure event shall not, of itself, extend the time for performance of any other
18 obligation, unless the Companies can demonstrate to the Division's satisfaction that
19 more than one obligation was affected by the force majeure event.

20 4. In the event that the Division and the Companies cannot agree that any
21 delay or failure has been or will be caused by circumstances constituting a force
22 majeure, or if there is no agreement on the length of the extension, the dispute shall be
23 resolved in accordance with the dispute resolution provisions set forth in Section XXIII
24 (Dispute Resolution) of this Settlement Agreement.

25 **XXIII. DISPUTE RESOLUTION**

26 1. The Parties agree that the procedures contained in this Section are the
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1 sole and exclusive procedures for resolving disputes arising under this Settlement
2 Agreement. If the Companies fail to follow any of the requirements contained in this
3 Section, then they shall have waived their rights to further consideration of the dispute in
4 issue.

5 2. If the Companies disagree with any decision or failure to make a decision
6 by the Division pursuant to this Settlement Agreement, except where the Settlement
7 Agreement expressly excludes the right to dispute resolution, the Companies shall notify
8 the Division in writing of the dispute ("Notice of Dispute") within fifteen (15) Days.

9 3. Any dispute that arises under or with respect to this Settlement Agreement
10 shall in the first instance be the subject of informal negotiations between the Parties.
11 The period for informal negotiations shall not exceed thirty (30) Days following the date
12 notice of the dispute is provided, unless such period is extended by written agreement of
13 the Parties. The dispute shall be considered to have arisen when the Division receives a
14 "Notice of Dispute."

15 4. In the event that the Parties cannot resolve a dispute by informal
16 negotiations under the preceding paragraph, then the position advanced by the Division
17 shall be considered binding unless, thirty (30) Days after the conclusion of the informal
18 negotiation period, the Companies invoke the formal dispute resolution procedures of
19 this Section by serving on the Division Administrator a written "Statement of Position"
20 which shall set forth the specific points of the dispute, the position the Companies claim
21 should be adopted as consistent with the requirements of this Settlement Agreement, the
22 basis for the Companies' position, any factual data, analysis or opinion supporting that
23 position, any supporting documentation relied upon by the Companies, and any matters
24 which it considers necessary for the Administrator's determination. The "Statement of
25 Position" also may include a request for an opportunity to make an oral presentation of
26 factual data, supporting documentation and expert testimony to the Administrator and to
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1 answer questions that the Administrator may pose. It is within the sole discretion of the
2 Administrator to grant or deny a request for an oral presentation.

3 5. Within fifteen (15) Days following receipt of a Statement of Position, or after
4 any oral presentation by the Companies, the Administrator shall issue his/her decision.
5 The Administrator's written decision shall include a response to the Companies'
6 arguments and evidence. The written decision of the Administrator shall be incorporated
7 into and become an enforceable element of this Settlement Agreement, and shall be
8 considered the Division's final decision as provided in paragraph 6 of this Section.

9 6. As to any final Division decision, the Companies may, as appropriate,
10 pursue the dispute before the State Environmental Commission as a "contested case"
11 pursuant to NRS §§ 233B.010 et seq. and NAC §§ 445B.875 – 445B.899, and shall be
12 entitled to judicial review as provided therein.

13 **XXIV. STIPULATED PENALTIES**

14 1. The Division may assess stipulated penalties up to the amounts set forth in
15 paragraph 4 for failure to comply with the requirements of this Settlement Agreement
16 specified below, unless excused under Section XXII (Force Majeure).

17 2. "Compliance" by the Companies shall include completion of the activities
18 under this Settlement Agreement or any Work plan or other plan approved under this
19 Settlement Agreement identified below in accordance with all applicable requirements of
20 law, this Settlement Agreement, the SOW, and any plans or other documents approved
21 by the Division pursuant to this Settlement Agreement and within the specified time
22 schedules established by and approved under this Settlement Agreement.

23 3. The Companies shall not be liable for stipulated penalties arising out of
24 BRC's failure to comply with applicable requirements.

25 4. Stipulated Penalty Amounts. The following stipulated penalties shall
26 accrue per violation per day for any noncompliance identified:

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<u>Maximum Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 3 rd day
\$3,000	4 th through 15 th day
\$5,000	16 th through 24 th day
\$7,000	26 th through 30 th day
\$10,000	per business day beyond the 30 th day

5. All penalties shall begin to accrue on the Day after the complete performance is due (which, in the case of any required resubmission of a Deliverable is the Day after the resubmission 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. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. If the Division's disapproval is upheld, stipulated penalties shall accrue from the date on which the initial revised submission was originally due.

6. Following the Division's determination that the Companies have failed to comply with a requirement of this Settlement Agreement, the Division shall within five (5) Days of such determination give the Companies written notification of the same and describe the noncompliance. The Division shall send the Companies a written demand for the payment of the penalties.

7. Notwithstanding any provision of this Settlement Agreement to the contrary, the Division may not assess any stipulated penalty hereunder for any period of time associated with Division review of any Deliverable. Nothing in this paragraph shall affect the Division's ability to assess stipulated penalties hereunder for and to the extent any Deliverable is not timely submitted.

8. No penalties accruing under this Section shall be due and payable to the

1 Division until thirty (30) Days after the Companies' receipt from the Division of a written
2 demand for payment of the penalties, unless the Companies invoke the Dispute
3 Resolution procedures under Section XXIII (Dispute Resolution). The amount of a
4 stipulated penalty is not subject to appeal. However, the Companies can appeal the
5 underlying alleged violation or act of non-compliance forming the basis for the stipulated
6 penalty. All payments to the State under this Section shall be paid by wire transfer,
7 certified or cashier's check(s) made payable and mailed as detailed in Section XX
8 (Reimbursement of Division Oversight and Response Costs) and shall indicate that the
9 payment is for stipulated penalties, and shall reference the Division, the Site and the
10 name and address of the Company making payment.

11 9. The payment of penalties shall not alter in any way the Companies'
12 obligation to complete the performance of the Work required under this Settlement
13 Agreement.

14 10. Penalties shall continue to accrue as provided in paragraph 4 during any
15 dispute resolution period, but need not be paid until the following:

16 a. If the dispute is resolved by agreement or by a decision of the
17 Division that is not appealed to the Environmental Commission, accrued penalties
18 determined to be owing shall be paid to the Division within fifteen (15) Days of the
19 agreement or the receipt of the Division's decision or order;

20 b. If the dispute is appealed to the Environmental Commission and
21 State prevails in whole or in part, the Companies shall pay all accrued penalties
22 determined to be owed to the Division within thirty (30) Days of receipt of the decision or
23 order, except as provided in Subparagraph c below;

24 c. If the Environmental Commission's decision is appealed by any
25 Party, the Companies shall pay all accrued penalties determined to be owing to the State
26 into an interest-bearing escrow account within sixty (60) Days of receipt of the
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1 Commission's decision or order. Penalties shall be paid into this account as they
2 continue to accrue, at least every sixty (60) Days. Within fifteen (15) Days of receipt of
3 the final District Court decision, the escrow agent shall pay the balance of the account to
4 the Division or to the Companies to the extent that they prevail.

5 11. If the Companies fail to pay stipulated penalties when due, the State may
6 institute proceedings to collect the penalties, as well as Interest. The Companies shall
7 pay Interest on the unpaid balance, which shall begin to accrue on the date of demand
8 made pursuant to paragraph 6.

9 12. Nothing in this Settlement Agreement shall be construed as prohibiting,
10 altering, or in any way limiting the ability of the State to seek any other remedies or
11 sanctions available by virtue of the Companies' violation of this Agreement or of the
12 statutes and regulations upon which it is based, including, but not limited to, penalties
13 pursuant to NRS 445A.700 and NRS 459.585.

14 13. Notwithstanding any other provision of this Section, the Division may, in its
15 unreviewable discretion, waive any portion of stipulated penalties that have accrued
16 pursuant to this Settlement Agreement.

17 **XXV. COVENANTS BY THE DIVISION AND RESERVATION OF RIGHTS**

18 1. Covenants Not to Sue. In consideration of the actions that have and will be
19 performed and the payments that have and will be made by the Companies under the
20 terms of the Settlement Agreement, and except as specifically provided in paragraph 5 of
21 this Section, the Division covenants not to sue or to take administrative action against
22 the Companies under applicable Environmental Law, including pursuant to Nevada State
23 Law, CERCLA 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act,
24 42 U.S.C. §§ 6901-6992k, or the Clean Water Act, 33 U.S.C. §§ 1251-1387 for matters
25 addressed by this Settlement Agreement. These covenants not to sue shall take effect
26 upon the receipt by the Division of the payments required by Section XX

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1 (Reimbursement of Division Oversight and Response Costs). These covenants not to
2 sue are conditioned upon the satisfactory performance by the Companies of their
3 obligations under this Settlement Agreement. These covenants not to sue extend only to
4 the Companies and do not extend to any other person. Notwithstanding the foregoing,
5 the Division specifically reserves its right to bring an action pursuant to 42 U.S.C. §
6 9607(f).

7 2. CERCLA Release and Covenant Not to Sue. Notwithstanding and without
8 limiting the provisions of this Section, and in consideration of the Companies having
9 made and making payments of the Division's costs as described in this Settlement
10 Agreement and having performed and performing the necessary remedial investigations,
11 removal and/or response actions described in this Settlement Agreement to the
12 Division's satisfaction in accordance with this Settlement Agreement, on behalf of the
13 State of Nevada the Division releases and covenants not to sue the Companies (or any
14 of them) under CERCLA, with respect to such payments, and necessary remedial
15 investigations, removal and/or response actions described in this Settlement Agreement.

16 3. The Division's Rights to Compel Further Response Actions. Notwithstanding
17 any other provision of this Settlement Agreement, the Division reserves, and this
18 Settlement Agreement is without prejudice to, the right to institute civil or administrative
19 proceedings, or to issue an administrative order seeking to compel the Companies:

20 a. to perform further response actions relating to the Site for matters
21 not the subject of Work approved by the Division and being performed by the
22 Companies; or

23 b. to reimburse the Division for additional costs of response if (i)
24 conditions at the Site, previously unknown to the Division, are discovered, or (ii)
25 information, previously unknown to the Division, is received, in whole or in part, and
26 these previously unknown conditions or information together with any other relevant
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1 information indicates that the remedy(ies) and/or Remedial Action(s) are not protective of
2 human health or the Environment.

3 4. General Reservations of Rights. The covenants not to sue set forth above
4 do not pertain to any matters other than those expressly specified in paragraphs 1 and 2
5 of this Section. The Division reserves, and this Settlement Agreement is without
6 prejudice to, all rights against the Companies with respect to all other matters, including
7 but not limited to, the following:

8 a. claims based on a failure by the Companies to meet a requirement of
9 this Settlement Agreement;

10 b. liability arising from the past, present, or future disposal, Release, or
11 threat of Release of Waste Materials outside of the Site;

12 c. liability for future disposal of Waste Material at the Site, other than
13 as provided in a ROD, the Work, or otherwise ordered by the Division;

14 d. liability for damages for injury to, destruction of, or loss of natural
15 resources, and for the costs of any natural resource damage assessments;

16 e. criminal liability;

17 f. liability for violations of federal or State law which occur during or
18 after implementation of the Remedial Action; and

19 g. liability, prior to issuance of a Determination of Completion, for
20 additional response actions that the Division determines are necessary to achieve
21 Performance Standards, but that cannot be required pursuant to Section VII paragraph 3
22 (Modification of the SOW or Related Work Plans).

23 5. Division's Reservations of Rights.

24 a. The Division reserves all of its statutory and regulatory powers,
25 authorities, rights, and remedies, both legal and equitable, which may pertain to the
26 Companies' failure to comply with any of the requirements of this Settlement Agreement
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1 or of any requirement of federal or state laws, regulations, or permit conditions. Except
2 as otherwise provided in this Section, this Settlement Agreement shall not be construed
3 as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers,
4 and/or authorities, civil or criminal, which the Division has under any applicable
5 Environmental Law or common law authority of the State. This Settlement Agreement in
6 no way relieves the Companies of their responsibility to comply with any federal, State or
7 local law or regulation.

8 b. The Division reserves the right to disapprove Work performed by the
9 Companies pursuant to this Settlement Agreement subject to Section XXIII (Dispute
10 Resolution).

11 c. The Division reserves any and all legal rights and equitable
12 remedies available to enforce (1) the provisions of this Settlement Agreement, or (2) any
13 applicable provision of State or federal law.

14 d. Notwithstanding any other provision of the Settlement Agreement,
15 the Division retains all authority and reserves all rights to take any and all response
16 actions authorized by law.

17 6. Division's Reservations Regarding TDS, Perchlorate and the Las Vegas Wash.
18 Notwithstanding any other provision of this Settlement Agreement, the Division reserves,
19 and this Settlement Agreement is without prejudice to, the Division's right to institute
20 proceedings in a civil action, or to issue an administrative order seeking to compel the
21 Companies, and/or others, to perform response actions relating to (a) the Site with
22 respect to investigation and remediation of TDS and/or Perchlorate, or (b) the Las Vegas
23 Wash. The Companies agree that this Settlement Agreement cannot be used as a bar to
24 any such action.

25 7. Settlement Agreement is not a Permit. This Settlement Agreement is
26 neither a permit nor a modification of a permit.

1 8. Division Approval is not a Warranty. The Companies acknowledge and
2 agree that the Division's approval of any Work plan hereunder does not constitute a
3 warranty or representation that the Work plan will achieve the required or appropriate
4 investigatory or Performance Standards.

5 9. Right to Review. Notwithstanding any other provision of this Settlement
6 Agreement, except as provided in Section XXIII (Dispute Resolution), no action or
7 decision by the Division pursuant to this Settlement Agreement including, without
8 limitation, decisions by the Administrator, shall constitute final agency action giving rise
9 to any right of judicial review prior to the Division's initiation of a judicial action to enforce
10 this Settlement Agreement, including an action to collect penalties or an action to compel
11 the Companies' compliance with the terms and conditions of this Settlement Agreement.

12 10. Waiver, Claim-Splitting, or other Defenses. In any subsequent
13 administrative or judicial proceeding initiated by the State for injunctive or other
14 appropriate relief relating to the Site, the Companies shall not assert, and may not
15 maintain, any defense or claims based upon the principles of waiver, claim-splitting, or
16 other defenses based upon any contention that the claims raised by the State of Nevada
17 in the subsequent proceeding were or should have been raised in this Settlement
18 Agreement.

19 11. Work Takeover. In the event the Division determines that the Companies
20 have ceased implementation of any required portion of the Work, are seriously or
21 repeatedly deficient or late in their performance of the Work, or are implementing the
22 Work in a manner which may cause an imminent or substantial endangerment to human
23 health or the Environment, the Division may assume the performance of all or any
24 portions of the Work as the Division determines necessary. The Division shall give the
25 Companies notice and a reasonable opportunity to cure prior to taking over any Work as
26 a result of action or inactions by BRC. In the event that the Division assumes
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1 performance of a portion or all of the Work pursuant to this paragraph, or Section XIX
2 (Emergency Response), the Companies shall, within forty-five (45) Days of notice, pre-
3 fund the Work by depositing, with the Division, the amount of \$1,000,000. Such deposit
4 shall be kept in an interest bearing trust account which may be drawn upon by the
5 Division to reimburse the Division for the actual costs to perform the Work, to the extent
6 the Division can provide supporting documentation. In the event that the Companies fail
7 to assume their obligations to complete the Work, the Companies shall maintain a
8 monthly balance of \$1,000,000 in the trust account. Any and all funds collected under
9 this Section not used by the Division shall be returned to the Companies which paid them
10 within one hundred eighty (180) Days of completion of such Work.

11 **XXVI. COVENANTS BY THE COMPANIES AND COMPANIES' RESERVATION**
12 **OF RIGHTS**

13 1. Covenant Not to Sue. Subject to the reservations in paragraph 2 of this
14 Section, except with respect to the gross negligence or willful misconduct of the Division
15 (or any of its employees, agents, contractors, or representatives), the Companies hereby
16 covenant not to sue and agree not to assert any claims or causes of action against the
17 State with respect to the Site, for past response actions, or this Settlement Agreement,
18 for any claims arising out of response activities at the Site, including claims based on the
19 Division's selection of response actions, oversight of response activities or approval of
20 plans for such activities which includes any direct or indirect claim for reimbursement of
21 the Division's oversight costs.

22 2. Claims. The Companies reserve, and this Settlement Agreement is without
23 prejudice to the Companies' rights to assert claims against the State of Nevada, subject
24 to the provisions of NRS Chapter 41, for money damages for injury or loss of property or
25 personal injury or death caused by the negligent or wrongful act or omission of any
26 employee, agent, contractor, or representative of the State while acting within the scope
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1 of his office or employment or agency under circumstances where the State, if a private
2 person, would be liable to the claimant in accordance with the law of the State of
3 Nevada, and claims against the State of Nevada as a potentially responsible party.

4 3. General Reservations of Rights. The Companies reserve all rights, claims,
5 and/or defenses they may have in any action brought or taken by or against the Division,
6 the EPA or any third party pursuant to applicable law, relating in any way to the Site.
7 Any rights that the Companies may have to obtain contribution or otherwise recover
8 costs or damages from persons not a party to this Settlement Agreement are preserved,
9 including without limitation the right to seek contribution from any person who is not a
10 party to this administrative settlement under CERCLA Section 113(f)(3)(B), 42 U.S.C.
11 Section 9613(f)(3)(B), based (in whole or in part) on this administrative settlement.

12 4. Nothing in this Agreement shall be construed as an admission of liability by
13 any Company.

14 **XXVII. ACCESS TO INFORMATION**

15 The Companies shall provide to the Division, upon request, copies of all Records.
16 The Companies shall also make available to the Division, at reasonable times and upon
17 reasonable notice, for purposes of investigation, information gathering, or testimony,
18 their employees, agents, or representatives with knowledge of relevant and non-
19 privileged facts concerning the performance of the Work.

20 **XXVIII. CONFIDENTIAL BUSINESS INFORMATION**

21 1. All information and records required by this Settlement Agreement will be
22 deemed public information upon submittal to the Division unless the Companies request
23 in writing at the time of submittal that specific information or records be treated as
24 confidential, business information in accordance with NRS 459.555 or 445A.665, and
25 such regulations adopted there under, and the Division grants the request. Pending
26 such determination and any appeals thereof, the Division shall treat such information as
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1 confidential. The Companies shall adequately substantiate any assertion of
2 confidentiality in writing when the request is made. The Companies may assert attorney-
3 client privilege or business confidentiality claims covering part or all of the records,
4 documents, or information submitted to the Division under this Settlement Agreement to
5 the extent permitted. If no claim of confidentiality accompanies a record, document, or
6 information when it is submitted to the Division, or if the Division has notified the
7 Companies that the record, document or information is not confidential, the public may
8 be given access to such records, documents or information without further notice to the
9 Companies.

10 2. Records, documents, reports or other information created or generated or
11 submitted pursuant to the requirements of the Settlement Agreement may be withheld
12 from submission to the Division on the grounds that they are privileged. The Companies
13 shall produce a reasonably detailed privilege log upon the Division's request.

14 3. No claim of confidentiality or privilege shall be made with respect to any
15 data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
16 scientific, chemical, or engineering data, evidencing conditions at or around the Site.

17 **XXIX. RETENTION OF RECORDS**

18 The Companies shall retain all Records during the Effective Period, without regard
19 to any corporate records retention policy to the contrary. Within ninety (90) Days after
20 the Termination Date, the Companies shall provide the Division with an electronic
21 version of all Records required to be maintained hereunder, in an electronic form to be
22 then agreed upon by the Parties. Notwithstanding the foregoing, the Companies shall
23 also instruct their respective contractors and consultants (and their respective
24 subcontractors, if any) to maintain all raw data, field notes, logs, manifests, chain of
25 custody records, and other technical data (whether in electronic or written form) and to
26 provide such materials to their respective Company client at the conclusion of their
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1 services, for the Companies to maintain Records under this Settlement Agreement.

2 **XXX. NOTICES AND DELIVERABLES**

3 Whenever, under the terms of this Settlement Agreement, written notice is
4 required to be given or a report, Deliverable or other document is required to be sent by
5 one Party to another, it shall be directed to the individuals at the addresses specified
6 below, unless those individuals or their successors give notice of a change of individual
7 or address to the other Parties in writing. All notices and submissions shall be
8 considered effective upon receipt, unless otherwise provided. Written notice as
9 specified herein shall constitute complete satisfaction of any written notice requirement
10 of the Settlement Agreement with respect to the Division and the Companies,
11 respectively.

12 As to the State: Special Projects Branch Supervisor
13 Nevada Division of Environmental Protection
14 1771 E. Flamingo Road, Suite 121-A
Las Vegas, NV 89119
Attn: Project Coordinator (BMI)

15 Remediation Branch Supervisor
16 Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
17 Carson City, NV 89701
Attn: Alternate Project Coordinator (BMI)

18 As to the Companies: Basic Remediation Company LLC
19 875 West Warm Springs Road
Henderson, NV 89105
20 Attn: Mr. Mark Paris

21 And copies to:

22 Stephen M. Rice
Rice Silbey Reuther & Sullivan
3773 Howard Hughes Parkway, Suite #300S
23 Las Vegas, NV 89109

24 David W. Tundermann
Parsons Behle & Latimer
201 South Main Street, Suite 1800
25 Salt Lake City, UT 84111

26 Basic Management, Inc.
875 West Warm Springs Road
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Henderson, NV 89105
Attn: Mr. Mark Paris

And copies to:

Stephen M. Rice
Rice Silbey Reuther & Sullivan
3773 Howard Hughes Parkway, Suite #300S
Las Vegas, NV 89109

David W. Tundermann
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Basic Environmental Company LLP
875 West Warm Springs Road
Henderson, NV 89105
Attn: Mr. Mark Paris

And copies to:

Stephen M. Rice
Rice Silbey Reuther & Sullivan
3773 Howard Hughes Parkway, Suite #300S
Las Vegas, NV 89109

David W. Tundermann
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Tronox LLC, formerly Kerr-McGee Chemical LLC
PO Box 55
Henderson, Nevada 89009
Attn: Ms. Susan Crowley

Tronox Worldwide LLC, formerly Kerr-McGee Chemical
Worldwide LLC, and prior to that Kerr-McGee Corporation
Donald K. Shandy
Deputy General Counsel
P.O. Box 268859
Oklahoma City, OK 73126-8859

Pioneer Americas LLC
700 Louisiana, Suite 4300
Houston, TX 77002
Attn: Vice President, Environmental, Health & Safety

Montrose Chemical Corporation of California
600 Erickson Avenue NE, Suite 380
Bainbridge Island, WA 98110
Attn: Joseph Kelly, Esq.

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and copy to:

Latham & Watkins, LLP
600 W. Broadway, Suite 1800
San Diego, CA 92101
Attn: Joel H. Mack, Esq.

Stauffer Management Company LLC
1800 Concord Pike
Wilmington, DE 19850-5437
Attn: Luke Mette, Esq.

and copies to:

John D. Edgcomb
Law Office of John D. Edgcomb
115 Sansome Street, Suite 805
San Francisco, CA 94104

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409
Attn: George Crouse

Howard Grubbs
Womble Carlyle Sandridge and Rice PLLC
550 South Main Street, Suite 400
Greenville, SC 29601

Titanium Metals Corporation
Attn: Manager, Health, Safety & Environmental Affairs
P.O. Box 2128
Henderson, NV 89009

And a copy to:

Titanium Metals Corporation
Attn: General Counsel
1999 Broadway, Suite 4300
Denver, CO 80202

Bayer CropScience Inc.
2 T.W. Alexander Drive
PO Box 12014
Research Triangle Park, NC 27709
Attn: George S. Goodridge, Esq.

XXXI. COOPERATION IN REVIEW

With respect to any action by the Parties contemplated by this Agreement (including without limitation the provisions of Section VII (Performance of the Work by the Companies)) for which a time period is not specified herein or any relevant Work plan,

1 the Parties agree to perform such actions within a reasonable time under the
2 circumstances, so as to not prejudice the other Party.

3 **XXXII. INCORPORATION AND ENFORCEABILITY OF APPENDICES OR**
4 **REFERENCED MATERIALS**

5 The following attachments are incorporated into, and made fully enforceable
6 under this Settlement Agreement as if fully set forth herein. Any and all Settlement
7 Agreement amendment(s) or modification(s), Work plan(s) (including each schedule
8 contained therein and attachments thereto), and Deliverable(s) required hereunder shall,
9 upon execution or Division approval as submitted or developed by the Division, be
10 deemed incorporated into and made fully enforceable under this Settlement Agreement
11 as if fully set forth herein. It is contemplated that from time to time, additional documents
12 shall be executed or approved by the Division and shall, as such, be incorporated herein.

13 "Appendix A" is the description of the BMI Common Areas

14 "Appendix B" is the description of the Site subject to this Settlement Agreement

15 "Appendix C" is the description of the Las Vegas Wash

16 "Appendix D" is the November 2, 2001 Record of Decision, Remediation of Soils
17 and Sediments in the Upper and Lower Ponds at the BMI Complex (the "Existing ROD")

18 "Appendix E" is the Scope of Work

19 **XXXIII. PUBLIC PARTICIPATION**

20 1. Subject to the provisions of Section XXVIII (Confidential Business
21 Information), all Deliverables received by the Division may be made available to the
22 public in accordance with applicable law. The Division may, at its discretion, conduct a
23 public notice or comment procedure with respect to any Deliverable submitted pursuant
24 to this Settlement Agreement. The Division shall notify the Companies in writing of its
25 determination to provide for, or legal requirement governing, public notice or comment
26 with respect to such document as well as the corresponding adjustment that shall be
27 made to any affected Work or Deliverable submittal or approved schedule. Following

1 any such notice and comment period, the Division may require the Companies to revise
2 the Deliverable and/or perform reasonable additional Work necessary to address
3 appropriately any issue regarding such document identified by the public during such
4 comment period.

5 2. Within one hundred twenty (120) Days of the Effective Date, the
6 Companies shall submit and/or update a Public Involvement Plan for the dissemination of
7 information to the interested public regarding the activities to be conducted pursuant to
8 this Settlement Agreement. Any such plan shall, at a minimum, address the following:

9 a. provide for the periodic development and distribution of fact sheets
10 summarizing current and/or proposed activities;

11 b. provide for the development of a mailing list for distribution of the
12 fact sheets;

13 c. provide for the establishment and ongoing support of an Information
14 and Document Repository at or near the Site with public access during business hours
15 for inspection and copying of such information and documents; and

16 d. identify a community liaison for the Companies with respect to
17 activities to be conducted pursuant to the Settlement Agreement.

18 **XXXIV. MODIFICATION**

19 1. This Settlement Agreement may be modified or amended only upon the
20 mutual agreement of the Parties. Any agreed upon amendment or modification shall be
21 in writing, shall be signed by all Parties, shall have as its effective date the date on which
22 it is signed by the Division as the last Party executing the amendment or modification,
23 and shall, upon that date, be incorporated into and made enforceable under this
24 Settlement Agreement.

25 2. Any requests for a compliance date modification or revision of an approved
26 Deliverable requirement must be made in writing. Such requests must be timely and
27

1 provide justification for any proposed compliance date modification or Deliverable
2 revision. The Division has no obligation to approve such requests, but if it does so, such
3 approval must be in writing. Any approved compliance date or Deliverable modification
4 shall be incorporated by reference into and made enforceable under this Settlement
5 Agreement.

6 3. No informal advice, guidance, suggestions, or comments by the Division
7 regarding any matter associated with this Settlement Agreement shall be construed as
8 relieving the Companies of their obligation to obtain written approval regarding any
9 Deliverable, if and when required by this Settlement Agreement; provided, however, that
10 the Division shall consider the good faith reliance by the Companies on such advice in
11 the exercise of its prosecutorial discretion.

12 4. Except as provided in Section VII, paragraph 3 (Modification of the SOW or
13 related Deliverables), no material modifications shall be made to the SOW without
14 written notification to and written approval of the Division and the Companies.

15 5. Nothing in this Agreement shall be deemed to alter the State's authority to
16 enforce, supervise, or approve modifications to this Settlement Agreement.

17 **XXXV. COMPUTATION OF TIME**

18 For purposes of computing due dates set forth in this Settlement Agreement, the
19 Effective Date or the Day of the act, event, or default from which the designated period of
20 time begins to run, shall be designated and counted as Day zero (0). Calendar Days
21 shall be utilized in computing due dates. The last Day of the period so computed shall
22 be included, unless it is a Saturday, Sunday, or legal state or federal holiday, in which
23 event the period runs until the end of the next Day which is not one of the
24 aforementioned Days.

25 **XXXVI. GOVERNING LAW**

1 The provisions and interpretation of this Settlement Agreement shall be governed
2 by the law of the State of Nevada without regard to choice of law statutes thereof. This
3 agreement shall be interpreted to effectuate the intent and purpose of any applicable
4 provision of Environmental Laws.

5 **XXXVII. OTHER APPLICABLE LAWS**

6 All actions required to be taken pursuant to this Settlement Agreement shall be
7 undertaken in accordance with the requirements of all applicable local, State, and federal
8 laws and regulations. The Companies shall obtain or cause their representative(s) to
9 obtain all permits and approvals necessary under such laws and regulations.

10 **XXXVIII. SEVERABILITY**

11 If any provision or authority of this Settlement Agreement or the application of this
12 Settlement Agreement to any Party or circumstances is held by any judicial or
13 administrative authority to be invalid, and such holding does not result in a material
14 change in the rights or obligations of the Parties, the application of such provisions to
15 other Parties or circumstances and the remainder of the Settlement Agreement shall
16 remain in force and shall not be affected thereby.

17 **XXXIX. EFFECTIVE DATE**

18 This Settlement Agreement shall become effective on the date upon which it is
19 executed by the Division as the last Party executing this Settlement Agreement, after it
20 having previously been signed by all of the Companies ("Effective Date"). This
21 Settlement Agreement may be executed in separate counterparts.

22 **XL. TERMINATION**

23 This Settlement Agreement shall terminate on the Division's approval of the
24 second Efficacy Review as required by Section XVIII. Except as provided in Sections
25 XXVIII (Confidential Business Information) and XXIX (Retention of Records),
26 respectively, any and all obligations of the Companies created hereunder shall be

1 deemed satisfied upon Termination. Within ninety (90) Days of the Termination, the
2 Companies shall reimburse to the Division any and all monies then owing to the Division
3 pursuant to their obligations hereunder. Within one hundred eighty (180) Days of the
4 Termination, the Division shall refund to the Companies any and all unused funds or
5 other monies to the Companies.

6 **XLI. MERGER**

7 This Settlement Agreement is the final and complete agreement between the
8 Parties; provided, however, that nothing in this Settlement Agreement supersedes,
9 terminates, modifies, diminishes or otherwise affects any settlement, escrow or any other
10 agreements between or among the Companies, their affiliates and any other parties
11 (other than the Division) with respect to the Site. This final Settlement Agreement is the
12 result of extensive negotiations between the Parties over each provision contained
13 herein. Each provision shall therefore be construed to have been mutually drafted and
14 none of the Parties shall be deemed to have solely drafted this entire Settlement
15 Agreement or any single provision herein.

16 **XLII. SIGNATORIES/SERVICE**

17 Each undersigned representative to this Settlement Agreement certifies that he or
18 she is fully authorized by the Parties whom he or she represents to enter into the terms
19 and conditions of this Settlement Agreement and to execute and legally bind such
20 Parties to this document.

21 IN WITNESS WHEREOF, the Parties execute this Settlement Agreement by their
22 duly authorized representatives.

23 It is so agreed and ordered.

24 The State of Nevada:

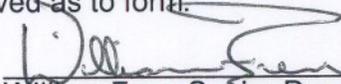
25 By: Leo M. Drozdoff

Date: 2/15/06

26 Leo M. Drozdoff, P.E., Administrator
27 For the State of Nevada, by and through its Department of Conservation & Natural
28 Resources, Division of Environmental Protection

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Approved as to form:

By: 
William Frey, Senior Deputy Attorney General
State of Nevada

Date: 2.15.06

Basic Remediation Company, LLC:

By: _____
Mark Paris, President

Date: _____

Basic Management, Inc.:

By: _____
Mark Paris, President

Date: _____

Basic Environmental Company LLP.:

By: _____
Mark Paris, President

Date: _____

Tronox LLC, Formerly Kerr-McGee Chemical LLC:

By: _____
Patrick S. Corbett, Vice President

Date: _____

Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to that, Kerr-McGee Corporation:

By: _____
Patrick S. Corbett, Vice President

Date: _____

Pioneer Americas LLC:

By: _____ Date: _____
Name: _____ Vice President, Environmental Health & Safety

Montrose Chemical Corporation of California:

By: _____
Joseph Kelly, President

Date: _____

1 Approved as to form:

2 By: _____
3 William Frey, Senior Deputy Attorney General
4 State of Nevada

Date: _____

5
6 Basic Remediation Company, LLC:

7 By: Mark Paris
8 Mark Paris, President

Date: 24 Jan 2006

9 Basic Management, Inc.:

10 By: Mark Paris
11 Mark Paris, President

Date: 24 Jan 2006

12 Basic Environmental Company LLP.:

13 By: Mark Paris
14 Mark Paris, President

Date: 24 Jan 2006

15 Tronox LLC, Formerly Kerr-McGee Chemical LLC:

16 By: _____
17 Patrick S. Corbett, Vice President

Date: _____

18 Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to
19 that, Kerr-McGee Corporation:

20 By: _____
21 Patrick S. Corbett, Vice President

Date: _____

22 Pioneer Americas LLC:

23 By: _____ Date: _____
24 Name: _____ Vice President, Environmental Health & Safety

25 Montrose Chemical Corporation of California:

26 By: _____
27 Joseph Kelly, President

Date: _____

1 Approved as to form:

2 By: _____ Date: _____
3 William Frey, Senior Deputy Attorney General
4 State of Nevada

6 Basic Remediation Company, LLC:

7 By: _____ Date: _____
8 Mark Paris, President

9 Basic Management, Inc.:

10 By: _____ Date: _____
11 Mark Paris, President

12 Basic Environmental Company LLP.:

13 By: _____ Date: _____
14 Mark Paris, President

15 Tronox LLC, Formerly Kerr-McGee Chemical LLC:

16 By: Patrick S. Corbett Date: 2/10/06
17 Patrick S. Corbett, Vice President

18 Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to
19 that, Kerr-McGee Corporation:

20 By: Patrick S. Corbett Date: 2/10/06
21 Patrick S. Corbett, Vice President

22 Pioneer Americas LLC:

23 By: _____ Date: _____
24 Name: _____ Vice President, Environmental Health & Safety

24 Montrose Chemical Corporation of California:

25 By: _____ Date: _____
26 Joseph Kelly, President

1 Approved as to form:

2 By: _____
3 William Frey, Senior Deputy Attorney General
4 State of Nevada
5

Date: _____

6 Basic Remediation Company, LLC:

7 By: _____
8 Mark Paris, President

Date: _____

9 Basic Management, Inc.:

10 By: _____
11 Mark Paris, President

Date: _____

12 Basic Environmental Company LLP.:

13 By: _____
14 Mark Paris, President

Date: _____

15 Tronox LLC, Formerly Kerr-McGee Chemical LLC:

16 By: _____
17 Patrick S. Corbett, Vice President

Date: _____

18 Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to
19 that, Kerr-McGee Corporation:

20 By: _____
21 Patrick S. Corbett, Vice President

Date: _____

22 Pioneer Americas LLC:

23 By: Michael Y. McGovern
MICHAEL Y. MCGOVERN, CHAIRMAN, PRESIDENT & CEO

Date: _____

24 Montrose Chemical Corporation of California:

25 By: _____
26 Joseph Kelly, President

Date: _____

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Approved as to form:

By: William Frey, Senior Deputy Attorney General
State of Nevada

Date: _____

Basic Remediation Company, LLC:

By: Mark Paris, President

Date: _____

Basic Management, Inc.:

By: Mark Paris, President

Date: _____

Basic Environmental Company LLP.:

By: Mark Paris, President

Date: _____

Tronox LLC, Formerly Kerr-McGee Chemical LLC:

By: Patrick S. Corbett, Vice President

Date: _____

Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to that, Kerr-McGee Corporation:

By: Patrick S. Corbett, Vice President

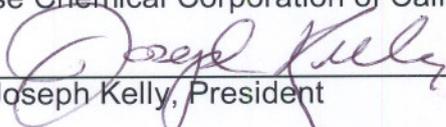
Date: _____

Pioneer Americas LLC:

By: Name: _____ Vice President, Environmental Health & Safety

Date: _____

Montrose Chemical Corporation of California:

By: 
Joseph Kelly, President

Date: 1/26/06

1 Titanium Metals Corporation:

2 By: Joan H. Prusse Date: 1/25/06
3 Name: Title: JOAN H. PRUSSE
Vice President, General Counsel + Secretary

4 Bayer CropScience, Inc.:

5 By: _____ Date: _____
6 Name: Title:

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Titanium Metals Corporation:

By: _____ Date: _____
Name: Title:

Bayer CropScience, Inc.:

By: George S. Goodridge Date: January 27, 2006
Name: Title:
George S. Goodridge, Assistant Secretary

1 Approved as to form:

2 By: _____ Date: _____
3 William Frey, Senior Deputy Attorney General
4 State of Nevada

5
6 Basic Remediation Company, LLC:

7 By: _____ Date: _____
8 Mark Paris, President

9 Basic Management, Inc.:

10 By: _____ Date: _____
11 Mark Paris, President

12 Basic Environmental Company LLP.:

13 By: _____ Date: _____
14 Mark Paris, President

15 Tronox LLC, Formerly Kerr-McGee Chemical LLC:

16 By: _____ Date: _____
17 Patrick S. Corbett, Vice President

18 Tronox Worldwide LLC, Formerly Kerr-McGee Chemical Worldwide LLC, and prior to
19 that, Kerr-McGee Corporation:

20 By: _____ Date: _____
21 Patrick S. Corbett, Vice President

22 Pioneer Americas LLC:

23 By: _____ Date: _____
24 Name: _____ Vice President, Environmental Health & Safety

25 Montrose Chemical Corporation of California:

26 By: _____ Date: _____
27 Joseph Kelly, President

1 Titanium Metals Corporation:

2 By: _____ Date: _____
3 Name: Title:

4 Bayer CropScience, Inc.:

5 By: _____ Date: _____
6 Name: Title:

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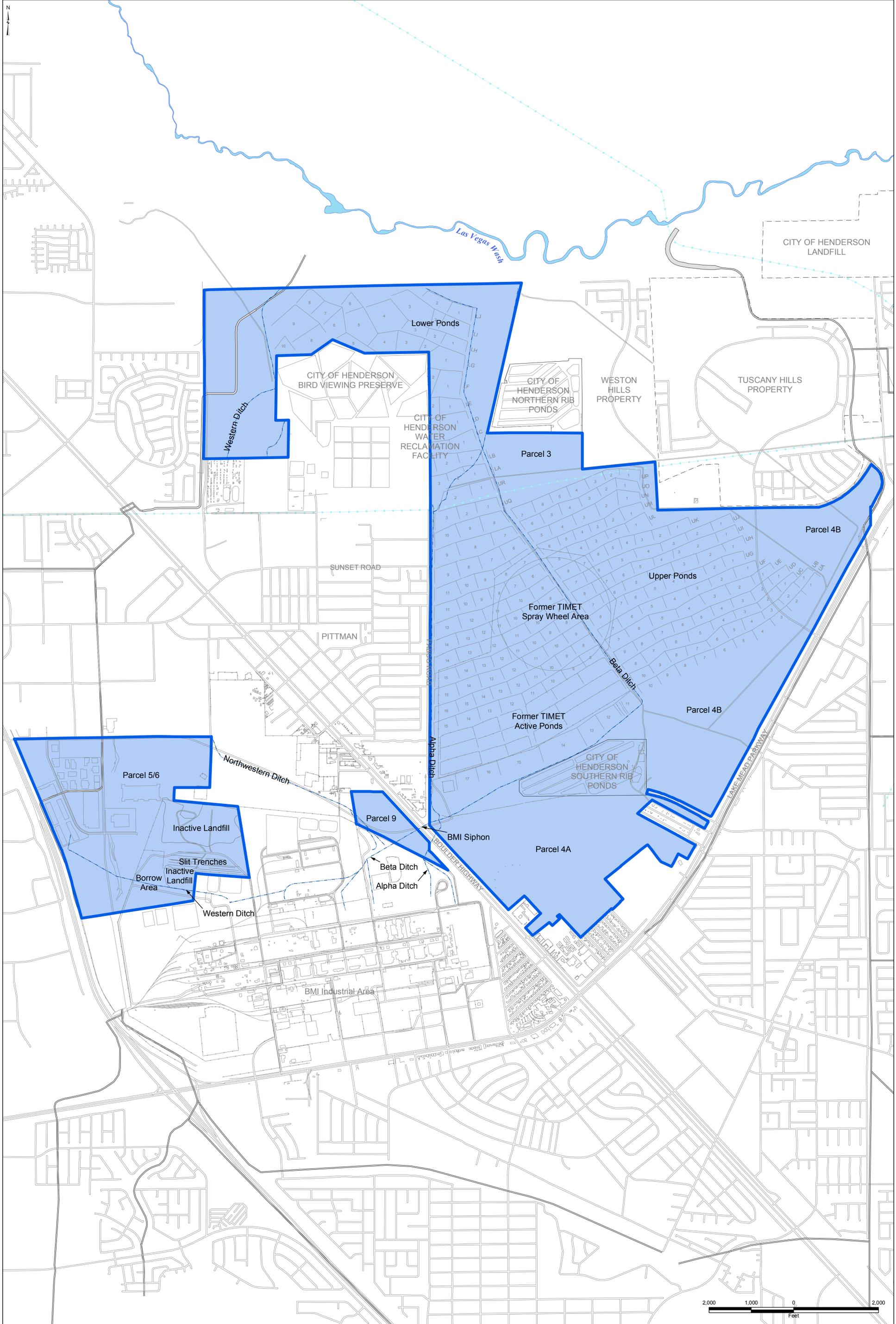
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28 BMI Common Areas Phase 3

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Appendix A
Description of the BMI Common Areas

{Note: This Appendix is intended to describe the original extent of the BMI Common Areas prior to any exclusions}

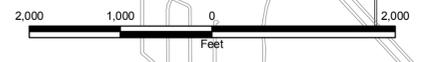
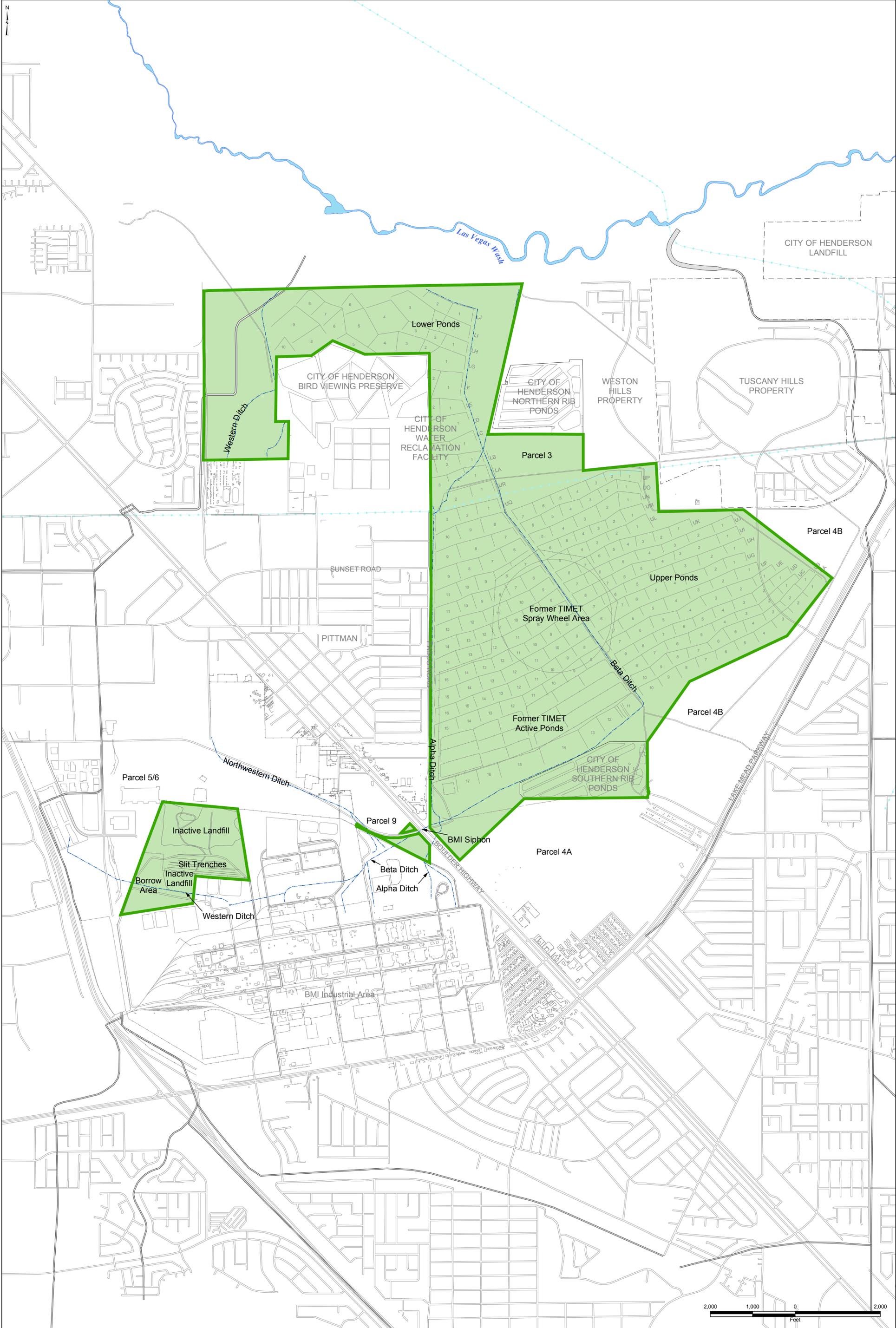


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Appendix B

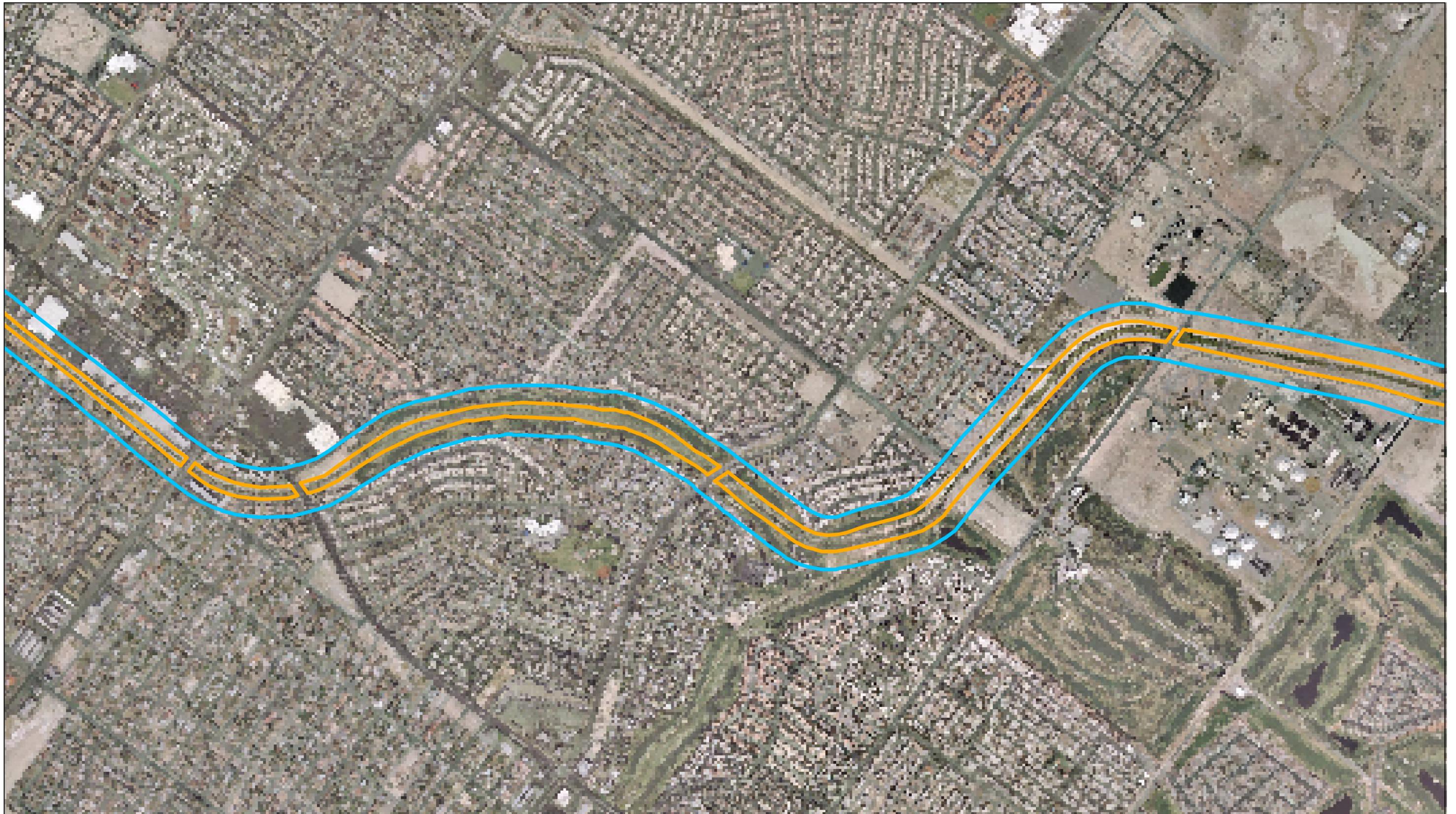
Description of the Site Subject to this Settlement Agreement

{Note: This Appendix is intended to document how the Site extents have changed from the original definition of the BMI Common Areas to the Site as it is subject to this Settlement Agreement.}



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Appendix C
Description of the Las Vegas Wash



ERO
ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

-  Outermost Slope/Bench
-  Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

Mapping is based on photointerpretation only.
This information has not been field verified.

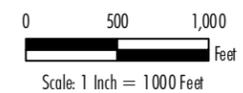
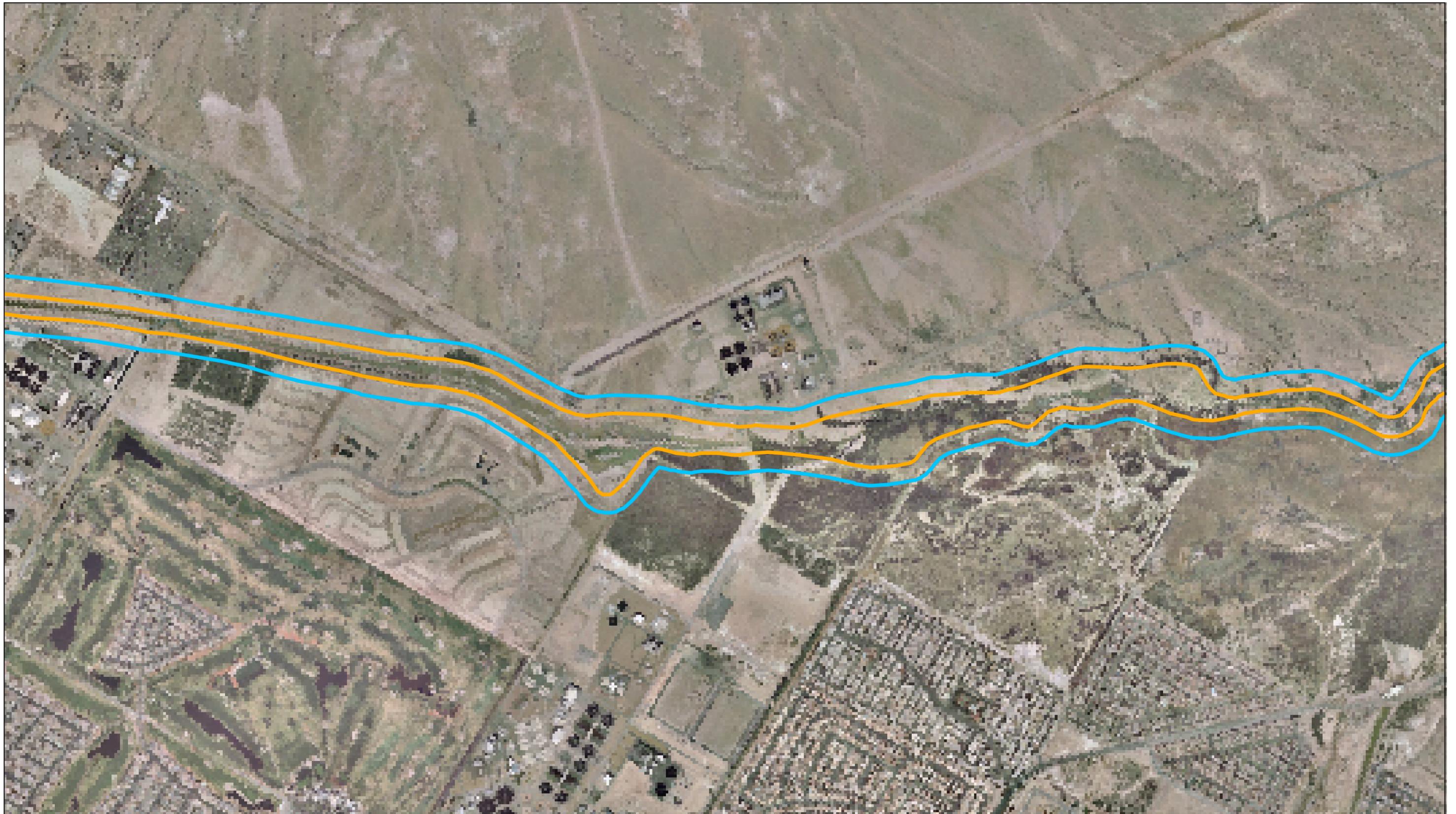


Figure 2f
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
January 24, 2005



ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

-  Outermost Slope/Bench
-  Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

Mapping is based on photointerpretation only.
This information has not been field verified.

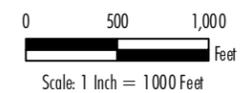


Figure 2e
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
January 24, 2005



ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

-  Outermost Slope/Bench
-  Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

Mapping is based on photointerpretation only.
This information has not been field verified.

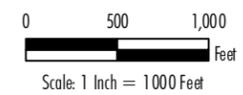


Figure 2d
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
January 24, 2005



ERO
 ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

- Outermost Slope/Bench
- Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

The waters of the Las Vegas Vegas Wash are conveyed underneath Lake Las Vegas via a pipeline;
 the approximate location of the pipeline is indicated by a dashed line on Fig. 1, 2b and 2c.

Mapping is based on photointerpretation only.
 This information has not been field verified.

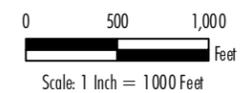


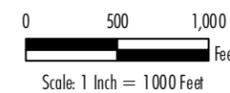
Figure 2c
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
 January 24, 2005



The waters of the Las Vegas Vegas Wash are conveyed underneath Lake Las Vegas via a pipeline; the approximate location of the pipeline is indicated by a dashed line on Fig. 1, 2b and 2c.

Mapping is based on photointerpretation only.
This information has not been field verified.



ERO
ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

- Outermost Slope/Bench
- Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

Figure 2b
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
January 24, 2005



Lake Mead



ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

- Outermost Slope/Bench
- Wash Boundary

Photo Source: 2004 CityOrtho Digital Aerial Photography

Mapping is based on photointerpretation only.
This information has not been field verified.

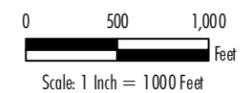
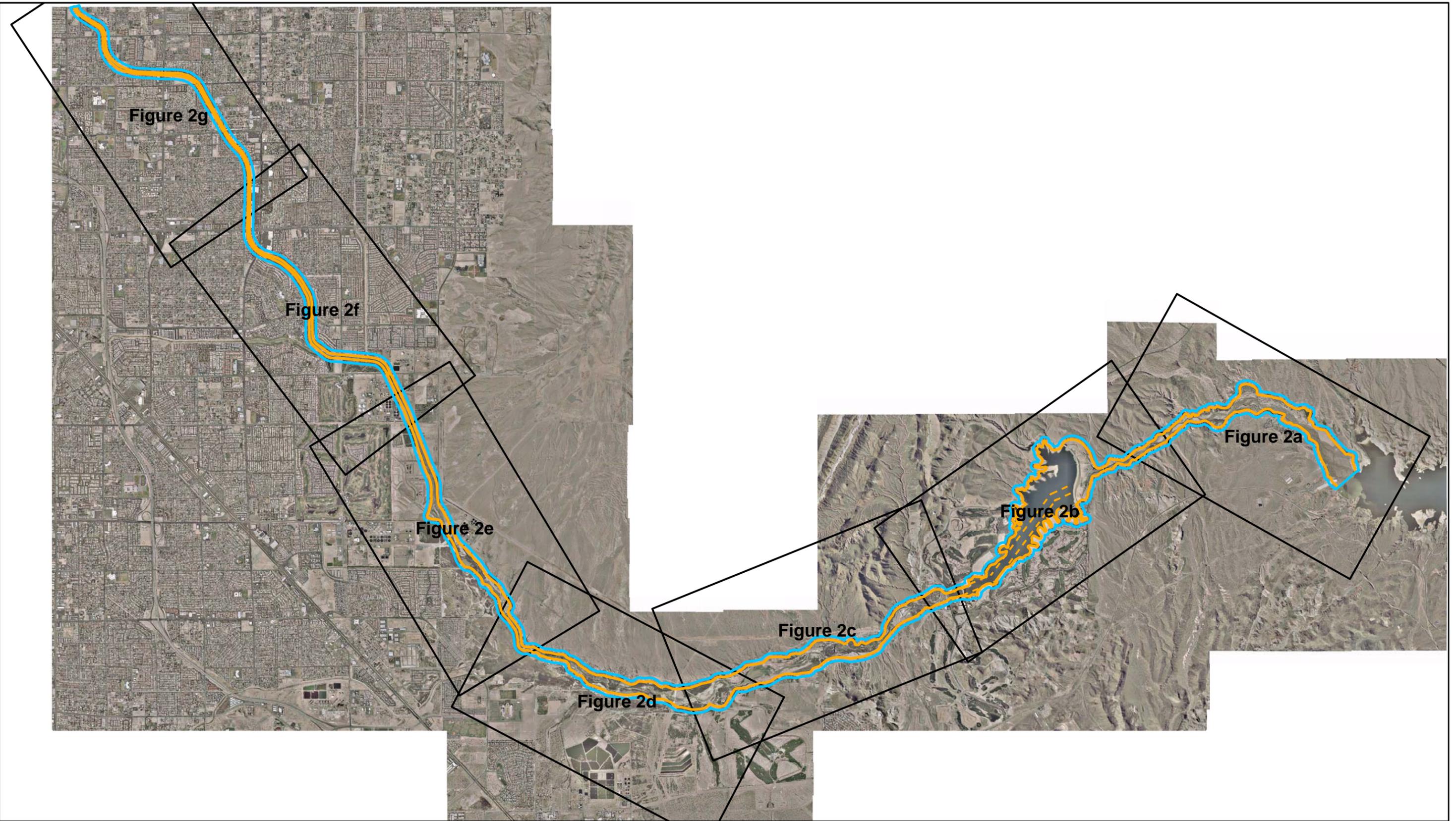


Figure 2a
Las Vegas Wash
Clark County, Nevada

File: 3325 - wash_mapbook.mxd (JP)
January 24, 2005



The waters of the Las Vegas Vegas Wash are conveyed underneath Lake Las Vegas via a pipeline;
the approximate location of the pipeline is indicated by a dashed line on Fig. 1, 2b and 2c.

Mapping is based on photointerpretation only.
This information has not been field verified.

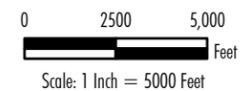


Figure 1 - Map Index
Las Vegas Wash
Clark County, Nevada

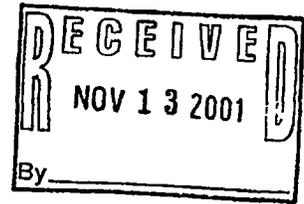
File: 3325 - wash_index.mxd (JP)
January 24, 2006



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Appendix D

November 2, 2001 record of Decision, Remediation of Soils and Sediments in the Upper and Lower Ponds at the BMI Complex (the “Existing ROD”)



Record of Decision

**Remediation of Soils and Sediments in the
Upper and Lower Ponds at the BMI Complex**

Henderson, Nevada

November 2, 2001

Bureau of Corrective Actions
Nevada Division of Environmental Protection
333 West Nye Lane
Carson City, Nevada 89706-0851

BR005787

EXECUTIVE SUMMARY

This Record of Decision (ROD) describes the process undertaken for evaluating alternative remedies and selecting a remedy for soils within portions of the Basic Management, Inc. (BMI) Common Areas, i.e., the Upper Ponds, Lower Ponds, Alpha Ditch, Western Ditch, Northwestern Ditch, and Beta Ditch in Clark County, Nevada. For the purpose of this ROD, this area is referred to as "the Site" or the "Common Areas." This ROD states the Nevada Division of Environmental Protection's (NDEP's) approval of Alternative 4B – soil encapsulation in a dedicated Corrective Action Management Unit (CAMU) or landfill – as the selected remedy. This alternative was presented in the Remedial Alternatives Study for Soils and Sediments in the Upper and Lower Ponds at the BMI Complex (ERM, March 1, 2000) (RAS).

NDEP's remedial action goal for the Site is to achieve a cleanup level protective of human health and the environment. In addition to this goal, the property owner has a remedial action goal of achieving a cleanup that allows residential land use. Remedial technologies capable of achieving the remedial action goals were then reviewed. Remedial technologies that best addressed the soil conditions and mitigation of future exposures were combined to form remedial alternatives. The remedial alternatives developed for further consideration were as follows:

Alternative 1 - No action

Alternative 2 - Institutional controls / limited action

Alternative 3 - On-Site capping of soils

Alternative 4 - Excavation and disposal of soils at an on-site landfill (located within the Site [4A] or at the BMI Complex [4B])

Alternative 5 - Excavation and disposal of soils at an off-site landfill

These alternatives were evaluated to assess the relative performance of each alternative with respect to the following criteria: 1) Overall Protection of Human Health; 2) Effectiveness and Permanence; 3) Implementability; 4) Cost; and 5) Community Acceptance.

Based on the evaluation of alternatives, Alternative 4B is the selected remedy to achieve the remedial action goals. This alternative consists of excavating and removing impacted soils. The excavated soils will be transported to and placed in a dedicated CAMU to be constructed on Basic Environmental Company (BEC) property within the BMI Complex.

BR005788

RECORD OF DECISION (ROD)

I. SITE LOCATION AND DESCRIPTION

The Site is part of the BMI Industrial Complex (BMI Complex) in Clark County, Nevada, approximately 13 miles south of Las Vegas. The Complex consists of several operational plants along Lake Mead Drive on the west side of Boulder Highway. Historically, waste disposal outside of the immediate areas of the operational plants occurred in areas referred to as the "Common Areas", i.e., the Upper Ponds, Lower Ponds, Alpha Ditch, Western Ditch, Northwestern Ditch and Beta Ditch. Most of these Common Areas (so called because their use was common to the operating companies within the BMI Complex) are associated with historical conveyance and/or disposal of operations effluent. A drawing of the Site is attached as Exhibit 1.

This ROD is issued pursuant to a Consent Agreement dated February 23, 1996 (1996 Common Areas Consent Agreement) between NDEP and certain current and former operators at the BMI Complex, commonly known as the Henderson Industrial Site Steering Committee (HISSC).¹ In 1999, Basic Remediation Company (BRC), a subsidiary of Basic Management, Inc., signed a Liability Transfer and Assumption Agreement with the HISSC and NDEP. Under the agreement, BRC assumed the HISSC's responsibilities to complete a Remedial Alternatives Study (RAS) as to Site soils.

A portion of the Upper Ponds that was formerly used for waste effluent disposal is not included in the Common Areas, as defined in the 1996 Common Areas Consent Agreement. This area is referred to as the "TIMET Active Ponds" because it is presently the location of lined ponds that are actively operated by Titanium Metals Corporation (TIMET). This area is the subject of a separate Consent Agreement between TIMET and the NDEP (June 1996). The Liability Transfer and Assumption Agreement addresses this area and BRC's assumption of RAS responsibilities. It is also shown on Exhibit 1. These ponds are expected to cease operation and begin closure in 2002, and are included in this ROD for the purpose of sizing of the disposal area identified in the RAS. In any event, the Site and the Timet Active Ponds are considered a single area for remedial evaluation and remedy selection in this ROD.

II. REGULATORY OVERSIGHT

NDEP originally entered into a Consent Agreement dated 25 April 1991 ("1991 Consent Agreement") with a group of current and former operators at the BMI Complex that addressed a multi-phase approach to the assessment and, if necessary, remediation of environmental conditions at the Common Areas. The following three phases were identified in the 1991 Consent Agreement:

¹ The members of HISSC are Kerr-McGee Chemical Corporation, Montrose Chemical Corporation of California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer Management Company, Titanium Metals Corporation and Basic Management, Inc.

- Phase I - development of a Phase I Environmental Conditions Assessment (ECA) report for the Common Areas;
- Phase II - if determined necessary by the NDEP, performance of an Environmental Conditions Investigation (ECI) to fill any data gaps identified in Phase I, and completion of a remedial alternative study to address conditions identified in Phases I and II; and
- Phase III - if determined necessary by the NDEP, implementation of remedial measures, as identified in Phase II.

A. Phase I Investigation

Phase I was completed and the results were presented in the Phase I Environmental Conditions Assessment (ECA) Report (Geraghty & Miller, 1993). Following a review of the Report, the NDEP identified a need for a Phase II Environmental Conditions Investigation (ECI) for portions of the Common Areas. In a Letter of Understanding (LOU) dated 15 August 1994, NDEP identified several study items that required additional study and investigation during this second phase.

B. Phase II Investigation

The HISSC and the NDEP entered into the 1996 Common Areas Consent Agreement to address the second phase of work at the Common Areas. The 1996 Common Areas Consent Agreement incorporated by reference the project workplan (*Project Workplan-BMI Common Areas-Environmental Conditions Investigation-Henderson, Nevada* (ERM-West, February 1996) which described proposed ECI (Phase II) activities to characterize the LOU study items. Phase II was completed and the results were presented in the *Draft Environmental Conditions Investigation Report - BMI Common Areas - Henderson, Nevada* (ERM-West, August 1996) (ECIR).

Based on the ECIR, the NDEP requested a Remedial Alternatives Study (RAS) for the Site. The Remedial Alternatives Study for Soils and Sediments in the Upper and Lower Ponds at the BMI Complex (ERM, March 1, 2000) was submitted to NDEP in March, 2000.

C. Future Actions at the Site (Phase III)

As stated in this ROD, cleanup of the Site will proceed under Alternative 4B as identified and described in the RAS. The necessary steps for completing the cleanup after issuance of this ROD include:

- Negotiating and signing a Phase III consent agreement to govern remedial implementation at the Common Areas and Timet active ponds.
- Processing and issuance of a NDEP permit to approve the activities described in the Remedial Action Plan (RAP) (Parsons Engineering Science, Inc. (January 2000). The

RAP will describe design and engineering details of the proposed CAMU and associated monitoring activities. The NDEP intends to include, as enforceable conditions, in either or both the Phase III consent agreement and the RAP permit the following conditions: a) a maximum CAMU volume; b) offsite disposal of any material exceeding the maximum CAMU volume; and c) remediation of all areas within the Upper and Lower Ponds, including the Timet pond area. Additionally, if the following issues have not been resolved at the time of permit issuance or Phase III consent agreement completion they will become permit or consent agreement conditions: a) no offsite use or sale of aggregate without an NDEP approved plan; and b) remediation of existing source areas at the proposed BMI Complex CAMU.

- Submission and NDEP approval of a Corrective Action Plan (CAP). The CAP will describe the methods for soil excavation from the Upper and Lower Ponds and transport to the CAMU.
- Revision and NDEP approval of a Site Closure Plan (R. Sahu et al., February 2001, revised July 2001). The closure plan will describe methods for post-remedial confirmation sampling and risk assessment. The risk assessment must demonstrate that the Site is suitable for residential uses, considering human exposure to soils and groundwater and potential impacts of soils on ground and surface water.

III. SITE CHARACTERISTICS

A. Chemical Occurrence at the Site

The following constituents have been detected in soil and/or groundwater samples collected during the Phase II investigations conducted at the Site:

- Volatile organic compounds (VOCs);
- Semivolatile organic compounds (SVOCs);
- Pesticides;
- Polychlorinated biphenyls (PCBs) (soil only);
- Metals;
- Perchlorate;
- Radionuclides; and
- Asbestos (soil only).

The ranges of detections are presented in the RAS.

B. Clean-up Goals.

The RAS indicated that concentrations of certain constituents in portions of the Common Area soils exceeded risk-based screening levels for residential uses. Accordingly, remedial action goals which are protective of human health and the environment and allow future residential land use are being established for the Site. In addition, the remedial action goals embody applicable or relevant and appropriate federal and state requirements. Preliminary goals and requirements include the following:

- Post-remediation chemical concentrations in site soils are to have an associated cumulative theoretical upper-bound incremental carcinogenic risk levels no greater than background or 10^{-6} , subject to additional evaluation in accordance with USEPA guidance;
- Post-remediation chemical concentrations in site soils are to have an associated cumulative non-carcinogenic hazard index of 1 or less;
- Radionuclides in Site soils are to have risks no greater than those associated with background conditions or with the USEPA's acceptable levels of 3×10^{-4} , whichever is greater;
- Lead is not to be present at concentrations above USEPA's recommended screening level of 400 milligrams per kilogram for residential land use; and
- Asbestos is not to be present at concentrations above 0.035 percent subject to adjustment based on risk assessment using USEPA procedures.

Adequacy of clean-up will be confirmed based on confirmation sampling results and post-remediation risk assessment that will be conducted in accordance with USEPA methods. The scope of the confirmation sampling program, the methodology to be used in the post-remediation risk assessment and the final remedial goals and requirements will be presented in the Site Closure Plan, which is subject to NDEP approval. (see Section II.C). The Closure Plan must include methodologies to demonstrate that post-remedial soil and ground water conditions are suitable for residential uses and that soils will not adversely affect ground water or surface water.

IV. DEVELOPMENT OF REMEDIAL ALTERNATIVES

Five remedial alternatives were developed for Site soils based on the screening of remedial technologies. These remedial alternatives are more fully described in the RAS (ERM, 2000).

- Alternative 1 - No Action. Under the No Action alternative, no remedial actions of any kind would be implemented at the Site.

- **Alternative 2 - Institutional Controls / Limited Action.** Under this alternative, institutional controls such as the installation of fences and warning signs would be used to limit exposure to impacted soil. Deed notification and deed restrictions would also be placed on the Site. Dust suppression measures would be implemented as part of this alternative.
- **Alternative 3 - On-Site Capping of Soils.** Alternative 3 combines institutional controls and containment. Under this alternative, all Site soils requiring remediation would be capped in-place. These portions of the Site would also have deed restrictions and/or notifications placed on them.
- **Alternative 4 - Excavation of Soils and On-Site Landfill Disposal.** Under Alternative 4, all soils requiring remediation would be excavated and disposed in an on-site landfill. Two potential locations for the on-site landfill have been identified. These alternatives are discussed in greater detail in the RAS.
 - **Alternative 4A – Site Landfill.** Following placement of impacted soils in the landfill, the Site would be developed in accordance with the development plan. However, modifications to the development plan may be required to account for the presence and monitoring requirements for the landfill to prevent exposure to impacted soils within the landfill. Institutional controls, including deed restrictions/notifications, may be implemented for this area to avoid accidental exposures by Site inhabitants and/or workers to impacted soils within the landfill.
 - **Alternative 4B – BMI Complex Landfill or CAMU.** Under this alternative, soils would be transported from the Site to a dedicated CAMU within the BMI Complex using a conveyor or alternative off-road conveyance system. Under this alternative, the Site could be developed in accordance with the current development plan, without the need for institutional controls within the Site. Future exposures to the soils within the CAMU would be eliminated by access controls to the BMI Complex.
- **Alternative 5 - Excavation of Soils and Off-Site Landfill Disposal.** Under this alternative, all soils requiring remediation would be excavated and disposed of in an off-site landfill.
- Following excavation in either alternative 4 or 5, soil samples would be collected to confirm that the remaining concentrations of compounds in the soils meet the remedial action goal.

V. EVALUATION OF REMEDIAL ALTERNATIVES

This section summarizes the alternative evaluation findings with respect to the criteria identified in the RAS (ERM, 2000).² A complete evaluation of the alternatives is provided in the RAS.

A. Overall Protection of Human Health and the Environment

Of the five remedial alternatives, Alternative 1 does not fully satisfy the remedial goals. All of the other alternatives satisfy the goal of protection of human health by either: 1) excavation of all soil containing chemical constituents at concentrations that exceed the goal; and/or 2) mitigation of exposure pathways to the impacted soils. In addition, Alternatives 3, 4 and 5 provide protection of the environment.

The selected remedy, Alternative 4B achieves the goals through excavation and disposal of impacted soils in an on-site CAMU within the BMI Complex. The Site would then be restored for development at a higher land use. Because all soils are removed from the Site, the Site can be developed without the need for institutional controls within the developed area.

B. Effectiveness and Permanence

Alternative 1 does not provide short or long-term effectiveness or permanence as no remedial actions would be taken. All of the remaining Alternatives provide short or long-term effectiveness and permanence. Alternative 2 does not provide a permanent barrier (cap) to impacted soils; however, dust control measures and access restrictions would be effective in preventing human exposure to Site chemicals. To alleviate potential concerns regarding the reliability of the access restrictions and dust control measures, a significant monitoring and maintenance program would have to be instituted. Alternatives 3 and 4 are effective and permanent because they provide a permanent barrier to exposure to contaminated soils. Future construction and/or maintenance activities under Alternative 3, 4A and 4B have the potential to disturb the impacted soils. Therefore, Alternatives 3, 4A and 4B would require the implementation of a long-term monitoring and training program. Under Alternative 4B, the potential for future activities which would require the disturbance of impacted soils is believed to be lower than Alternatives 3 and 4A since the CAMU in Alternative 4B is within the industrial complex. Alternative 5 is effective and permanent because all contaminated soils are removed from the Site.

C. Implementability

Alternative 1 is most easily implemented because it requires no action at the Site. The remaining alternatives are all readily implementable, but vary in their complexity. Alternative 2

² The RAS considered soil treatment to reduce toxicity, mobility or volume. In situ and ex situ technologies were evaluated. These technologies did not pass initial screening. Accordingly, soil treatment was not retained as a remedial alternative or carried forward as an express evaluation criterion.

is implementable. Implementation of this alternative would require institution of dust control measures to prevent exposure to off-site receptors during grading activities. A long-term fence inspection and maintenance program would have to be developed as part of this alternative. Alternatives 3 and 4 are implementable. Implementation of these alternatives would require institution of dust control measures to prevent exposure to off-site receptors during soil excavation, transportation, and capping activities. In addition, under Alternatives 4A and 4B, a permit to construct the new CAMU will have to be prepared. A training program and long-term inspection, maintenance, and monitoring program would have to be developed as part of Alternatives 3 and 4. The concerns regarding the increased community exposure to traffic hazards as part of Alternative 5 are a difficulty associated with implementation of this alternative. An extensive transportation plan would have to be created for Alternative 5. As with Alternatives 3 and 4, implementation of this alternative will require institution of dust control measures to prevent exposure to off-site receptors during soil excavation and transportation.

D. Cost

All costs are provided as present worth costs in 2000, the year of RAS submission. Due to the uncertainty associated with the remedial actions, a 10 percent contingency has been applied to the sum of direct and indirect capital costs. In accordance with EPA guidance, a discount rate of 7 percent was used for annual costs. The costs presented below are based on the areal extent and estimated volumes of impacted soils as presented in the RAS. If the required extent of remediation is subsequently revised, these costs may be modified; however, the relative cost differences are expected to remain similar.

- Alternative 1 has no cost, since no action is taken.
- The total present worth cost for Alternative 2 is estimated to range between \$3,286,000 to \$7,492,000.
- The total present worth cost for Alternative 3 is estimated to range between \$7,021,000 to \$13,806,000.
- The total present worth cost for Alternative 4A is estimated to range between \$13,033,000 to \$17,966,000.
- The total present worth cost for Alternative 4B is estimated to range between \$16,195,000 to \$21,129,000 (subsequently revised to include an additional \$320,000 to address remediation activities associated with the slit trenches).
- Alternative 5 has a capital cost estimated to range between \$22,833,000 to \$33,838,000. No operation and maintenance costs are associated with Alternative 5.

E. Community Acceptance

Community acceptance of the selected remedy is addressed in Section VII. *Public Participation and Community Acceptance*.

VI. SELECTED REMEDY

Based on the evaluation of alternatives presented in the previous subsections, Alternative 4B has been selected as the preferred remedial alternative to achieve the remedial action goals. This alternative consists of the excavation and removal of impacted soils containing chemical concentrations in excess of the cleanup goals. The excavated soils will then be transported to, and placed in, a CAMU to be constructed within the BMI Complex.

Reasons Alternative 4B was selected include:

- The ability to restore all of the property in the Site area with no land use restrictions;
- The elimination of all impacted soils from potential public contact by placing them within a CAMU in the BMI Complex;
- The level of protection provided to the environment (air, surface water, groundwater) by removal of potential sources;
- The use of a conveyor belt or similar off-road conveyance system for transportation, minimizes the transportation risks to the community;

A. Description of the Selected Remedial Alternative

This remedy consists of the excavation and removal of impacted soils to achieve the remediation goal. The excavated soils will then be transported to, and placed in, a CAMU to be constructed within the BMI Industrial Complex. A brief chronological description of the components of this remedial alternative is provided below.

1. Work Area Preparation

Prior to performing soil excavation, access routes to the excavation areas and the CAMU will be created. As necessary, portions of the soil berms present between ponds will be removed to facilitate the ingress/egress of equipment and transportation of excavated soils throughout the Site and to the CAMU. In addition, all underground pipes, electrical conductors, fuel, water and sewer lines in the remediation areas will be identified, and as appropriate, de-energized, locked out, or blinded off.

Currently, a fence line exists around the perimeter of the Upper Ponds to preclude unauthorized access. ERM/BRC expect that it may be necessary to breach this fence during the course of remedial activities. Therefore, as part of the remedial activities, the perimeter fence

line will be rerouted, as necessary, to prevent unauthorized entry to the Site and human contact with impacted soils. A monitoring program has been implemented to identify and repair breaches in the perimeter fence line. This program, which would include any new fence installed as part of remedial activities, would continue until after completion of final remediation.

2. CAMU Construction

The *Remedial Action Plan (RAP), Permit Application for Corrective Action Management Unit (CAMU), Henderson, Nevada* (Parsons, January 2000) presents a more detailed description of the design and construction of the proposed CAMU. As presented in the RAP, the CAMU is designed to contain material excavated under Alternative 4B as well as future material from the area around the TIMET Active Ponds which are the subject of a separate Consent Agreement between TIMET and NDEP (June 1996).

3. Location

The conveyor will be constructed from the proposed CAMU location, and run east, beneath Boulder Highway (through an existing culvert), to a soil staging area within the Site. The *Remedial Action Plan (RAP), Permit Application for Corrective Action Management Unit (CAMU), Henderson, Nevada* (Parsons, January 2000) presents a more detailed description of the location of the proposed CAMU and conveyor system.

4. Corrective Action Plan

BRC must submit an approvable Corrective Action Plan (CAP) to describe the detailed methods for excavating, transporting and conveying soils from contaminated areas to a staging location and then ultimately to disposal at the CAMU.

5. CAMU Operation and Closure

The CAMU will be built, operated and closed according to the standards of the RAP, CAP and Closure Plan. The RAP, CAP and Closure Plan are currently under development. Upon completion the RAP, CAP and Closure Plan will address the following issues:

- Liner and Leachate Collection System;
- Final Cover;
- Monitoring;
- Soil Excavation;
- Confirmation Sampling;
- Soil Transportation and Management; and

- Reporting.

VII. PUBLIC PARTICIPATION AND COMMUNITY ACCEPTANCE

A. Public Participation and Community Acceptance

Public comment and opinion were included in remedy selection and design at various points during the process. Public comment was received through open meetings and written comment periods. The following public notices were given respecting the indicated activities in the table below. In addition, the local press has published numerous articles addressing the Common Areas.

1. NDEP Public Meeting on the RAS

On April 4, 2000 NDEP hosted a public meeting for citizens to learn about the RAS and Alternative 4B as the preferred remedy. Citizens were invited to attend and offer questions and comments about the site and the proposed cleanup plan. Notice of the meeting was provided in the Las Vegas Review-Journal & Sun on March 9, 2000. The meeting was held at the Henderson Convention Center, 200 Water Street, Henderson, Nevada at 7:00 pm. At the meeting the site history was explained, followed by an overview of the site characterization efforts and the results of these investigations. The RAS was then explained along with a summary of each remedial alternative. Alternative 4B was presented as the preferred alternative. The meeting was opened for community input on these issues and attendees were told that written comments could be provided by April 12, 2000. During the open comment session citizens inquired about the nature of the potential hazards at the site, how fugitive dust and other remediation impacts will be handled, how attainment with cleanup up goals will be verified, whether the clean up was protective of human health and the environment, whether verification data will be publicly available and what parties would be performing the work. Responses to these questions and comments were provided at the meeting.

2. Public Meetings Regarding the Environmental Conditions Assessment and Environmental Conditions Investigation

During the Phase I and Phase II activities, NDEP, the HISSC and the individual participating companies conducted a coordinated effort to inform the public about ECA and ECI progress. This coordinated effort included informal interviews of community leaders, the preparation and distribution of a press release describing the Phase I and Phase II processes and their results, and the holding of public meetings as follows:

November 3, 1993 (presentation of the findings of the Phase I ECA Reports);

March 12, 1996 (presentation of the scope of the Phase II ECI workplan);
and

December 1, 1998 (presentation of the results of the Phase II ECI investigation).

All three public meetings were held at the Henderson Convention Center in Henderson, Nevada, and were moderated by NDEP. The meetings were the subject of timely public notice in the major, local newspapers of general circulation. At the meetings, public comment was solicited. As a result of these activities, NDEP and the HISSC gathered information about the public's concerns and information needs regarding the ongoing assessment of the environmental conditions at the Common Areas. Overall, few comments were made at these public meetings. Of those that were made, the ones concerning the assessment of environmental conditions at the Common Areas can be summarized as follows: support was expressed for the complex-wide assessment and remediation program; concerns were expressed about potential delays in the conduct of subsequent phases of the evaluation project; a question was asked about the contents of some of the waste ponds on site; concern was expressed about possible ground water contamination at the site and the potential for off-site migration of any such contamination; and concern was expressed regarding the current status of radiation issues at the site. Responses to these questions and comments were provided at the meetings.

B. Local Government Acceptance

The Henderson City Council formally approved Alternative 4B as the selected remedy at its Regular Meeting on June 6, 2001. A copy of the Henderson City Council acceptance of the preferred remedy is attached as Exhibit 2.

C. Restoration Advisory Committee (RAC)

In order to begin assessing public response to these remedial alternatives, BEC, as the property owner, established a Restoration Advisory Committee (RAC), which began meeting in October 1999 initially on a monthly basis and later on a quarterly basis. The RAC consists of approximately twenty community leaders.²⁴ The RAC provided an additional means of sounding community opinion and acceptance of the proposed remedial alternatives. The RAC meeting dates and primary agenda topics are included in the following table.

Meeting Date	Agenda Topic
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²⁴ The RAC members are as follows: Mike Cyphers, Emergency Management Coordinator, City of Henderson; Janet Dobry, Principal, Gordon McCaw Elementary School; Ron Harbison, the Boyd Group; Jeff Harris, Manager, Clark County Parks & Recreation Dept.; Doug Zimmerman, NDEP; Alice Martz, Executive Director, Henderson Chamber of Commerce; Dr. Ron Meek, Provost, Comm. Coll. Of Southern Nevada/Henderson Campus; Doug Reifsteck, Plant Manager, Ocean Spray; Bob Reynolds, President, Calico Ridge HOA; David Sanchez, Economic Board of Clark County, Senator Hal Smith, Henderson Industrial Citizens Advisory Panel; Dr. Klaus Stetzenbach, Director, Harry Reid Environmental Center, UNLV; Carolyn Titus, Red Rock Audubon Society/Henderson Bird Viewing Preserve; Carrie White, Principal Environmental Planner; Jeff van Ee, Environmentalist; Shauna Welch, Director of Communications, St. Rose Dominican Hospital; Michael Wethington, General Manager, the Galleria at Sunset.

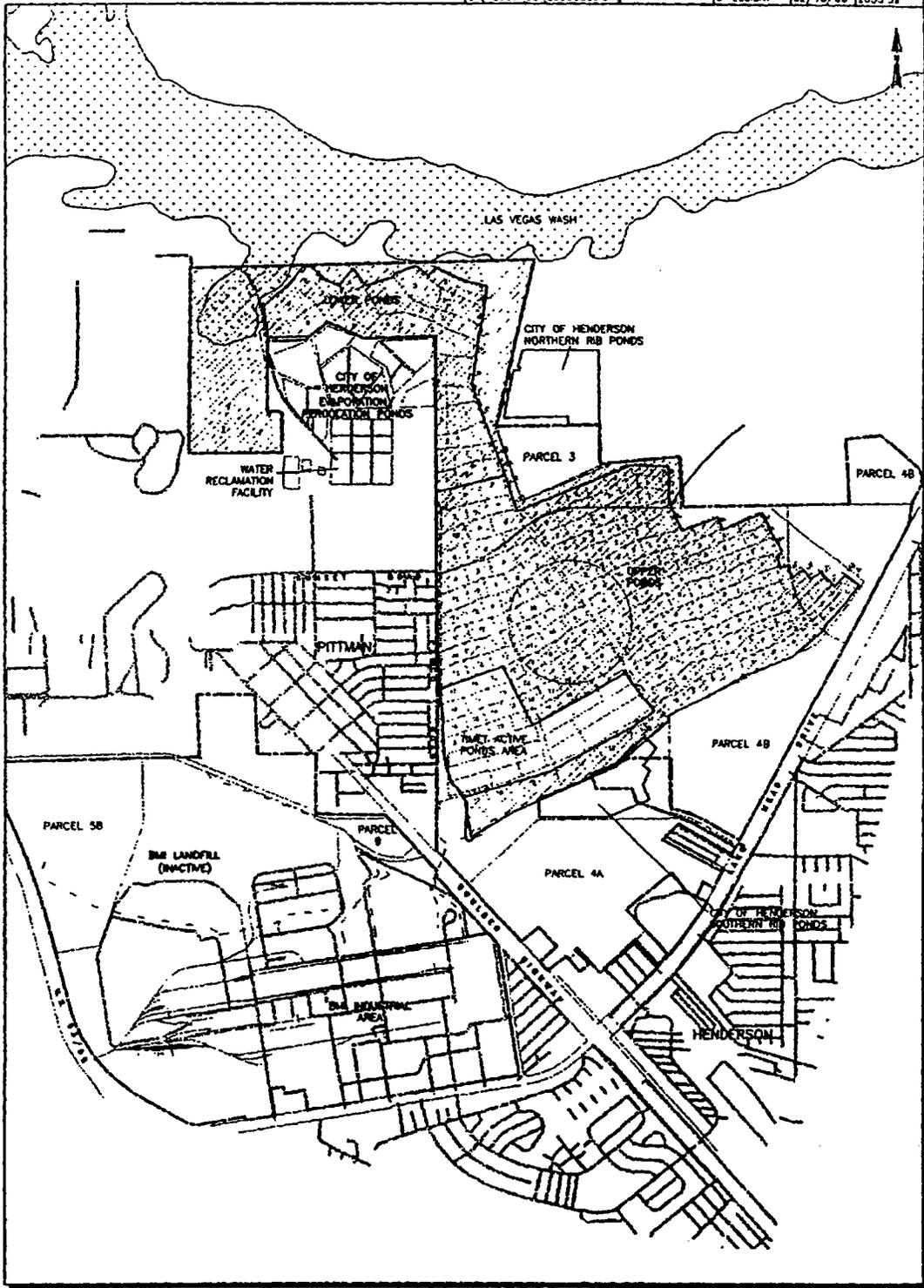
Meeting Date	Agenda Topic
October 6, 1999	Inaugural meeting, historical perspective, overview of site, cleanup goals and role of RAC
November 3, 1999	Site tour and overview of cleanup issues
December 1, 1999	Review and comment on the RAS prior to submittal to NDEP
January 5, 2000	Soil/Groundwater nexus
February 2, 2000	Future land uses at BMI and bird sanctuary
March 1, 2000	Presentation and review of NDEP draft presentation on the RAS.
April 5, 2000	Summary of issues covered during the public meeting on April 4, 2000.
May 3, 2000	Presentation on proposed conveyor system, soil excavation/dust mitigation and landfill construction
June 7, 2000	Presentation of Corrective Action Plan (CAP)
November 1, 2000	Status update of IRMs, and RAS approval process
January 10, 2001	Closure Plan Review
April 4, 2001	Closure Plan Review and Confirmation Sampling Issues

VIII. ROD EFFECTIVENESS

This ROD constitutes NDEP approval of Alternative 4B – soil encapsulation in a dedicated CAMU – as the selected remedy. This Record of Decision is issued and effective this 2nd day of November, 2001.



 ALLEN BIAGGI, Administrator
 Nevada Division of Environmental Protection



LEGEND
SITE

0 2,000
FEET

Exhibit 1

Site Map
BMI Common Areas
Henderson, Nevada
1994 01/00

BR005801

**HENDERSON CITY COUNCIL
REGULAR MEETING
June 6, 2001**

I. CALL TO ORDER

Mayor Gibson called the Regular Meeting to order at 7:07 p.m. in the Council Chambers at City Hall, 240 Water Street, Henderson, Nevada.

II. CONFIRMATION OF POSTING

The City Clerk confirmed the Regular Meeting had been noticed in compliance with the Open Meeting Law by posting the Agenda three working days prior to the meeting at City Hall, Emergency Services Facility, Green Valley Library and Community College of Southern Nevada, by publication in the Henderson Home News, and by mailing a copy of the Agenda to everyone appearing thereon and on the Master Agenda mailing list.

III. ROLL CALL

Present: Mayor James B. Gibson

Councilmembers:

Jack Clark
Amanda M. Cyphers
Arthur "Andy" Hafen
Steven D. Kirk

Absent: None

Officers: Philip D. Speight, City Manager
Shauna M. Hughes, City Attorney
Monica M. Simmons, City Clerk

Absent: None

Staff: Robert Murnane, Public Works Director
Steven M. Hanson, Finance Director
Mary Kay Peck, Community Development Director
David A. Kitchen, Deputy City Clerk
Tedie Jackson, Senior Minutes Clerk

INVOCATION: The invocation was given by Rabbi Richard Schachet, Valley Outreach Synagogue. Boy Scout Troop No. 348 led the assembly in the Pledge of Allegiance.

BR005802

IV. ACCEPTANCE OF AGENDA

(Motion) Councilmember Hafen moved to accept the agenda as amended:

Presentations: PR-3 - withdrawn at the request of staff.

Unfinished Business: UB-56 - continued indefinitely at the request of applicant.

New Business: NB-63 - heard immediately following PR-4;
NB-70, NB-73, and NB-74, heard immediately following NB-63.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

V. PRESENTATIONS

PR-1	PRESENTATION NEVADA LEAGUE OF CITIES YOUTH AWARDS CHRISTOPHER AGUIAR AND CARISSA AUGUSTINE
------	--

Presentation of Nevada League of Cities Youth Awards to Christopher Aguiar and Carissa Augustine.

(Action) City Manager Philip Speight read the presentations for the Nevada League of Cities Youth Awards which were presented to Christopher Aguiar, 1st place winner, who received a plaque and a \$500.00 check; and Carissa Augustine, semi-finalist, who also received a plaque and a \$300.00 check, by the Mayor and Council.

PR-2	COMMENDATION MERITORIOUS CONTRIBUTIONS SCOTT GINGER
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Presentation of commendation to Scott Ginger for his contributions during his tenure as a Green Valley High School coach.

(Action) City Manager Philip Speight read the commendation for Scott Ginger's contributions during his tenure as a Green Valley High School coach, which was presented to Mr. Ginger by the Mayor and Council.

BR005803

PR-3	PROCLAMATION SALVATION ARMY WEEK MAY 13 THROUGH MAY 19, 2001
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Proclamation declaring May 13 through May 19, 2001, as Salvation Army Week.

(Action) Withdrawn at the request of staff.

PR-4	PRESENTATION J. EDGAR HOOVER GOLD MEDAL AWARD OFFICER TODD RASMUSSEN AND OFFICER DANIEL KING
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Presentation of the J. Edgar Hoover Gold Medal Award to City of Henderson Police Department Officers Todd Rasmussen and Daniel King.

(Action) Paul Gargis and Herman Hagen of the Veterans of Foreign Wars Post No. 3848 read the presentation of the J. Edgar Hoover Gold Medal Award which was presented to Henderson Police Department Officers Todd Rasmussen and Daniel King.

NOTE: NB-63, NB-70, NB-73, and NB-74 heard immediately following PR-4.

VI. CONSENT AGENDA

CA-5	MINUTES – COMMITTEE AND REGULAR MEETINGS MAY 15, 2001
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Minutes of the Committee and Regular Meetings of May 15, 2001.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and adopt the minutes of the Committee and Regular Meetings of May 15, 2001. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005804

CA-6	THIRD SUPPLEMENTAL INTERLOCAL CONTRACT NO. 284C GIBSON ROAD (I-515 TO BOULDER HIGHWAY) REGIONAL TRANSPORTATION COMMISSION
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Third Supplemental Interlocal Contract No. 284c between the City of Henderson and the Clark County Regional Transportation Commission for Gibson Road (I-515 to Boulder Highway).

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve Third Supplemental Interlocal Contract No. 284c between the City of Henderson and the Clark County Regional Transportation Commission for Gibson Road (I-515 to Boulder Highway). The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-7	FIRST SUPPLEMENTAL INTERLOCAL CONTRACT PIONEER DETENTION BASIN CONSTRUCTION CLARK COUNTY REGIONAL FLOOD CONTROL DISTRICT
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First Supplemental Interlocal Contract between the City of Henderson and the Clark County Regional Flood Control District for the Pioneer Detention Basin Construction.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the First Supplemental Interlocal Contract between the City of Henderson and the Clark County Regional Flood Control District for the Pioneer Detention Basin Construction. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-8	PURCHASE OF MODULAR FURNITURE FINANCE AND ECONOMIC DEVELOPMENT PUBLIC WORKS DEPARTMENT
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Ratify purchase of modular furniture and file cabinets for the relocation of the Accounts Payable Division of the Finance Department and Economic Development to the 3rd floor of City Hall based on an existing agreement between the City of Henderson and Knoll, Inc., dated March 29, 2001.

BR005805

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and ratify the purchase of modular furniture and file cabinets for the relocation of the Accounts Payable Division of the Finance Department and Economic Development to the 3rd floor of City Hall based on an existing agreement between the City of Henderson and Knoll, Inc., dated March 29, 2001, in the amount of \$45,995.40, to be funded from Account No. 73-39-51-7202. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-9	PURCHASE OF COMPUTER EQUIPMENT DATA NETWORK INFRASTRUCTURE COMPAQ COMPUTER CORPORATION
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Purchase of Cisco and Compaq equipment for the Data Network infrastructure.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the purchase of Cisco and Compaq equipment for the Data Network infrastructure, in the approximate amount of \$1,100,000.00, to be funded from Fund 01-14. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-10	PURCHASE OF COMPUTER SOFTWARE SQL SERVER SOFTWARE COMPUSA
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Purchase of SQL Server Software from CompUSA.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the purchase of SQL Server Software from CompUSA, in the amount of \$45,753.58, to be funded from Account No. 01-14-91-5235. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-11	BIODIESEL FUEL BLEND PURCHASE THROUGH LAS VEGAS VALLEY WATER DISTRICT CONTRACT PUBLIC WORKS DEPARTMENT
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Ratify staff action for the purchase and delivery of biodiesel fuel from Haycock Petroleum Co., under Las Vegas Valley Water District Bid No. 4666-00 and NRS 332.195.

BR005806

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and ratify staffs purchase and delivery of biodiesel fuel from Haycock Petroleum Co., under Las Vegas Valley Water District Bid No. 4666-00 and NRS 332.195, in the amount of \$60,000.00, to be funded from Account No. 34-34-01-5134. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-12	REVISED CLASS SPECIFICATION ENVIRONMENTAL SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Revised class specification for Environmental Services Manager.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the revised class specification for Environmental Services Manager. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-13	AMEND STAFF COMPLEMENT ENVIRONMENTAL SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Amend the staff complement of the Department of Utility Services by adding one (1) Environmental Services Manager and deleting one (1) Chief of Utility Operations from Fund 21-36-02.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and amend the staff complement of the Department of Utility Services by adding one (1) Environmental Services Manager to, and deleting one (1) Chief of Utility Operations from, Fund 21-36-02. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-14	REVISED CLASS SPECIFICATION ASSISTANT DIRECTOR OF UTILITY SERVICES DEPARTMENT OF UTILITY SERVICES
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Revised class specification for Assistant Director of Utility Services.

BR005807

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the revised class specification for Assistant Director of Utility Services. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-15	AMEND STAFF COMPLEMENT ASSISTANT DIRECTOR OF UTILITY SERVICES DEPARTMENT OF UTILITY SERVICES
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Amend the staff complement of the Department of Utility Services by adding one (1) Assistant Director of Utility Services to, and deleting one (1) Assistant Utility Services Manager from, Fund 21-36-04.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and amend the staff complement of the Department of Utility Services by adding one (1) Assistant Director of Utility Services to, and deleting one (1) Assistant Utility Services Manager from, Fund 21-36-04. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-16	CLASS SPECIFICATION AND WAGE ASSIGNMENT TECHNICAL SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Class specification for Technical Services Manager and the wage assignment to Range 547 of the Management Wage Schedule.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the class specification for Technical Services Manager and the wage assignment to Range 547 of the Management Wage Schedule, \$71,334.25 - \$93,804.54/year. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005808

CA-17	AMEND STAFF COMPLEMENT TECHNICAL SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Amend the staff complement of the Department of Utility Services by adding one (1) Technical Services Manager to, and deleting one (1) Project Engineer III from, Fund 21-36-06.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and amend the staff complement of the Department of Utility Services by adding one (1) Technical Services Manager to, and deleting one (1) Project Engineer III from, Fund 21-36-06. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-18	REVISED CLASS SPECIFICATION BUSINESS SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Revised class specification for Business Services Manager.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the revised class specification for Business Services Manager. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-19	AMEND STAFF COMPLEMENT BUSINESS SERVICES MANAGER DEPARTMENT OF UTILITY SERVICES
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Amend the staff complement of the Department of Utility Services by adding one (1) Business Services Manager to, and deleting one (1) Chief of Utility Services from, Fund 21-36-03.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and amend the staff complement of the Department of Utility Services by adding one (1) Business Services Manager to, and deleting one (1) Chief of Utility Services from, Fund 21-36-03. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005809

CA-20	REVISED CLASS SPECIFICATION DIRECTOR OF UTILITY SERVICES DEPARTMENT OF UTILITY SERVICES
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Revised class specification for Director of Utility Services.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the revised class specification for Director of Utility Services. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-21	REVISED CLASS SPECIFICATION ASSISTANT RECREATION COORDINATOR PARKS AND RECREATION DEPARTMENT
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Revised class specification for Assistant Recreation Coordinator.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the revised class specification for Assistant Recreation Coordinator. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-22	CLASS SPECIFICATION AND WAGE ASSIGNMENT RECREATION LEADER PARKS AND RECREATION DEPARTMENT
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Class specification for Recreation Leader and the wage assignment to the new Range 358 on the Non-Union Wage Schedule.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the class specification for Recreation Leader and the wage assignment to the new Range 358 on the Non-Union Wage Schedule, \$13.762 - \$16.095/hour. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005810

CA-23	AMEND STAFF COMPLEMENT SECRETARY II CITY MANAGER'S OFFICE
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Amend the staff complement of the City Manager's Office by adding one (1) Secretary II to, and deleting one (1) Administrative Office Assistant from, Fund 01-46-01.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and amend the staff complement of the City Manager's Office by adding one (1) Secretary II to, and deleting one (1) Administrative Office Assistant from, Fund 01-46-01, in the amount of \$4,089.95 in salaries and benefits for Fiscal Year 2001/2002. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-24	APPORTIONMENT REPORT AND FINAL ASSESSMENT ROLL – AMENDMENT NO. 51 LID T-10, SEVEN HILLS PARCEL W, UNIT 3 PUBLIC WORKS DEPARTMENT
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Apportionment Report and Final Assessment Roll – Amendment No. 51, LID T-10, Seven Hills Parcel W Unit 3, APN's 191-02-411-001 through 067 (formerly all or a portion of APN 191-02-410-003), dated April 27, 2001.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the Apportionment Report and Final Assessment Roll – Amendment No. 51, LID T-10, Seven Hills Parcel W Unit 3, APN's 191-02-411-001 through 067 (formerly all or a portion of APN 191-02-410-003), dated April 27, 2001. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-25	BUDGET AUGMENTATION OPERATION EXPENSES MUNICIPAL COURT
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Budget augmentation for the Municipal Court for additional operating expenses.

BR005811

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the budget augmentation for the Municipal Court for additional operating expenses in the amount of \$10,000.00 for Accounts No. 01-07-01-4030; \$10,000.00 for Account No. 01-07-01-6304, and \$10,000.00 for Account No. 01-07-02-4020. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-26	RATE INCREASES ROOM AND EQUIPMENT RENTAL CONVENTION CENTER
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Rate increases for room and equipment rental for the Henderson Convention Center.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the rate increases for room and equipment rental for the Henderson Convention Center as detailed in Exhibits 1 and 2 on file in the City Clerk's office. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-27	ACCEPTANCE OF GRANT EVERY 15 MINUTES PROGRAM POLICE DEPARTMENT
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Acceptance of grant funds from UNLV's "Stand Tall, Don't Fall United Against Underage Drinking" program for the Henderson Police Department's "Every 15 Minutes" program to educate high school students on the consequences of alcohol-related traffic accidents.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and accept grant funds from UNLV's "Stand Tall, Don't Fall United Against Underage Drinking" program for the Henderson Police Department's "Every 15 Minutes" program to educate high school students on the consequences of alcohol-related traffic accidents, in the amount of \$8,000.00, to be deposited to Account No. 16-21-12-4030. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-28	AUTHORIZATION TO APPRAISE 18.23 ACRES OF CITY-OWNED PROPERTY CITY ATTORNEY'S OFFICE/ PROPERTY MANAGEMENT DIVISION
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Authorization to appraise 18.23 acres of City-owned land designated as Parcel 14, located at the Boulder Highway/I-515 Interchange, APNs 179-34-101-001 and 179-27-401-001.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and authorize the appraisal of 18.23 acres of City-owned land designated as Parcel 14, located at the Boulder Highway/I-515 Interchange, APNs 179-34-101-001 and 179-27-401-001, the appraisal fee will be paid in advance by the Clark County Regional Transportation Commission. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-29	AUTHORIZATION TO APPRAISE 123 WEST BASIC ROAD CITY ATTORNEY'S OFFICE/ PROPERTY MANAGEMENT DIVISION
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Authorization to appraise the property at 123 West Basic Road for possible acquisition.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and authorize the appraisal of the property at 123 West Basic Road for possible acquisition, in the amount of \$250.00, to be funded from Account No. 50-31-01-6510. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-30	AUTHORIZATION TO APPRAISE 9,340 SQUARE FEET OF CITY-OWNED PROPERTY ATHENS ROAD WEST OF PABCO ROAD CITY ATTORNEY'S OFFICE/ PROPERTY MANAGEMENT DIVISION
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Authorization to appraise 9,340 square feet of City-owned property located at Athens Road, west of Pabco Road, portions of APN's 161-36-801-001 and 161-36-701-001.

BR005813

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and authorize the appraisal of 9,340 square feet of City-owned property located at Athens Road, west of Pabco Road, portions of APN's 161-36-801-001 and 161-36-701-001, with the appraisal fee to be paid by Kerr-McGee. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-31	REVOCABLE PERMIT GOLF CART PATH MARKINGS, HAMPTON ROAD APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 20 + 26 on Hampton Road in the Anthem Sun City neighborhood.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 20 + 26 on Hampton Road in the Anthem Sun City neighborhood. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-32	REVOCABLE PERMIT GOLF CART PATH MARKINGS, OLIVIA HEIGHTS AVENUE APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 56 + 49 on Olivia Heights Avenue in the Anthem Sun City Unit 16 Phase 1 subdivision.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 56 + 49 on Olivia Heights Avenue in the Anthem Sun City Unit 16 Phase 1 subdivision. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-33	REVOCABLE PERMIT GOLF CART PATH MARKINGS, OLIVIA HEIGHTS AVENUE APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 37 + 07 on Olivia Heights Avenue in the Anthem Sun City Unit 16 Phase 1 subdivision.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 37 + 07 on Olivia Heights Avenue in the Anthem Sun City Unit 16 Phase 1 subdivision. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-34	REVOCABLE PERMIT GOLF CART PATH MARKINGS, POINT PLEASANT DRIVE APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 4 + 04 on Point Pleasant Drive in the Anthem Sun City Unit 4 Phase 1 subdivision.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 4 + 04 on Point Pleasant Drive in the Anthem Sun City Unit 4 Phase 1 subdivision. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-35	REVOCABLE PERMIT GOLF CART PATH MARKINGS, SCOTTS VALLEY DRIVE APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 19 + 94 on Scotts Valley Drive in the Anthem Sun City Unit 4 Phase 1 subdivision.

BR005815

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 19 + 94 on Scotts Valley Drive in the Anthem Sun City Unit 4 Phase 1 subdivision. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-36	REVOCABLE PERMIT GOLF CART PATH MARKINGS, WILLIAMSPORT STREET APPLICANT: DEL WEBB COMMUNITIES, INC.
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Request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 16 + 67 on Williamsport Street in the Anthem Sun City Unit 2 subdivision.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of a painted golf cart crossing in the public right-of-way at Station 16 + 67 on Williamsport Street in the Anthem Sun City Unit 2 subdivision. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-37	REVOCABLE PERMIT TRASH RECEPTACLES ON CHAPARRAL DRIVE APPLICANT: ANDREW METZ
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Request for a revocable permit to allow the installation of two aggregate trash receptacles in the right-of-way along Chaparral Drive adjacent to the 7-Eleven store.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the request for a revocable permit to allow the installation of two aggregate trash receptacles in the right-of-way along Chaparral Drive adjacent to the 7-Eleven store. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005816

CA-38	RIGHT-OF-WAY ROW-063-01 APPLICANT: CLARK COUNTY SCHOOL DISTRICT
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Acceptance of a portion of Green Valley Parkway (formerly Maryland Parkway) adjacent to Wolff Elementary School in the Southeast Quarter of Section 35, Township 22 South, Range 61 East, M.D.M., in the Westgate Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and accept a portion of Green Valley Parkway (formerly Maryland Parkway) adjacent to Wolff Elementary School in the Southeast Quarter of Section 35, Township 22 South, Range 61 East, M.D.M., in the Westgate Planning Area, subject to the following:

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits, or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-39	RIGHT-OF-WAY ROW-064-01 APPLICANT: WPI-EASTERN/HORIZON LLC
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Acceptance of a portion of Horizon Ridge Parkway adjacent to Horizon Pointe in the Southeast Quarter of Section 25, Township 22 South, Range 61 East, M.D.M., in the Westgate Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and accept a portion of Horizon Ridge Parkway adjacent to Horizon Pointe in the Southeast Quarter of Section 25, Township 22 South, Range 61 East, M.D.M., in the Westgate Planning Area, subject to the following:

BR005817

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits, or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-40	RIGHT-OF-WAY ROW-065-01 APPLICANT: COMMERCE ASSOCIATES, LLC
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Acceptance of a Municipal Utility Easement for water purposes in Tuscany Hills in the Northeast Quarter of Section 32, Township 21 South, Range 63 East, M.D.M., in the Calico Ridge Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and accept a Municipal Utility Easement for water purposes in Tuscany Hills in the Northeast Quarter of Section 32, Township 21 South, Range 63 East, M.D.M., in the Calico Ridge Planning Area, subject to the following:

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits, or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-41	RIGHT-OF-WAY ROW-066-01 APPLICANT: RIO DEVELOPMENT COMPANY, INC.
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Acceptance of a Municipal Utility Easement for sewer purposes on the Golf Course (Parcel 4) at Seven Hills in the Northeast Quarter of Section 1, Township 23 South, Range 61 East, M.D.M., in the Westgate Planning Area.

BR005818

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and accept a Municipal Utility Easement for sewer purposes on the Golf Course (Parcel 4) at Seven Hills in the Northeast Quarter of Section 1, Township 23 South, Range 61 East, M.D.M., in the Westgate Planning Area, subject to the following:

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits, or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-42	BUSINESS LICENSE DEAN KENTRIS RV CENTER APPLICANT: DEAN S. KENTRIS
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Application for a Category B, Class I, Secondhand Dealer (Used Automobiles) business license for Dean S. Kentris, dba Dean Kentris RV Center, 6250 Mountain Vista Road, Suite I-3, Henderson, Nevada 89014.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the application for a Category B, Class I, Secondhand Dealer (Used Automobiles) business license for Dean S. Kentris, dba Dean Kentris RV Center, 6250 Mountain Vista Road, Suite I-3, Henderson, Nevada 89014, pending required department approvals and payment of fees. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-43	BUSINESS LICENSE PARADISE TEXACO APPLICANT: SOUTHWEST GAMING SERVICES, INC.
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Application for a Restricted Gaming business license for Southwest Gaming Services, Inc., dbat Paradise Texaco, 500 Conestoga Way, Henderson, Nevada 89015.

BR005819

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the application for a Restricted Gaming business license for Southwest Gaming Services, Inc., dbat Paradise Texaco, 500 Conestoga Way, Henderson, Nevada 89015, pending State Gaming approval and payment of fees. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-44	BUSINESS LICENSE TROPHY'S RESTAURANTS APPLICANT: AMERICAN CAFÉ, LIMITED PARTNERSHIP
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Application for a Supper Club business license for American Café, Limited Partnership, dba Trophy's Restaurants, 2300 Paseo Verde, Henderson, Nevada 89012.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the application for a Supper Club business license for American Café, Limited Partnership, dba Trophy's Restaurants, 2300 Paseo Verde, Henderson, Nevada 89012, pending verification of capital investment, seating ratio, Clark County Health Department approval, required department approvals, and payment of fees. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-45	BUSINESS LICENSE DRAGONRIDGE GOLF CLUB APPLICANT: DRAGONRIDGE GOLF CLUB, INC.
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Application for a Recreation Club Liquor business license for Dragonridge Golf Club, Inc., dba Dragonridge Golf Club, 552 South Stephanie Street, Henderson, Nevada 89012.

(Motion) Councilmember Cyphers moved to concur in the recommendation of staff and approve the application for a Recreation Club Liquor business license for Dragonridge Golf Club, Inc., dba Dragonridge Golf Club, 552 South Stephanie Street, Henderson, Nevada 89012, pending payment of fees. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005820

PLANNING COMMISSION RECOMMENDATIONS OF MAY 10, 2001

CA-46	ZONE CHANGE AND PLANNED UNIT DEVELOPMENT Z/PUD-74-00 HORIZON/PECOS COMMERCIAL APPLICANT: K & M PROPERTIES
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Rezone from RS-2 (Low-Density Residential) to CN-PUD (Neighborhood Commercial with Planned Unit Development Overlay) on 3.3 acres located at 2799 Horizon Ridge Parkway, in the Westgate Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of the Planning Commission and staff and approve the request to rezone from RS-2 (Low-Density Residential) to CN-PUD (Neighborhood Commercial with Planned Unit Development Overlay) on 3.3 acres located at 2799 Horizon Ridge Parkway, in the Westgate Planning Area, subject to the following:

FINDINGS OF FACT

- A. The proposal is consistent with the Comprehensive Plan.
- B. The planned unit development is necessary to address a unique situation or represents a substantial benefit to the City, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards, based upon the purposes set out in Section 19.1.4.
- C. The planned unit development complies with standards of Section 19.5.4.
- D. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
- E. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.
- F. The same development could not be accomplished through the use of other techniques, such as re-zonings, variances or administrative adjustments.

PUBLIC WORKS DEPARTMENT CONDITIONS

- 1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

BR005821

2. Applicant shall submit a utility plan and a utility analysis for Public Works' approval.
3. Applicant shall submit a drainage study for Public Works' approval.
4. Driveways shall be constructed per Clark County Area Standard Drawing Nos. 226.1 and 226.2.
5. Applicant shall comply with the Black and Veatch Water Study.
6. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements.
7. Applicant shall construct full offsites per Public Works' requirements.
8. Applicant shall comply with Standard Drawing No. 201.1 that refers to major intersections.
9. Applicant shall submit to Public Works copies of their maintenance agreements and cross-easements.
10. Applicant shall participate in the Southwest Henderson Refunding Agreement for sewer and water.

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the Uniform Fire Code is N.R.S. 477.030 and Ordinance Number 1962, as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

11. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted) and any other fire apparatus access roadway obstructions. [97UFC § 902.2.2.1, 901.7 and 902.2.4]
12. The applicant shall submit fire apparatus access road (fire lane) plans for Fire Department approval. [97UFC § 901.2.2.1 and 902.2]
13. The applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon review of the Civil Improvement Drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on-site. [97UFC § 901.2.2.2 and 903.1]
14. Projects constructed in phases shall submit a phasing plan describing fire apparatus access roads and fire hydrant locations relevant to each phase. [97UFC § 901.2.2.1 and 901.3]
15. Applicant shall provide secondary access as approved by Public Works and the Fire Department to ensure an adequate level of fire and life safety. [97UFC § 902.2.1]
16. Applicant shall provide a dual water source as approved by Public Works and the Fire Department to ensure an adequate level of fire and life safety. [97UFC § Appendix III-B]
17. The minimum turning radius of 45/52 feet outside and 21/28 feet inside shall be provided for all portions of the fire apparatus access road (fire lane). [97UFC § 902.2.2.3]

BR005822

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

18. This resolution of intent shall expire on July 7, 2002.
19. If any portion of this development for which this zoning was approved is abandoned, the zoning for that portion shall automatically revert to the underlying zoning.
20. Prior to subdividing any portion of this site, applicant shall obtain approval of a tentative map for the entire site, and additional use permits if required.
21. Applicant shall submit to the Community Development Department a floppy disk containing an Auto CAD Release 13 drawing of the site plan with building footprints, driveways, parking, fire hydrants, Fire Department connections and unit numbers prior to issuance of building permits.
22. All aboveground double-detector check equipment, Nevada Power transformers/vaults, and all other aboveground public and privately owned utility equipment and cabinets shall be clearly identified on every site plan submitted for building permit approval. All such equipment, vaults, signs and cabinets taller than 32 inches above street curb height shall maintain a 15-foot setback from the curb on all perimeter streets.
23. Approval of this application requires the applicant to comply with all Code requirements not specifically listed as a condition of approval but required by Title 19 of the Henderson Municipal Code, compliance with all plans and exhibits presented and amended as part of the final approval, and compliance with all additional items required to fulfill conditions of approval.
24. Prior to issuance of a building permit, applicant shall obtain approval of a materials and debris containment plan from the Building Official. Upon issuance of the building permit, the developer shall use and maintain throughout construction of the project a materials and debris enclosure, in accordance with the approved plan.
25. All walls visible from streets, parking lots and common areas shall be constructed of decorative materials and installed by the applicant. The use of colored, common gray or painted CMU block shall not be permitted.
26. Applicant shall submit landscaping and irrigation construction documents for Community Development staff review and approval prior to the issuance of a building permit. Landscape and irrigation construction documents shall include all required common area, parking lot and perimeter landscaping.
27. Unless approved by a phasing plan, all landscaping shall be installed with the first phase of development. All landscaping shall be maintained by the applicant or a property owner(s) association.
28. Applicant shall provide a certificate of occupancy phasing plan prior to issuance of building permits.
29. Applicant shall submit a building and numbering plan for Community Development staff approval prior to issuance of building permits.

BR005823

- 30. This approval does not endorse signage shown with this application. Signage shall be reviewed and approved separately.
- 31. Prior to issuance of a building permit, applicant shall obtain approval of a design review for specific buildings and approval of use permits, if required, for specific uses.

PARKS AND RECREATION CONDITION

- 32. Applicant shall provide a bicycle route in Horizon Ridge Parkway and Coronado Center Drive per the City traffic engineer, with all the signing and street striping as required by the traffic engineer.

WAIVER GRANTED BY THIS APPROVAL

- a. Reduce the minimum size for a planned unit development from 10 acres to 3.3 acres.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

CA-47	ZONE CHANGE AND PLANNED UNIT DEVELOPMENT Z/PUD-63-00 BUDGET CAR AND TRUCK RENTAL APPLICANT: MALCO ENTERPRISES OF NEVADA
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Rezone from Community Commercial to Community Commercial with Planned Unit Development Overlay on 2.5 acres, located south of Sunset Road and west of the new Gibson Road alignment, in the Midway Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of the Planning Commission and staff and approve the request to rezone from Community Commercial to Community Commercial with Planned Unit Development Overlay on 2.5 acres, located south of Sunset Road and west of the new Gibson Road alignment, in the Midway Planning Area, subject to the following:

FINDINGS OF FACT

- A. The proposal is consistent with the Comprehensive Plan.
- B. The planned unit development is necessary to address a unique situation or represents a substantial benefit to the City, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards, based upon the purposes set out in Section 19.1.4.

BR005824

- C. The planned unit development complies with standards of Section 19.5.4.
- D. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
- E. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.
- F. The same development could not be accomplished through the use of other techniques, such as re-zonings, variances or administrative adjustments.

PUBLIC WORKS DEPARTMENT CONDITIONS

- 1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.
- 2. Applicant shall submit a utility plan and a utility analysis for Public Works' approval.
- 3. Applicant shall submit a drainage study for Public Works' approval.
- 4. Driveways shall be constructed per Clark County Area Standard Drawing Nos. 226.1 and 226.2.
- 5. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements.
- 6. Applicant shall construct full offsites per Public Works' requirements.
- 7. Applicant shall revert and/or merge acreage of existing parcels per Public Works' approval.
- 8. Applicant shall resolve all mapping concerns per Public Works' requirements.

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the Uniform Fire Code is N.R.S. 477.030 and Ordinance Number 1962, as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

- 9. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted) and any other fire apparatus access roadway obstructions. [97UFC § 902.2.2.1, 901.7 and 902.2.4]
- 10. The applicant shall submit fire apparatus access road (fire lane) plans for Fire Department approval. [97UFC § 901.2.2.1 and 902.2]

BR005825

11. The applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon review of the Civil Improvement Drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on-site. [97UFC § 901.2.2.2 and 903.1]
12. Applicant shall provide secondary access as approved by Public Works and the Fire Department to ensure an adequate level of fire and life safety. [97UFC § 902.2.1]
13. The minimum turning radius of 52 feet outside and 28 feet inside shall be provided for all portions of the fire apparatus access road (fire lane). [97UFC § 902.2.2.3]

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

14. Applicant shall submit to the Community Development Department a floppy disk containing an Auto CAD Release 13 drawing of the site plan with building footprints, driveways, parking, fire hydrants, Fire Department connections and unit numbers prior to issuance of building permits.
15. All aboveground double-detector check equipment, Nevada Power transformers/vaults, and all other aboveground public and privately owned utility equipment and cabinets shall be clearly identified on every site plan submitted for building permit approval. All such equipment, vaults, signs and cabinets taller than 32 inches above street curb height shall maintain a 15-foot setback from the curb on all perimeter streets.
16. Approval of this application requires the applicant to comply with all Code requirements not specifically listed as a condition of approval but required by Title 19 of the Henderson Municipal Code, compliance with all plans and exhibits presented and amended as part of the final approval, and compliance with all additional items required to fulfill conditions of approval.
17. Prior to issuance of a building permit, applicant shall obtain approval of a materials and debris containment plan from the Building Official. Upon issuance of the building permit, the developer shall use and maintain throughout construction of the project a materials and debris enclosure, in accordance with the approved plan.
18. All walls visible from streets, parking lots and common areas shall be constructed of decorative materials and installed by the applicant. The use of colored, common gray or painted CMU block shall not be permitted.
19. Applicant shall submit landscaping and irrigation construction documents for Community Development staff review and approval prior to the issuance of a building permit. Landscape and irrigation construction documents shall include all required common area, parking lot and perimeter landscaping.

BR005826

20. Unless approved by a phasing plan, all landscaping shall be installed with the first phase of development. All landscaping shall be maintained by the applicant or a property owner(s) association.
21. Applicant shall provide a certificate of occupancy phasing plan prior to issuance of building permits.
22. Applicant shall submit a building and numbering plan for Community Development staff approval prior to issuance of building permits.
23. Rental vehicles shall be stored only in the areas designated on the site plan presented with this application.
24. Applicant shall comply with all conditions of approval for CPA-38-96 and SP-18-00.
25. This resolution of intent shall carry a two-year time limit from date of City Council approval.
26. Approval of this planned unit development shall be for a period of two years from the date of City Council approval.
27. If any portion of this development for which this zoning was approved is abandoned, the zoning for that portion shall automatically revert to the underlying zoning.
28. Prior to issuance of building permits, the applicant shall submit revised landscape plans to reflect the increased tree size and increased density of groundcover landscaping along "old" Gibson Road by a minimum of 50 percent as shown on the current plan.

PARKS AND RECREATION DEPARTMENT CONDITION

29. Applicant shall provide a bicycle route on Gibson Road per the City traffic engineer with all the signing and street striping as required by the traffic engineer.

WAIVERS GRANTED BY THIS APPROVAL

- a. Planned unit development size of 2.5 acres.
- b. Reduced landscape buffer along "new" Gibson Road to 15 feet back-of-sidewalk.
- c. Reduce the required 15-foot landscape buffer along the "old" Gibson Road to 5 feet back-of-sidewalk.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005827

CA-48	ZONE CHANGE AND PLANNED UNIT DEVELOPMENT ZCO-01-001133 OASIS AUTO SPA APPLICANT: DAVE FARRIS
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Rezone from CC (Community Commercial) to CC-PUD (Community Commercial with Planned Unit Development Overlay) on .7 acres generally located on Eastern Avenue northeast of Candeleria Drive, in the Westgate Planning Area.

(Motion) Councilmember Cyphers moved to concur in the recommendation of the Planning Commission and staff and approve the request to rezone from CC (Community Commercial) to CC-PUD (Community Commercial with Planned Unit Development Overlay) on .7 acres generally located on Eastern Avenue northeast of Candeleria Drive, in the Westgate Planning Area, subject to the following:

FINDINGS OF FACT

- A. The proposal is consistent with the Comprehensive Plan.
- B. The planned unit development is necessary to address a unique situation or represents a substantial benefit to the City, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards, based upon the purposes set out in Sec. 19.1.4.
- C. The planned unit development complies with standards of Sec. 19.5.4.
- D. The proposal mitigates any potential significant adverse impacts to the maximum practical extent.
- E. Sufficient public safety, transportation, and utility facilities and services are available to serve the subject property, while maintaining sufficient levels of service to existing development.
- F. The same development could not be accomplished through the use of other techniques, such as re-zonings, variances or administrative adjustments.

PUBLIC WORKS DEPARTMENT CONDITIONS

- 1. Applicant shall submit a traffic analysis to address traffic concerns and to determine the proportionate share of this development's local participation in the cost of traffic signals and/or intersection improvements.
- 2. Applicant shall submit a drainage study for Public Works' approval.
- 3. Applicant shall construct full offsites per Public Works' requirements.
- 4. Applicant shall submit a utility plan and a utility analysis for Utilities' approval.
- 5. Driveways shall be constructed per Clark County Area Standard Drawing Nos. 226.1 and 226.2.

BR005828

6. Applicant shall revert and/or merge acreage of existing parcels per Public Works' approval and provide proof of completed mapping prior to issuance of a certificate of occupancy.
7. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

FIRE DEPARTMENT CONDITIONS

The authority for enforcing the Uniform Fire Code is N.R.S. 477.030 and Ordinance Number 1962, as adopted by the City of Henderson. Fire Department approval is based upon review of the civil improvement or building drawings, not planning documents.

8. Applicant shall submit plans for review and approval prior to installing any gate, speed humps (speed bumps not permitted), and any other fire apparatus access roadway obstructions.
9. Applicant shall submit fire apparatus access road (fire lane) plans for Fire Department review and approval.
10. Applicant shall submit utility plans containing fire hydrant locations. Fire Department approval is based upon the review of the civil improvement drawings, not planning documents. Fire hydrants shall be installed and operational prior to starting construction or moving combustibles on site.
11. Applicant shall provide secondary access as approved by Public Works and the Fire Department.
12. Applicant shall provide a minimum turning radius of 52 feet outside and 28 feet inside for all portions of the fire apparatus access road (fire lane). This radius shall be shown graphically and the dimensions noted on the drawings.

COMMUNITY DEVELOPMENT DEPARTMENT CONDITIONS

13. Applicant shall submit to the Community Development Department a floppy disk containing an Auto CAD Release 13 drawing of the site plan with building footprints, driveways, parking, fire hydrants, Fire Department connections, and unit numbers prior to issuance of building permits.
14. All aboveground double-detector check equipment, Nevada Power transformers/vaults, and all other aboveground public and privately owned utility equipment and cabinets shall be clearly identified on every site plan submitted for building permit approval. All such equipment, vaults, signs, and cabinets taller than 32 inches above street curb height shall maintain a 15-foot setback from the curb on all perimeter streets.

BR005829

15. Approval of this application requires the applicant to comply with all Code requirements not specifically listed as a condition of approval but required by Title 19 of the Henderson Municipal Code, compliance with all plans and exhibits presented and amended as part of the final approval, and compliance with all additional items required to fulfill conditions of approval.
16. Prior to issuance of a building permit, applicant shall obtain approval of a materials and debris containment plan from the Building Official. Upon issuance of the building permit, the developer shall use and maintain throughout construction of the project a materials and debris enclosure in accordance with the approval plan.
17. All walls visible from streets, parking lots, and common areas shall be constructed of decorative materials and installed by the applicant. The use of colored, common gray or painted CMU block shall not be permitted.
18. Applicant shall submit landscaping and irrigation construction documents for Community Development staff review and approval prior to the issuance of a building permit. Landscape and irrigation construction documents shall include all required common area, parking lot, and perimeter landscaping.
19. Unless approved by a phasing plan, all landscaping shall be installed with the first phase of development. All landscaping shall be maintained by the applicant or property owner(s) association.
20. This approval does not endorse signage shown with this application. Signage shall be reviewed and approved separately.
21. Approval of this planned unit development shall be for a period of two years from the date of City Council approval.
22. Applicant shall coordinate building colors, textures, and materials with the adjacent Carmel Plaza development and include 50 percent sloped roofs for all buildings as required in the Serene Country Estates Neighborhood Plan. The applicant shall submit a revised materials and colors board for staff approval.
23. Business hours shall be limited to 6:00 a.m. to 11:00 p.m.

WAIVERS GRANTED BY THIS APPROVAL

- a. Allow a planned unit development on .7 acre.
- b. Reduce site landscaping to 10 percent.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005830

VII. PUBLIC HEARINGS

PH-49	PUBLIC HEARING VACATION VAC-09-01 APPLICANT: CLARK COUNTY SCHOOL DISTRICT
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Petition to vacate a portion of a 36-foot public utility easement in Section 19, Township 22 South, Range 62 East, M.D.M., in the Green Valley Ranch Planning Area.

Mary Kay Peck, Community Development Director, stated that this is the site of Bob Miller Middle School, which has been built. The easements have been relocated so these easements are no longer necessary.

Mayor Gibson opened the public hearing at 7:55 p.m., asking if there was anyone present wishing to speak for or against this item.

Lee Ferris, 901 North Green Valley Parkway, representing the applicant, concurred with staff's recommendation.

There being no one wishing to speak, the public hearing was closed immediately.

(Motion) Councilmember Hafen moved to concur in the recommendation of the Planning Commission and staff and approve the petition to vacate a portion of a 36-foot public utility easement in Section 19, Township 22 South, Range 62 East, M.D.M., in the Green Valley Ranch Planning Area, subject to the following:

PUBLIC WORKS DEPARTMENT CONDITION

1. The acceptance or approval of this item does not authorize or entitle the applicant to construct the project referred to in such application or to receive further development approvals, grading permits, or building permits. The City must first execute a written release of applicant's processing waiver and a water service commitment before applicant shall have any claim of entitlement to construct the project or to receive any grading or building permit.

The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005831

PH-50a	COMPREHENSIVE PLAN AMENDMENT CPA-01-001078 - PUBLIC HEARING
PH-50b	ZONE CHANGE AND PLANNED UNIT DEVELOPMENT ZCO-01-001079 HORIZON RIDGE/GREEN VALLEY CONDOMINIUMS APPLICANT: FREY DEVELOPMENT

- a) Amend the Land Use Policy Plan to High-Density Residential (Conventional);
- b) Rezone from RS-2 (Single-Family Residential) to RM-16 (Medium-Density Residential with Planned Unit Development Overlay); on 9.7 acres generally located west of Green Valley Parkway on the south side of Horizon Ridge Drive, in the MacDonald Ranch Planning Area.

Mary Kay Peck, Community Development Director, stated that the Planning Commission recommended denial of this project because adjacent properties to the east, west, and south are all designated Low-Density Residential. The Southwest Area Plan requires that High-Density Residential be located within 300 feet of an intersection of major arterials; however, this project is located 1,000 feet from the intersection. The character and condition of the area has not changed, and there has not been a substantial benefit to the City for these requests.

Mayor Gibson opened the public hearing at 7:58 p.m., asking if there was anyone present wishing to speak for or against this item.

Kathy Smith, VPoint Engineering, 1009 Whitney Ranch Drive, representing the applicant, explained that the justification for this application is because the site is located on Horizon Ridge Parkway, which is 100-foot east/west arterial. The sector analysis is a Conditional Level A. The site is too small, narrow, and deep to develop as a single-family project. The applicant also feels that this project adds as a transitional buffer between the existing mini-storage and the residential land use on the other side. She showed a land use map, and noted the adjoining uses. This project meets the parking requirements and has doubled the amount of the required open space. Waivers have been submitted to achieve a friendlier site plan. An exclusive right-turn lane into the project on Horizon Ridge Parkway was also required, which necessitated a waiver for the landscaping and the wall. The building separation is 27 feet window to window where 30 feet is required.

BR005832

Ms. Smith noted that at staff's request, a neighborhood meeting was held on May 8, 2001, from 5:30 p.m. to 6:30 p.m., but no one attended this meeting. There was also no citizen comment at the Planning Commission meeting. In considering providing office buildings on this site, there would be 126,000 square feet of office space, including the parking requirements. This would generate approximately 1,230 trips per day on and off Horizon Ridge Parkway. The proposed for-sale 156-condominium unit project will produce 950 trips per day.

Gary Frey, representing Frey Development, distributed pictures depicting the site as a single-family home development, standing 15 feet away from the property line of the mini-storage. The picture shows that the view from the first floor would be of a 15-to-18- to 20-foot covered parking structure with the lights. The applicant's site plan shows that the closest building would be 50 feet from the wall. Some of the mitigating circumstances include the cost of improvements, as it would not be cost effective to bring in sewer and water for 30 homes.

There being no one else wishing to speak, the public hearing was closed at 8:03 p.m.

Councilmember Clark stated that he does not think 30 homes in this area will provide the kind of volume to attract amenities. He also commented that there has been discussion regarding Anthem acquiring the surrounding land parcels. Although a storage facility is a fairly innocuous use, it is not a pleasant sight to look at over your back wall. He is supportive of this for-sale project, and feels it will provide amenities to the people who live there. Because the site is so deep, he feels it would be difficult to rent offices located in the back.

Councilmember Hafen agreed that this is a very difficult and challenging parcel to work with, and that the arguments are compelling. He expressed concern regarding setting a trend on the outside of Horizon, and that if this project is approved, other property owners will seize the opportunity to apply for higher density. He does not feel that a low-density project could be developed on this site; however, it would be beneficial to encourage the other landowners to work together and combine properties to develop a low-density project.

Mr. Frey responded that this is a speculative land deal, and has been held by the same entity since 1976. There have been discussions regarding purchasing the adjacent undeveloped properties, but nothing has come of the discussions.

Mayor Gibson stated that he understands the applicant's points to develop their project. This project is involved in the Interstate Mortgage litigation. Experience indicates that investors want all their investment and accrued interest, but by the time an issue is through bankruptcy court, investors will usually get out if they can get most of their money back.

BR005833

Mayor Gibson stated that the Tuscan Hills project involved 38 or 40 separate mortgage investors, and appeared to be a hopeless situation until someone purchased the property. He feels something similar could happen to this area, and that there will be an opportunity to aggregate properties. The south side of Horizon has beautiful vistas and ground for residential development. There is some evidence that the circumstances play to the acquirer's advantage today if time is not the enemy. He would like there to be an opportunity to discuss with the receiver the potential for acquisition. The Council needs to promote single-family development to the south side of Horizon Ridge. He suggested a cross-access easement or something that allows this property to be developed as an informally coordinated effort with adjacent property.

Councilmember Hafen commented that he is not suggesting the applicant try to purchase the property. He believes that if the applicant holds fast, it will send a message to any property owners in that area who may think their property is more valuable.

Councilmember Kirk stated that he believes the proposed project is high quality, but the Council must consider what would be best for the entire city. The Council cannot consider financial hardship when discussing an application.

Mr. Frey noted that he would accept a motion for denial without prejudice.

(Motion)

Councilmember Hafen moved to deny, without prejudice, the request to a) amend the Land Use Policy Plan to High-Density Residential (Conventional); and b) rezone from RS-2 (Single-Family Residential) to RM-16 (Medium-Density Residential with Planned Unit Development Overlay); on 9.7 acres generally located west of Green Valley Parkway on the south side of Horizon Ridge Drive, in the MacDonald Ranch Planning Area. The roll call vote favoring passage was: Those voting Aye: Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: Clark. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005834

PH-51	ACCOMPANYING RESOLUTION FOR PH-50 CPA-01-001078 HORIZON RIDGE/GREEN VALLEY CONDOMINIUMS APPLICANT: FREY DEVELOPMENT
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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND THE LAND USE POLICY PLAN OF THE CITY OF HENDERSON COMPREHENSIVE PLAN FOR THE PURPOSE OF CHANGING THE LAND USE DESIGNATION OF THAT CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF HENDERSON, NEVADA, DESCRIBED AS A PARCEL OF LAND CONTAINING 9.7 ACRES, MORE OR LESS, AND FURTHER DESCRIBED AS A PORTION OF SECTION 30, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D.M., CLARK COUNTY, NEVADA, LOCATED WEST OF GREEN VALLEY PARKWAY ON THE SOUTH SIDE OF HORIZON RIDGE PARKWAY, IN THE MACDONALD RANCH PLANNING AREA, TO HIGH-DENSITY RESIDENTIAL (CONVENTIONAL).

(Action) Moot due to the denial of PH-50.

PH-52	ACCOMPANYING RESOLUTION FOR PH-50 ZCO-01-001079 HORIZON RIDGE/GREEN VALLEY CONDOMINIUMS APPLICANT: FREY DEVELOPMENT
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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, EXPRESSING THE INTENT TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY, DESCRIBED AS A PORTION OF SECTION 30, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M. D. B. & M., CLARK COUNTY, NEVADA, LOCATED WEST OF GREEN VALLEY PARKWAY ON THE SOUTH SIDE OF HORIZON RIDGE PARKWAY ON 9.7 ACRES IN THE MACDONALD RANCH PLANNING AREA, FROM RS-2 (SINGLE-FAMILY RESIDENTIAL) TO RM-16-PUD (MEDIUM-DENSITY RESIDENTIAL WITH PLANNED UNIT DEVELOPMENT OVERLAY).

(Action) Moot due to the denial of PH-50.

BR005835

PH-53	APPEAL - AP-07-01 FOR TENTATIVE MAP - TMA-01-001080 HORIZON RIDGE/GREEN VALLEY CONDOMINIUMS APPLICANT: FREY DEVELOPMENT
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Appeal of the Planning Commission denial for a 156-unit condominium project on 9.7 acres generally located west of Green Valley Parkway on the south side of Horizon Ridge Parkway, in the MacDonald Ranch Planning Area.

See discussion under PH-50.

(Motion) Councilmember Hafen moved to deny, without prejudice, the appeal of the Planning Commission denial for a 156-unit condominium project on 9.7 acres generally located west of Green Valley Parkway on the south side of Horizon Ridge Drive, in the MacDonald Ranch Planning Area. The roll call vote favoring passage was: Those voting Aye: Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: Clark. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

PH-54	PUBLIC HEARING PREFERRED ALTERNATIVE LANDFILL CITY ATTORNEY'S OFFICE
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Receive input with regard to acceptance by the community of the preferred alternative (landfill) identified in the Remedial Alternative Study (RAS) relating to the remediation of the land owned by Basic Environmental Company slated for development of the Provenance Project located generally northeast of the intersection of Boulder Highway and Lake Mead Drive.

Doug Zimmerman, Bureau Chief, Bureau of Corrective Actions, representing the Nevada Division of Environmental Protection (NDEP), explained that the Bureau of Corrective Actions is responsible for making sure the protection of human health in the environment is achieved at sites where releases of hazardous materials have occurred. They oversee the cleanup of those sites to ensure the intended land use is achieved.

Mr. Zimmerman gave a PowerPoint presentation and described the major steps of the remediation process, where they are currently in the process, and possible future actions. He also highlighted evaluation criteria and described several alternatives for this site. (A copy of the PowerPoint presentation can be obtained in the City Clerk's office.)

BR005836

Mayor Gibson opened the public hearing at 8:52 p.m., asking if there was anyone present wishing to speak for or against this item.

There being no one wishing to speak, the public hearing was closed immediately.

Mayor Gibson stated that it is obvious that a lot of time, effort, and care has been taken in arriving at this recommendation. He summarized that this report recommends the remedial alternative study be adopted. He feels it is extremely important that the remediation activities be confined to the local area where the remediation is done. The thought of 75,000 trucks hauling this material will further complicate problems with transportation in the valley. The 4b alternative affords an opportunity to see remediation of the slit trenches, which is an important goal. Mayor Gibson is persuaded that the report is worthy of the Council's consideration, and stated that activities of the NDEP are appreciated. It is very critical that mistakes are not made regarding this kind of remediation.

In response to a question by Councilmember Clark that nothing would move forward on this site until the slit trench issue is resolved, Mr. Zimmerman clarified that the conveyor system would be part of the overall remedial action plan permit. The slit trenches will also be a component of that permit, and will all come together at the same time.

Councilmember Cyphers stated that the presentation listed a couple of estimated costs for remediation. She asked if these numbers were derived by the applicant or the NDEP, and whether the in-ground testing sources were chosen by the applicant or overseen by NDEP specifically around the slit trenches.

Mr. Zimmerman responded that the estimated costs are presented by the applicant and reviewed by the Bureau of Corrective Actions division. The applicant makes the proposal for the sources, but this division has the final approval process. The NDEP is also involved in the location of the testing areas.

Responding to a comment by Mayor Gibson that a sampling plan would have to be approved, Mr. Zimmerman said yes; both sampling in the characterization phases and in the confirmation sampling plan. Those locations and number of samples have to be approved by the division. Since the applicant is choosing residential development on the site, there is very stringent criteria the NDEP is applying to this. Data needs to be able to demonstrate that areas down to one-eighth of an acre of typical backyard size are safe for a family that will reside there for their lifetime. The NDEP defers to the USDPA standards, which are based on exposure to contaminants. The NDEP has established the range as the most conservative value, 10 to the minus 6.

BR005837

Councilmember Kirk commented that he believes there is a public benefit in cleaning this site up, and there is a better use for this property. He asked who will pay for problems if it is determined that the off-site disposal using the conveyor belt to move the material across the landfill is not big enough. He also questioned what would happen if the study is approved and the applicant runs out of money.

Mr. Zimmerman responded that a condition of the permit is that the applicant would be responsible for paying for any additional cost of expanding the landfill. The applicant has obtained a fairly unique financing option for cleaning up this property. They have a policy with AIG Insurance that essentially provides funding to BRC to complete the clean up. The policy considered the range of clean-up options for the least expensive to the most expensive. There is a safety net in terms of this insurance policy regarding the financial aspects. To alleviate the NDEP's concern, they would like this language added as a legally enforceable condition in the permit to enforce the complete and full clean up of this site through legal measures, if necessary. He noted that BRC will be the only one signing the agreement; AIG Insurance will not be signing the agreement.

Regarding the slit trenches, Councilmember Hafen said he has heard that the soil is contaminating the groundwater and that the groundwater is contaminating the soil. He asked if the remediation process will determine which is correct. Mr. Zimmerman explained that they drilled two of the wells that were put in to characterize slit trenches. This went all the way to the water table, which is in the 50- to 60-foot range. Contaminates were found from the slit trenches all the way down to groundwater. The interpretation was that the contaminants moved from the slit trenches to the groundwater system. He added that there have been many other waste disposal activities that have affected this site.

In regards to a question by Councilmember Hafen as to how effectively the NDEP can measure 2 million cubic yards of dirt placed on the new landfill site, Mr. Zimmerman said there have been hundreds of borings put in the upper and lower ponds. From samples obtained from these borings, the estimates indicate that 2 million cubic yards is fairly conservative. One of the areas that is very difficult to do these estimates in is the Timet active ponds, because only limited testing was able to be done. It is a realistic estimate with conservative values. He noted that there will be a monitoring requirement to report the volume of waste that has been excavated, transported, and disposed of in the landfill. BRC gets the primary responsibility of monitoring the volume of waste, but the NDEP will have a continual presence at the site.

BR005838

Mayor Gibson noted that it is important to reemphasize the fact that this item is a public hearing that affords the citizens and Council an opportunity to give input so that the NDEP can make decisions regarding permitting the application. The City Council is not authorizing anything, but has been involved in intensive discussions, analysis, and research. The City is not the agency that will ultimately grant the permit.

- (Action) The Mayor and Council accepted the report and recommendations by Doug Zimmerman, Bureau Chief, Bureau of Corrective Actions, representing the Nevada Department of Environmental Protection on the preferred alternative landfill. Monica Simmons, City Clerk, will convey a report and the recommendation to the Nevada Department of Environmental Protection.

VIII. CITIZEN'S CONCERNS

1. Ron Hughes, 2903 Rio Sonora Court, questioned whether the City of Henderson or the Nevada Department of Transportation (NDOT) has authority regarding the widening of St. Rose Parkway. He noted his opposition to widening St. Rose Parkway to 8 lanes due to concerns relating to noise, safety, air quality, and decline of quality of life.

Robert Murnane, Public Works Director, explained that the Master Streets and Highways Plan (MSHP) was first adopted in 1978, and St. Rose Parkway was shown as a 120-foot arterial roadway. The MSHP does not identify the relationship between existing homes and the roadway; however, the State plans indicate that the alignment leaves about 65 feet beyond the roadway. He noted that the MSHP is designed to anticipate future transportation needs. After considering the growth of Henderson, signalized intersections, and other studies in the area, it was recommended that St. Rose Parkway be increased to 8 lanes by the year 2007 to adequately handle the traffic. It has been suggested to build 8 lanes at this time rather than 6 lanes now and 2 lanes at a later date.

2. Brett Cheek, 449 Rumford, expressed concern that widening St. Rose Parkway will cause a safety hazard for students needing to cross this very busy intersection to attend Coronado High School. He also noted that the traffic flow on Eastern and the intersection between Eastern and St. Rose Parkway is extremely congested.
3. Geraldine Perry, 506 Rafkin Place, noted that she understands the need for expansion on St. Rose Parkway to 6 lanes, but is opposed to 8 lanes due to increased diesel fumes and noise. She commented that a 20-foot sound wall would completely block the view she had paid a premium for.

BR005839

4. Jodi Lambert, 453 Rumford, stated that expanding St. Rose Parkway to 4 lanes would be acceptable, but more than 4 lanes would require a sound wall. She expressed concerns relating to health, safety, increased traffic, noise pollution, and exhaust fumes.
5. Freeman Harris, 2688 Park Creek Lane, President of Southfork Homeowners' Association, voiced his concerns regarding noise, traffic, and the need for a sound wall.
6. Melisa Sandalak, 500 Armenian Place, proposed the establishment of a truck route on the existing I-15 and I-215 to move trucks away from residential areas. She feels that 4 lanes is adequate for St. Rose Parkway and that more than 4 lanes would necessitate a sound wall.
7. Kent Reynolds, 2859 Skowhegan Drive, stated that noise abatement measures will be necessary to address the expansion of St. Rose Parkway. It is his understanding that the State would pay for half of the sound walls if the residents pay the rest.
8. Carolyn Donaldson, 501 Crumpler Place, noted her opposition to widening St. Rose Parkway to 8 lanes, and feels that 6 lanes would be adequate to address the traffic. She is also opposed to a sound wall because it would block her view.

Responding to a question by Councilmember Hafen as to whether the proposed 8-lane highway is inclusive of turn lanes, Mr. Murnane clarified that turn lanes would also be added, so there could be a total expansion of 10 to 12 lanes in some areas. The State has indicated that they would be willing to expand to 6 lanes now and reserve a roadway section for 2 more lanes in the future.

Councilmember Hafen directed staff to meet with Nevada Department of Transportation (NDOT) representatives and citizens to discuss mitigation efforts regarding the sound attenuation and other concerns addressed by the residents. He noted that he feels it is important to build the expansion right the first time, and asked staff to consider an expansion of 4 through lanes with extra turn lanes.

Councilmember Cyphers concurred with Councilmember Hafen that staff should meet with NDOT and do what is best for the City and the citizens. She feels very strongly that NDOT should take responsibility regarding sound attenuation and funding.

BR005840

Councilmember Clark stated that it is important that sound attenuation issues are considered before the highway is expanded. He agreed that it would create a huge problem if the highway is under built and would create even larger problems to remedy in the future.

Mayor Gibson asked staff to determine the number of students who will be attending Coronado High School and ensure that the safety issue of students crossing St. Rose Parkway is addressed.

9. Rick Williams, 2499 Sedona; and Jacqueline Bowling, 1144 Glacier Park, expressed concern regarding a development being constructed behind their homes. The development has been built up to a level even with the top of their roofs and Mr. Williams said dirt and construction debris are blowing into his yard and pool. This new development, Encore at Anthem, of 159 homes is also feeding Encore's storm sewers into Mr. Williams' development. Mr. Williams showed a map of the houses in this area and noted that there is a 2-foot diameter storm pipe to drain rainwater. The water from that pipe currently runs down Glacier Park to Deer Season, over to Mirage Lake, down to Summit Grove, and then west in front of Lamping Elementary School. He suggested that the storm sewers should be redirected into an existing 20-foot wide wash.

Mayor Gibson directed Robert Murnane, Public Works Director, to address this drainage issue and report back to the Council and contact these residents with the City's findings. He also directed Mike Bouse, Director of Building, to address the issue regarding construction debris in Mr. Williams' yard.

Councilmember Hafen commented that Joe Damiani, Project Engineer, has looked into this issue. He asked staff to find out the completion date of the Encore at Anthem development.

IX. UNFINISHED BUSINESS

UB-55	STATUS REPORT 71ST SESSION OF THE NEVADA LEGISLATURE CITY MANAGER'S OFFICE
-------	--

Receive status report on the 71st Session of the Nevada Legislature.

(Action) This item was continued to June 19, 2001, at the request of staff.

BR005841

UB-56	MASTER STREETS AND HIGHWAYS MSH-01-000710 ALPER PROFESSIONAL CENTER APPLICANT: ELIOT ALPER
-------	---

Amend the Master Streets and Highways Plan by renaming a portion of Executive Airport Drive to Alper Center Drive, in the Westgate Planning Area.
(CONTINUED FROM MAY 15, 2001)

(Action) This item was continued indefinitely at the request of applicant.

UB-57	BILL NO. 1721 - ORDINANCE NO. 2053 Z-13-99 ANTHEM COUNTRY CLUB PARCELS 18 AND 25 - 48.98 ACRES APPLICANT: TERRAVITA HOME CONSTRUCTION COMPANY
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Mayor Gibson introduced Bill No. 1721 and City Manager Speight read the Bill by title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING ORDINANCE NO. 1972, THE ZONING MAP, TO RECLASSIFY CERTAIN REAL PROPERTY WITHIN THE CITY LIMITS, DESCRIBED AS A PORTION OF SECTION 7, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.B. & M., CLARK COUNTY, NEVADA, LOCATED AT ANTHEM COUNTRY CLUB PARCELS 18 AND 25 FROM DEVELOPMENT HOLDING DISTRICT TO RS-6-MP (LOW-DENSITY RESIDENTIAL WITH MASTER PLAN OVERLAY) DISTRICT; AND OTHER MATTERS RELATING THERETO.

(Motion) Mayor Gibson moved to adopt Ordinance No. 2053, introduced as Bill No. 1721. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

X. NEW BUSINESS

NB-58	MAYORAL APPOINTMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADVISORY COMMITTEE (PAC) CITY CLERK'S OFFICE
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Mayoral appointment to the Community Development Block Grant Program Advisory Committee to fill the expired term of Corie Craig, for the term June 2001 to June 2005.

BR005842

(Motion) Mayor Gibson moved to reappoint Corie Craig to the Community Development Block Grant Program Advisory Committee, for the term June 2001 to June 2005. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-59	WARD I APPOINTMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADVISORY COMMITTEE (PAC) CITY CLERK'S OFFICE
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Ward I appointment to the Community Development Block Grant Program Advisory Committee to fill the expired term of David Beason, for the term June 2001 to June 2003.

(Motion) Councilmember Cyphers moved to reappoint David Beason to the Community Development Block Grant Program Advisory Committee, for the term June 2001 to June 2003. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-60	WARD II APPOINTMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADVISORY COMMITTEE (PAC) CITY CLERK'S OFFICE
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Ward II appointment to the Community Development Block Grant Program Advisory Committee to fill the expired term of Barbara Gomez, for the term June 2001 to June 2003.

(Motion) Councilmember Hafen moved to reappoint Barbara Gomez to the Community Development Block Grant Program Advisory Committee, for the term June 2001 to June 2003. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005843

NB-61	WARD III APPOINTMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADVISORY COMMITTEE (PAC) CITY CLERK'S OFFICE
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Ward III appointment to the Community Development Block Grant Program Advisory Committee to fill the expired term of Jon Hoolihan, for the term June 2001 to June 2005.

(Motion) Councilmember Clark moved to reappoint Jon Hoolihan to the Community Development Block Grant Program Advisory Committee, for the term June 2001 to June 2005. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-62	WARD IV APPOINTMENT COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADVISORY COMMITTEE (PAC) CITY CLERK'S OFFICE
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Ward IV appointment to the Community Development Block Grant Program Advisory Committee to fill the expired term of Alice Martz, for the term June 2001 to June 2003.

(Motion) Councilmember Kirk moved to appoint Craig Burr to the Community Development Block Grant Program Advisory Committee to fill the expired term of Alice Martz, for the term June 2001 to June 2003. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-63	STATUS REPORT PUBLIC OUTREACH EFFORTS FOR YUCCA MOUNTAIN CITY MANAGER'S OFFICE
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Receive status report from Clark County regarding the public outreach efforts for Yucca Mountain.

NOTE: Heard immediately after PR-4.

BR005844

A PowerPoint presentation was given by Irene Navis and Jenny Sarton, whereby they encouraged residents to get involved in the public outreach efforts for Yucca Mountain and voice their concerns to their state representatives. A copy of this PowerPoint presentation can be obtained in the City Clerks office.

(Action) The Mayor and Council accepted the report from Irene Navis and Jenny Sarton, representatives of Clark County, regarding the public outreach efforts for Yucca Mountain.

NB-64	RESOLUTION NO. 2608 Z/PUD-74-00 HORIZON/PECOS COMMERCIAL APPLICANT: K & M PROPERTIES
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Mayor Gibson introduced Resolution No. 2608 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, EXPRESSING THE INTENT TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY, DESCRIBED AS A PORTION OF SECTION 36, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M. D. B. & M., CLARK COUNTY, NEVADA, LOCATED AT 2799 HORIZON RIDGE PARKWAY ON 3.3 ACRES IN THE WESTGATE PLANNING AREA, FROM RS-2 (LOW-DENSITY RESIDENTIAL) TO CN-PUD (NEIGHBORHOOD COMMERCIAL WITH PLANNED UNIT DEVELOPMENT OVERLAY).

(Motion) Councilmember Hafen moved for adoption of Resolution No. 2608 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-65	RESOLUTION NO. 2609 Z/PUD-63-00 BUDGET CAR AND TRUCK RENTAL APPLICANT: MALCO ENTERPRISES OF NEVADA
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Mayor Gibson introduced Resolution No. 2609 and City Manager Speight read the Resolution by title:

BR005845

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, EXPRESSING THE INTENT TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY, DESCRIBED AS A PORTION OF SECTION 2, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M. D. B. & M., CLARK COUNTY, NEVADA, LOCATED SOUTH OF SUNSET ROAD AND WEST OF THE NEW GIBSON ROAD ALIGNMENT ON 2.5 ACRES IN THE MIDWAY PLANNING AREA, FROM COMMUNITY COMMERCIAL TO COMMUNITY COMMERCIAL WITH PLANNED UNIT DEVELOPMENT OVERLAY.

(Motion) Councilmember Hafen moved for adoption of Resolution No. 2609 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-66	RESOLUTION NO. 2612 ZCO-01-001133 OASIS AUTO SPA APPLICANT: DAVE FARRIS
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Mayor Gibson introduced Resolution No. 2612 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, EXPRESSING THE INTENT TO REZONE CERTAIN PROPERTY WITHIN THE CITY LIMITS OF THE CITY, DESCRIBED AS A PORTION OF SECTION 24, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M. D. B. & M., CLARK COUNTY, NEVADA, LOCATED ON EASTERN AVENUE NORTHEAST OF CANDELERIA DRIVE ON .7 ACRES IN THE WESTGATE PLANNING AREA, FROM COMMUNITY COMMERCIAL TO COMMUNITY COMMERCIAL WITH PLANNED UNIT DEVELOPMENT OVERLAY.

(Motion) Councilmember Kirk moved for adoption of Resolution No. 2612 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005846

NB-67	RESOLUTION NO. 2613 POLICIES FOR PROJECTS OF REGIONAL SIGNIFICANCE SOUTHERN NEVADA REGIONAL PLANNING COALITION COMMUNITY DEVELOPMENT DEPARTMENT
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Mayor Gibson introduced Resolution No. 2613 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO RATIFY THE SOUTHERN NEVADA REGIONAL PLANNING COALITION'S POLICIES FOR PROJECTS OF REGIONAL SIGNIFICANCE.

Mary Kay Peck, Community Development Director, explained that this is the second legislative deadline that is mandated. As of July 1, 2001, the City must have a definition for projects of regional significance. This has been accepted by the Southern Nevada Regional Planning Coalition (SNRPC) and forwarded to the local governments for ratification, and will then go back to the SNRPC for approval.

Greg Dale, representing Clarion, stated that Assembly Bill 493 mandates the creation of a definition of projects of regional significance. They have worked very hard over the past couple of months to come up with a definition and a process for addressing those projects. The Council was provided with copies of the report that describe the definitions. There are two types of projects of regional significance: site specific projects and regionally significant infrastructure projects. A notice and comment process has been set up involving site specific projects when they achieve certain threshold criteria in terms of size and located within proximity to adjoining boundaries, specifically a half-mile from jurisdictional boundaries.

Mr. Dale said there are provisions for the notification, comment, and mitigation. They have tried to respect the principle of local autonomy in designing the process. The issue remains a matter of issues between the adjoining jurisdictions. There is nothing in the report that will remove the ability of the City of Henderson to make decisions about site specific projects. The report provides a mechanism for approved communication and coordination among jurisdictions.

Councilmember Kirk commented that Clarion has done a wonderful job defining what needs to be done without making it too restrictive. He appreciates all the work Clarion has done and the positive relationship that has been developed.

(Motion) Councilmember Kirk moved for adoption of Resolution No. 2613 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005847

NB-68	RESOLUTION NO. 2614 INTERLOCAL COOPERATIVE AGREEMENT WITH THE CLARK COUNTY SCHOOL DISTRICT REGARDING LUNCHES AND BREAKFASTS CITY ATTORNEY'S OFFICE/ PARKS AND RECREATION DEPARTMENT
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Mayor Gibson introduced Resolution No. 2614 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, REGARDING AN INTERLOCAL COOPERATIVE AGREEMENT WITH THE CLARK COUNTY SCHOOL DISTRICT ACTING THROUGH ITS FOOD SERVICE DEPARTMENT FOR LUNCHES AND/OR BREAKFASTS FROM THE FOOD SERVICE DEPARTMENT DURING THE 2001-2002 SCHOOL YEAR.

(Motion) Councilmember Hafen moved for adoption of Resolution No. 2614 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-69	RESOLUTION NO. 2615 RIGHTS-OF-WAY, FEE TITLE, AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE GIBSON ROAD NORTH REALIGNMENT AND SUNSET ROAD CORRIDOR PROJECTS CITY ATTORNEY'S OFFICE
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Mayor Gibson introduced Resolution No. 2615 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, A MUNICIPAL CORPORATION, STATING THE PUBLIC NEED AND NECESSITY TO OBTAIN VARIOUS RIGHTS OF WAY, FEE TITLE TO PROPERTY AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE GIBSON ROAD NORTH REALIGNMENT AND SUNSET ROAD CORRIDOR PROJECTS FROM THE OWNERS OF THE FOLLOWING IMPACTED PARCELS OF REAL PROPERTY CONSISTING OF ASSESSOR PARCEL NUMBERS: 178-02-201-001, 178-02-301-024, 178-03-210-011, 178-03-210-014, 178-03-210-017, 178-03-301-003, 178-03-601-001, 178-03-610-005, 178-03-610-006, 178-03-701-002, 178-03-701-004, 178-03-701-005, 178-03-710-014, 178-04-612-003 AND 178-04-612-004 AND OTHER MATTERS RELATED THERETO.

BR005848

(Motion) Councilmember Hafen moved for adoption of Resolution No. 2615 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-70	RESOLUTION NO. 2610 ADMINISTRATIVE AGREEMENT - LID T-13 (CORNERSTONE) CITY CLERK'S OFFICE
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Mayor Gibson introduced Resolution No. 2610 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA ACCEPTING A PETITION, APPROVING AND AUTHORIZING THE EXECUTION OF AN ADMINISTRATION AGREEMENT - LOCAL IMPROVEMENT DISTRICT NO. T-13 (CORNERSTONE) BY AND BETWEEN THE CITY OF HENDERSON, NEVADA PUBLIC IMPROVEMENT TRUST AND THE CITY AND MAKING CERTAIN OTHER FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH.

NOTE: Heard immediately following NB-63.

Shauna Hughes, City Attorney, stated that this item comes with a recommendation for approval from the Henderson Public Improvement Trust, which met this afternoon. Two consultants are present to answer questions: Greg Harrington, bond counsel; and Steve Haney, representing Stone and Youngbird, the underwriter. Approval of this item will be the first step toward the creation of a Local Improvement District for the Cornerstone project. She noted that this is slightly different from other LID's because this project involves redevelopment funding.

(Motion) Councilmember Hafen moved for adoption of Resolution No. 2610 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005849

NB-71	BILL NO. 1722 AMEND HMC CHAPTER 2.01 - SALARY RAISES FOR COUNCILMEMBERS TO INCLUDE COST OF LIVING RAISES CITY ATTORNEY'S OFFICE
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Mayor Gibson introduced Bill No. 1722 and City Manager Speight read the Bill by title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING CHAPTER 2.01 OF THE HENDERSON MUNICIPAL CODE BY CLARIFYING THAT SALARY RAISES RECEIVED BY MEMBERS OF THE COUNCIL INCLUDE COST OF LIVING RAISES.

(Motion) Councilmember Kirk moved to refer Bill No. 1722 to the Committee Meeting of June 19, 2001, for review and recommendation. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-72	BILL NO. 1723 AMEND HMC CHAPTER 2.05 - RAISE SALARIES OF MUNICIPAL COURT JUDGES CITY ATTORNEY'S OFFICE
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Mayor Gibson introduced Bill No. 1723 and City Manager Speight read the Bill by title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, AMENDING CHAPTER 2.05 OF THE HENDERSON MUNICIPAL CODE BY RAISING THE SALARIES OF MUNICIPAL COURT JUDGES.

(Motion) Councilmember Hafen moved to refer Bill No. 1723 to the Committee Meeting of June 19, 2001, for review and recommendation. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

BR005850

NB-73	BILL NO. 1724 AMEND ORDINANCE NO. 1643 LIMITED OBLIGATION REFUNDING BONDS CITY CLERK'S OFFICE
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Mayor Gibson introduced Bill No. 1724 and City Manager Speight read the Bill by title:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, DESCRIBING CERTAIN RECITALS, MAKING CERTAIN FINDINGS, AUTHORIZING CERTAIN ACTIONS, INCLUDING THE ISSUANCE OF LIMITED OBLIGATION REFUNDING BONDS OF SAID CITY, AND THE EXECUTION AND DELIVERY OF SPECIFIED AGREEMENTS, DOCUMENTS AND INSTRUMENTS, APPROVING CERTAIN MATTERS RELATING THERETO, AMENDING ORDINANCE NO. 1643 AND PROVIDING THE EFFECTIVE DATE HEREOF.

NOTE: NB-73 and NB-74 heard immediately following NB-70.

Steve Hanson, Finance Director, stated that a few years ago, the City issued Local Improvement District bonds in the Seven Hills area. At that time, the land was essentially owned by a single development. There was a risk premium attached to the interest rate the City paid on those bonds, which were issued at about 7.5 percent. Due to the construction in this area, and because many of the homeowners are acquiring certain portions of the assessment against those bonds, the risk is being spread out over a number of homeowners. Since the risk has dropped over time, by refunding these bonds and going back out in the market, the City can probably issue between 5 and 5.25 percent interest rate. The homeowners should see a 15 percent reduction in their assessment payments, or approximately \$150 to \$200 a year in savings to an average homeowner. In the district, as a whole, there be about \$6 million savings in interest expense over the life of the bonds.

Mayor Gibson commented that the Council appreciates the significant effort staff has made to watch interest rates and be able to benefit the residents who live in this area.

Councilmember Cyphers stated that this is a perfect opportunity on behalf of the citizens in Seven Hills to show that government is interested to save residents money.

BR005851

Responding to a question by Councilmember Kirk as to whether citizens could petition for a lower interest rate on their bonds, Mr. Hanson explained that it is possible for a group of informed citizens to do that; however, it is improbable because most people do not really understand the technical mechanisms of these bond issues. Finance directors must review their bond portfolio on an ongoing basis to determine an optimum time to start this procedure.

Councilmember Kirk stated that Henderson has been recognized throughout the country for our parks and the previous Public Works Director, Mark Calhoun, was given an award a couple years ago. The Finance Director receives an accounting award every year for his excellence. The Council appreciates the ability Mr. Hanson has to find this kind of savings to save people money.

Councilmember Clark agreed that this is another example of why Mr. Hanson and his staff win awards, they go above and beyond. It is amazing that Mr. Hanson has been able to accomplish so much with so little over the years. He pointed out that it is not uncommon in the City of Henderson for staff to do this kind of work and constantly look for savings and improvements.

(Motion) Councilmember Hafen moved to suspend the rules and adopt Ordinance No. 2052, introduced as Bill No. 1724, as an emergency ordinance. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

NB-74	RESOLUTION NO. 2611 REDUCE INTEREST RATE ON UNCOLLECTED INSTALLMENTS OF ASSESSMENTS - LID T-10
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Mayor Gibson introduced Resolution No. 2611 and City Manager Speight read the Resolution by title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, REDUCING THE RATE OF INTEREST ON THE UNCOLLECTED INSTALLMENTS OF ASSESSMENTS LEVIED IN CITY OF HENDERSON, NEVADA, LOCAL IMPROVEMENT DISTRICT NO. T-10 (SEVEN HILLS).

(Motion) Councilmember Kirk moved for adoption of Resolution No. 2611 as presented. The roll call vote favoring passage was: Those voting Aye: Clark, Cyphers, Gibson, Hafen, and Kirk. Those voting Nay: None. Those Abstaining: None. Those Absent: None. Mayor Gibson declared the motion carried.

XI. SET MEETING

Mayor Gibson reminded those present that a special meeting will be held on June 12, 2001, at 6:00 p.m.

The June 19, 2001, Committee meeting was set for 6:45 p.m.

XII. ADJOURNMENT

There being no further business to come before Council, Mayor Gibson, with concurrence of Council, adjourned the meeting at 10:49 p.m.

PASSED AND APPROVED THIS 19TH DAY OF JUNE, 2001

James B. Gibson
Mayor

ATTEST:

Monica M. Simmons, CMC
City Clerk

BR005853

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Appendix E
Scope of Work

APPENDIX "E"

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT

BMI Common Areas Phase 3

Scope of Work

1.0 Introduction

On April 25, 1991, the Division and Chemstar, Inc., Kerr McGee Corporation, Montrose Chemical Corporation of California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer Management Company and Titanium Metals Corporation entered into a Phase I Consent Agreement to address the first of a contemplated phased approach to the assessment and remediation of environmental conditions at or associated with the BMI Complex.

The following three phases were anticipated:

Phase I – the development of environmental conditions assessment reports detailing information regarding the BMI Complex;

Phase II – the performance of environmental investigations to fill in any data gaps identified by the Phase I reports; and

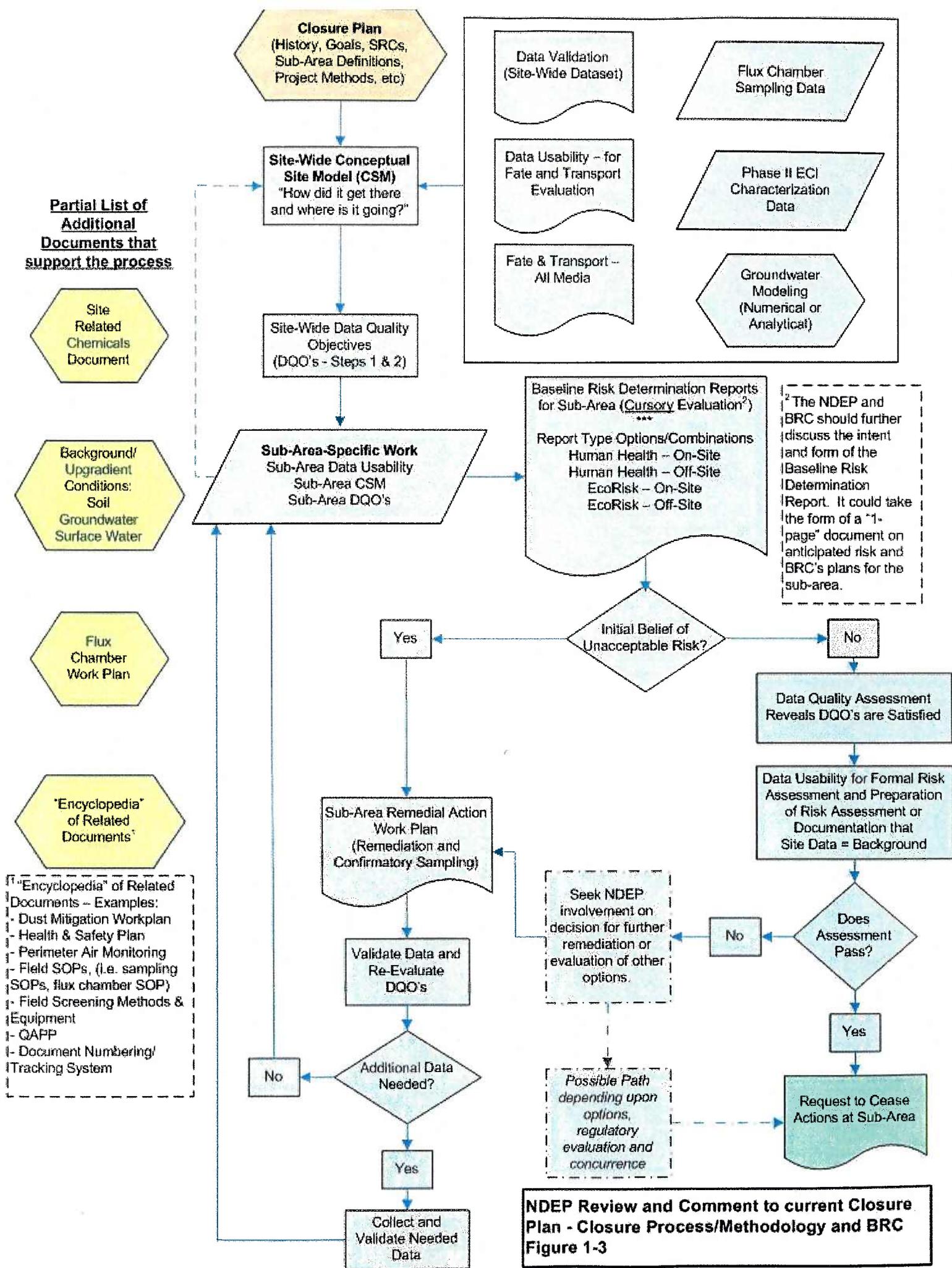
Phase III – identification and implementation of appropriate remedial measures to address environmental conditions identified in Phase I and II.

On February 23, 1996, the Division and Basic Management, Inc., the Kerr McGee Corporation, Montrose Chemical Corporation of California, Inc., Pioneer Chlor Alkali Company, Inc., Stauffer Management Company and Titanium Metals Corporation entered into a Phase II Consent Agreement to address the performance of additional environmental investigations to fill in data gaps identified in the Phase I reports. The Phase II investigation has proceeded.

The Settlement Agreement to which this Scope of Work ("SOW") is attached and incorporated therein, is the third phase and provides for the continuation of environmental contaminant characterization activities contemplated by the Phase I and Phase II Consent Agreements, and allows for the identification and/or implementation of remedial measures to proceed.

APPENDIX "E"

The attached schematic diagram (Figure 1-3) outlines the mechanics of this SOW. This document explains the diagram.



APPENDIX "E"

2.0 Objectives for the Scope of Work

The overall objective for this SOW is to provide a framework for the completion of characterization activities for all media within the BMI Common Areas, for the evaluation of the impacts of the historic uses of the Common Areas, and for the identification and implementation of remedial measures applicable to each media as may be necessary. The common objective of all parties is to seek permanent remedies for all media that address current and future risks to human health and environment.

A Remedial Alternatives Study ("RAS") was performed for the soils and a Record of Decision ("ROD") made by the Division. The media evaluated for the Soil ROD included the soils and sediments of the Upper and Lower Ponds and ditches in the BMI Common Areas. If it is determined that there are impacts to other media, not yet fully investigated, that require remedial activities not contemplated by the Soil ROD, then additional remedial measures will be developed by the Companies, evaluated by the Parties and approved by the Division prior to implementation.

2.1 Deliverables and Decision Documents

This SOW defines specific deliverables and decision documents that provide a framework and sequence for activities to be completed under the Settlement Agreement. The list of these documents is described in Section 3.0. It should be noted that this SOW cannot anticipate every scenario that may unfold during the course of investigating, characterizing and remediating the BMI Common Areas, and additional work products may be required as necessary to complete the project. Similarly, some of the work products may be combined or eliminated at NDEP's discretion as the project progresses.

Detailed Work Plans are required for submittal to the Division for review and approval prior to the start of any field or study activities.

It is expected that technical issues will be discussed and resolved in meetings prior to formal document submittal.

2.2 Definitions

Any capitalized term used in this SOW which is defined in the Settlement Agreement shall have the meaning assigned to it in the Settlement Agreement. Any other capitalized term shall have the meaning assigned to it in this SOW.

3.0 Work to Be Performed

3.1 Deliverables to be Prepared by the Companies

3.1.1 Health and Safety Plan ("HASP")

The Health and Safety Plan shall conform to applicable federal and state Occupational Safety and Health Administration requirements including, but not limited to, 29 CFR §1910.120 and §126, as well as NRS Chapter 618.

APPENDIX "E"

The Division does not have regulatory jurisdiction over the Federal Occupational Safety and Health Act (OSHA) regulations in Title 29 of the Code of Federal Regulations (29 CFR) under which this Health and Safety Plan is to be generated; nor the Nevada Occupational Safety and Health Act regulated by the Nevada Division of Industrial Relations under NRS Chapter 618.

Likewise, the Division's review will not constitute approval of the plan. However, this work is being conducted within the boundaries of a site which may be an uncontrolled hazardous waste site for which the NDEP does have jurisdiction. Therefore, the Division reserves the right to review the general content of the Health and Safety Plan and may have comments to be considered by the Companies.

This document must be completed prior to the implementation of field activities.

3.1.2 Closure Plan

The Closure Plan is a "road map" that describes the process by which the site will be closed. In addition, the Closure Plan includes the Risk Assessment Work Plan.

As shown in the process laid out on the Schematic Diagram, this document must be completed and approved prior to submittal of the Site-Wide Conceptual Site Model.

3.1.3 Response to Comments Tracking Document ("RTC")

The Division may provide the Companies comments to draft submittals. Formal response-to-comments letters are required to such comments that clearly address each comment and state where the comment has been addressed in the resubmittal. In addition, the Companies are required to develop a process to track and address the Division's historic comments concerning the BMI Common Areas beginning as of August 21, 2001 (the "Protocol for Flux Chamber Source Testing"). Through this mechanism, the NDEP is hereby incorporating the historic comments and the requirement for the Companies to respond to these comments as part of this Settlement Agreement.

This document must be completed and approved prior to proceeding with the process as detailed on the Schematic Diagram.

3.1.4 Site Related Chemicals (SRC) Document

The SRC Document is a description of all of the chemicals that are known to possibly exist at the Site. This document is currently in development between NDEP and BRC. The latest version of This document was submitted on October 25, 2005.

As shown in the process laid out on the Schematic Diagram, this document must be completed and approved prior to submittal of the Site-Wide Conceptual Site Model.

3.1.5 Assessment of Background Conditions

The assessment of background conditions may be submitted through a series of work plans and reports. Background conditions may be developed for various soils (e.g., Quaternary Alluvium and Muddy Creek Formation) as well as various water-bearing zones (e.g., alluvial aquifer, shallow Muddy Creek Foundation, intermediate Muddy Creek Formation and deep Muddy Creek Formation). This process has already been

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initiated by BRC and is expected to continue. The NDEP is currently awaiting the report assessing background conditions in the Quaternary Alluvium soils.

As shown in the process laid out on the Schematic Diagram, the report regarding conditions in the Quaternary Alluvium must be completed and approved prior to submittal of the Site-Wide Conceptual Site Model.

3.1.6 Flux Chamber Work Plan

The flux chamber work plan will describe the method by which volatile compounds will be evaluated at the site. This document has been submitted with the Field Standard Operating procedures and is under review by the NDEP. It should be noted that there might be alternate methodologies that BRC may choose to use to evaluate the vapor intrusion pathway in place of the flux chamber methodology. Any alternate methodology must be discussed, presented to, and approved by the NDEP prior to implementation.

3.1.7 Site-Wide Conceptual Site Model (CSM) for the Upper and Lower Ponds Area

The site-wide CSM is a comprehensive description of the conditions at the site. This CSM document will replace the need to generate a separate, stand-alone Phase II site characterization report. Additionally, this report may result in the generation of other workplans to address data gaps identified in the CSM. Examples of issues that must be addressed as part of this CSM are as follows:

- (a) a comprehensive list of site-related chemicals and/or surrogate indicator chemicals with proposed analytical methods (under separate cover as described above in Section 3.1.4);
- (b) an evaluation of background conditions (as described above in Section 3.1.5);
- (c) delineation of all source areas;
- (d) presentation of the three dimensional nature and extent of contamination including on-site and off-site soils contamination (as described in the Work), vadose zone contamination, and groundwater contamination;
- (e) detailed evaluation of hydrogeological conditions including: cross-section; evaluation of the interconnectivity of water-bearing zones; descriptions and illustrations regarding the thickness of saturated zones; structure maps on top of the Muddy Creek Formation; and other descriptions and illustrations that fully describe the hydrogeological conditions regarding the site.

As shown in the process laid out on the Schematic Diagram, this document must be completed and approved prior to submittal of the finalized Site-Wide Data Quality Objectives.

3.1.8 Site-Wide Data Quality Objectives (DQOs) for the Upper and Lower Ponds Area

The site-wide DQOs will complete steps 1 and 2 of the USEPA DQO process. The NDEP and BMI are currently working cooperatively to develop a set of site-wide DQOs.

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As shown in the process laid out on the Schematic Diagram, this document must be completed and approved prior to submittal of the sub-area-specific work plans.

3.1.9 Sub-Area Specific Work for Upper and Lower Ponds Area

As requested by the NDEP, the site will be delineated into sub-areas of the site, with adequate justification for each delineation. For each sub-area a number of documents may be required depending on the circumstances of each sub-area. Examples of documents that may need to be produced include: data usability assessment; sub-area CSM' sub-area DQOs (steps 3-7 (as necessary)); baseline risk determination report; data quality assessment; remedial action work plan; implementation of remedial actions, data validation: and risk assessment (human health and ecological).

3.1.10 Encyclopedia of Supporting Documentation

This encyclopedia will contain supporting documents that pertain to all projects and sub-areas with the site. Examples include: Health and Safety Plan (as described above); Dust Mitigation Workplan; Perimeter Air Monitoring Plan; Field Standard Operating Procedures (SOPs); Field Screening

Methods and Equipment; Quality Assurance Project Plan (QAPP); the Document Numbering and Tracking System (see also Section 3.1.3); and field logs.

As shown in the process laid out on the Schematic Diagram, these supporting documents must be completed and approved prior to implementation of the sub-area-specific work.

3.1.11 Data Validation Reports

Data validation reports need to be generated for all data that are proposed to be used at the site. It is recommended that these reports be submitted on specific data sets and not on the entire database in one report.

These reports must be submitted and approved prior to using the data in any other deliverable.

3.1.12 Groundwater Modeling

It is expected that some form of groundwater modeling may need to be completed as part of the evaluation of fate and transport mechanisms on the site. The specific models and scenarios to be evaluated are currently under discussion but remain indefinite at this time. It is expected that a workplan and a report will be generated for each instance and that the models will be refined as additional data is collected.

The types of modeling to be conducted will be negotiated with the NDEP as necessary.

Note that groundwater modeling may be implemented to supplement the information in the CSM or may be implemented to satisfy data gaps identified in the CSM.

3.1.13 Soils RAS for the Upper and Lower Ponds Area

This document has been previously submitted and a remedy has been approved by the NDEP. Public notice is required of the selection of the at-grade crossing of Boulder Highway, which is a slight modification of the selected remedy.

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3.1.14 Groundwater RAS for the Upper and Lower Ponds Area

Following the completion of the characterization of the site conditions, the Companies must complete a RAS for groundwater at the Site. Note that remedial alternatives should be evaluated in appropriate feasibility studies and follow the project data quality objectives. The site characterization activities that remain should be fully integrated with the development and evaluation of alternatives in the feasibility study work.

Note that it is necessary for this document to be submitted, approved and a ROD to be issued prior to remediation at the site for groundwater.

3.1.15 Assessment of Off-Site Impacts

It is possible that wind-blown dust, over-land transport of storm water, and discharge of groundwater to the surface may represent a loading of contaminants to off-site areas. Workplans are required to assess these potential impacts, which shall however be limited to the responsibilities specifically delineated in the Settlement Agreement. A product of these workplans will be reports that provide the delineation of the extents of off-site impacts, consistent with the responsibilities specifically delineated in the Settlement Agreement. It is likely that air and groundwater modeling may be conducted as part of this evaluation.

Note that these assessments must be completed and approved prior to the development of any RAS for groundwater or other media.

3.1.16 Other Media RAS

Based on the assessments described above, a RAS for other media at the Site may be necessary. Note that remedial alternatives should be evaluated in appropriate feasibility studies and follow the project data quality objectives. The site characterization activities that remain should be fully integrated with the development and evaluation of alternatives in the feasibility study work.

3.1.17 Remedial Action Plan (RAP) Permit Application for the Corrective Action Management Unit (CAMU)

BRC must re-submit a RAP permit application to the NDEP Bureau of Waste Management for review and approval of the proposed CAMU.

3.1.18 CAMU Area Documents

There are several documents that must be submitted for the CAMU area. These documents include: a CSM and any workplans that are necessary to fill data gaps as identified in the CSM. These workplans may include: additional characterization of CAMU area media (soils, groundwater, soil gas, etc.), and modeling reports to describe the conditions associated with this area of the site. Additionally, a RAS must be completed for the CAMU area for soils and groundwater. A long term operations and maintenance manual may be required depending on the remedial alternative that is selected.

A portion of the CAMU area known as the gravel pit area will also require the submission of several documents, including: a CSM and any workplans that are

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necessary to fill data gaps as identified in the CSM. The workplans may include: additional characterization of gravel pit area media (soils, groundwater, soil gas, etc.), and modeling reports to describe the conditions associated with this area of the site. A risk assessment workplan must be generated for the gravel pit area and a risk assessment must be conducted based on an approved workplan. Additionally, a workplan must be developed and approved to describe the process by which the gravel will be mined and transported off-site.

The latest versions of the documents relating to the gravel pit area were submitted by BRC to the Division in January and April 2005. The NDEP provided comments to these documents in a letter dated June 6, 2005.

Note that this document must be submitted and approved prior to the implementation of any remedial activities identified in the Soil ROD.

3.1.19 Corrective Action Plan (CAP)

This document shall describe the methods by which BMI proposes to implement the soils ROD. This document has already been submitted to the NDEP and comments were issued on December 2, 2005.

Note that this document must be submitted and approved prior to the implementation of any remedial activities identified in the Soils ROD.

3.1.20 CAMU Construction, Operation and Maintenance

Once the RAP permit is approved; and the CAMU Area documents (as described above) and the CAP have been reviewed and approved by the NDEP, the Companies must construct the CAMU and implement the long-term operations and maintenance program as required by the RAP.

3.1.21 Implementation of Soils ROD

Once the RAP, CAP and other appropriate documents have been developed and approved; the Soils ROD must be implemented.

3.1.22 Implementation of Groundwater ROD

Once the Groundwater RAS has been developed and a ROD issued by the NDEP it is anticipated that several workplans and reports will be generated by which detail the implementation of the ROD. Once approved by the NDEP, the Groundwater ROD must be implemented.

3.1.23 Implementation of ROD's for Other Media

As necessary, the NDEP will develop ROD's for other media in response to RAS for such other media. Once developed, it is anticipated that several workplans and reports will be generated which detail the implementation of the ROD(s). Once approved, the ROD(s) must be implemented.

3.1.24 Assessment of Common Areas West of Boulder Highway

The Companies must implement a process similar to the investigation and remediation process as outlined in this SOW for the Upper and Lower Ponds Area for the Common

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Areas West of Boulder Highway (hereinafter referred to as the West Side Areas). However, it is not anticipated that intrusive investigations will be required for Items (c) and (d) below. The West Side Areas include the following features:

- (a) Ditch Systems (Northwestern Ditch, Western Ditch, portions of the Alpha Ditch, and portions of the Beta Ditch).
- (b) BMI Siphon
- (c) Trade Effluent Settling Ponds
- (d) Historic BMI Landfill
- (e) Parcel 9 South

3.2 Decision Documents to be Prepared by the Division

3.2.1 Remedial Action Plan Permit

3.2.2 Groundwater ROD

3.2.3 ROD's for Other Media (as necessary)

4.0 Schedule for SOW Implementation and Deliverables

The Implementation of the SOW shall begin upon the Effective Date of the Settlement Agreement. Pursuant to the Settlement Agreement, the Companies agree to perform the work included in this SOW by the dates specified herein, within the Settlement Agreement or within an approved Deliverable. All dates calculated herein shall be in accordance with the Computation of Time section of the Settlement Agreement.