

**Memorandum of Agreement
Between
Montana Department of Environmental Quality
And
Lincoln County Asbestos Resource Program
for the
Libby Asbestos National Priorities List site**

This Memorandum of Agreement (“Agreement” or “MOA”) is made and entered into by Lincoln County, acting by and through the Lincoln County Asbestos Resource Program (ARP), and the Montana Department of Environmental Quality (DEQ), collectively “the Parties.” This Agreement sets forth the terms, conditions, understandings, and procedures under which DEQ, through cooperative agreements with the Environmental Protection Agency (EPA), will reimburse Lincoln County Asbestos Resource Program and/or Lincoln County, for costs incurred in ARP’s continued role as the local presence responsible for implementing protective measures and selected institutional controls (IC) during operation and maintenance (O&M) of Libby Asbestos National Priorities List site Operable Units (OU) 4 and 7 and additional OUs (1, 2, 5, and 8), having entered into O&M previously, as applicable, pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and related regulations.

I. Recitals

1. The State of Montana, acting by and through DEQ, in consultation and cooperation with EPA pursuant to a Libby Asbestos O&M Cooperative Agreement (CA) dated March 15, 2017, and any modifications, amendments, and future awards of subsequent O&M CAs, provides management assistance to EPA for the Libby Asbestos Superfund site, including acting as the lead agency within the State of Montana for O&M Superfund-related issues within OU 4 and 7.
2. DEQ is responsible for implementing O&M activities, which will include contracted services.
3. DEQ will contract, in compliance with applicable federal and state procurement regulations, the performance of the activities as necessary to accomplish the objectives of the O&M Plan and Institutional Control Implementation and Assurance Plan (ICIAP). DEQ shall comply with and/or require contractors and subcontractors to comply with the applicable EPA general terms and conditions reflected in the official CA award document and any prescribed additional assurances and certifications made as part of the award and terms, conditions or restrictions. Upon receipt of the official CA award document, Lincoln County will have the opportunity to review the general terms and conditions and notify DEQ if any issues may prevent Lincoln County from abiding by them.
4. All usages of ARP in this MOA refer to all ARP staff and additional Lincoln County personnel that participate in CERCLA O&M actions and support actions at the Libby Asbestos site.

5. The ARP is the existing program staffed in Lincoln County, Montana, which was funded by EPA through September 30, 2020. The ARP works under the direction of Lincoln County and reports to Lincoln County and the City-County Board of Health for Lincoln County (BOH). Through this MOA, ARP will remain as the local presence responsible for implementing protective measures and selected ICs as outlined herein during O&M. ARP is a program that educates the public regarding the remaining risks of Libby Amphibole Asbestos (LAA) exposure, provides resources to manage the associated risks, and implements initiatives to reduce or prevent the risk of LAA exposure. ARP will continue to provide information, as needed, to assist property owners and their contractors in understanding the appropriate best management practices (BMP) and ICs that apply to their properties. On a case by case basis, Lincoln County may contract with the abatement contractors directly per the property owner's request and with prior DEQ approval. Further, Lincoln County is providing access to the Lincoln County Landfill including the Asbestos cell for use in disposal of LAA materials.
6. The transition date for O&M of OUs 4 and 7 will be July 1, 2020.

II. Terms, Conditions, and Understandings

NOW, THEREFORE, for and in consideration of the mutual benefits and agreements herein, the Parties agree as follows:

- A. Term of Agreement. The initial period covered by this Agreement shall be from July 1, 2020 until May 31, 2022, provided that (a) the EPA funding is awarded and available and (b) all work is being properly completed by all parties. The Effective date of July 1, 2020 will be contingent on the Libby Asbestos O&M CA award date for EPA funding to continue ARP through this Agreement and will be the later of these two dates (July 1, 2020 or the award date). ARP may submit requests for reimbursement for allowable costs incurred from July 1, 2020 until May 31, 2022, subject to the authorization of such costs by DEQ as provided below. This Agreement may only be extended if the Libby Asbestos O&M CA or future awards of subsequent O&M CAs funding ARP between DEQ and EPA are awarded and extended. This Agreement will automatically expire upon the end of the Libby Asbestos O&M CA or future awards of subsequent O&M CAs. This Agreement may otherwise be terminated by either party after delivery of a 30 days calendar notice of termination to the other party.
- B. Amendment: This Agreement may be amended when such an amendment is agreed to in writing by both Parties. The amendment will be effective on the date of execution by both Parties, unless otherwise specified therein.
- C. Renewal of the Agreement: A request to renew this Agreement may be submitted by either Party at least 120 calendar days prior to the expiration of this Agreement. The request must include a two-year budget and updated scope of work. A renewal of this Agreement may be accomplished through an amendment executed by both Parties, as appropriate.
- D. Termination. This Agreement shall terminate as outlined in Section II.A above, or prior, at the option of the non-materially breaching Party, if there is a material breach of the terms of this

Agreement that are not corrected after giving the other Party 30 days written notice and the opportunity to cure; or as otherwise agreed by the Parties in writing.

- E. Funding and Budget. ARP will provide the DEQ project liaison and fiscal liaison with a proposed scope of work and detailed budget broken out for each task and cost item (using standard state accounting and acquisition practices for guidance including, but not limited to, employee and allocation of office space rates) for any work proposed under this Agreement. ARP personnel will not proceed with any proposed activities or incur any costs for proposed activities until DEQ provides written approval of the specific scope of work and budget.

- F. Reimbursement for ARP Costs: The budget for costs incurred during the term of this Agreement is a maximum of \$600,000, and that amount constitutes the ceiling amount for reimbursements to ARP allowed under this Agreement. The ceiling amount shall be contingent on the final award amount to DEQ for ARP in the Libby Asbestos O&M CA and any additional funding conditions issued within the award including incremental funding allocations. Due to ARP's submitted budget, the ceiling will not be sufficient for ARP's anticipated efforts under this Agreement during the term of this Agreement, and the parties agree to revisit future funding needs as appropriate. Such future funding needs and the ceiling amount may be increased through CA amendments and future awards of subsequent O&M CAs; any such amendment and future award would require an Amendment to this Agreement as outlined in Section II.B above. This ceiling amount does not apply to any DEQ approved case by case reimbursements to ARP for costs specific to homeowner abatement contracts.

- G. ARP and County Responsibilities: ARP agrees to continue to be the local presence responsible for implementing protective measures and selected ICs during O&M pursuant to this Agreement and further outlined by the ARP-submitted scope of work and budget, which has been approved by DEQ and incorporated herein, in good faith. The O&M tasks anticipated to be performed by ARP and the County include, but are not limited to, the following:
 - 1. Data Entry into DEQ's Libby Instance of Response Manager (RM)
 - i. Document communications with property owners and/or contractors, address updates, Montana811, ARP Hotline calls, and Property Evaluation Notification (PEN) requests, site assessments, analytical data, SOWs, reimbursement calculations and approvals, oversight activities, completion sketches, etc.;
 - 2. PEN/Montana811 Requests or ARP Hotline calls
 - i. Respond to PEN/Montana811 requests and/or ARP Hotline calls;
 - ii. Track each disturbance request;
 - iii. Evaluate the existing data and information related to LAA at and adjacent to the property;
 - iv. Conduct a site assessment if deemed necessary to determine the potential for LAA to be encountered and provide relevant information to the homeowner and/or contractor;
 - 3. Property Status Requests
 - i. Conduct database queries for property status requests;
 - 4. Site Assessments

- i. Perform site assessments to determine if investigation and/or abatement work is necessary;
- 5. SOW Development
 - i. Prepare investigation and abatement SOWs for third-parties;
 - ii. Maintain and Update list of Abatement Contractors
 - iii. Assist DEQ and third-parties with the contracting and reimbursement process;
- 6. Project Oversight
 - i. Provide oversight of third-party sampling investigation and/or abatement work;
 - ii. Review analytical results;
 - iii. Conduct final inspection and document results, complete completion sketches, and photo log;
 - iv. Conduct confirmation sampling, as approved by DEQ;
 - v. Provide for Lincoln County Solid Waste Class IV Asbestos Cell and LAA-waste disposal information, budget estimates, quantity verification, and coordination for tipping fee reimbursements as necessary;
- 7. Education and Outreach
 - i. Provide information and updates through the website, social media, newspapers, promotional materials and mailings;
 - ii. Provide brochures that contain BMP and information about reducing exposures;
 - iii. Educate the public through training and outreach events;
 - iv. Provide general contractor and sampling training;
- 8. Supplies, Equipment and Landfill Disposal
 - i. Procure, maintain, and provide equipment and supplies (e.g., Tyvek suits, polyurethane sheeting, asbestos disposal bags) for use by local residents/ARP for minor property disturbances to be addressed by the property owner;
 - ii. Track and maintain the EPA-provided backfill materials;
 - iii. Provide for disposal of materials at County Landfill, including reimbursement for fees.
- 9. Annual Inspections
 - i. Support DEQ-led annual Sitewide O&M inspections;
 - ii. Provide property information for a selected number of properties;
 - iii. Participate in field reviews and conduct property owner interviews;
 - iv. Assist with evaluation of ICs;
- 10. Abatement Contracting Options:
 - i. Present the following three options to homeowners for abatement contracting:
 - 1. ARP contracts for the abatement work directly, per State procurement rules, and seeks reimbursement from DEQ;
 - 2. Homeowner contracts for the abatement work and seeks reimbursement from DEQ with the assistance of ARP if necessary; or
 - 3. Homeowner completes the abatement work and seeks reimbursement from DEQ for the costs of materials only unless sufficient facts support reimbursement of labor.
 - ii. Work with property owners, developers, and contactors to develop SOWs and provide associated reimbursement eligibility determinations;

- iii. Provide recommendations to DEQ for approval and disbursement of funds for eligible activities based on verified work;
 - iv. Re-evaluate the abatement contract process in 8-12 months in order to be sure that it is effective once it has been up and running for a period of time and be prepared to refine as necessary.
11. Additional and Unforeseen Costs: Prior to ARP accruing any costs associated with additional and unforeseen circumstances resulting from their responsibilities, ARP will contact the DEQ and request an amendment to this Agreement. The parties agree to work in good faith in addressing any such addition and unforeseen costs. Any amendment will describe the proposed work and itemize the costs in either a Unit Price or Lump Sum. Payment will be as outlined in this Agreement. Lincoln County is not obligated to perform any services that result in costs exceeding the contractual maximum limit of compensation under this agreement or any future amendments.

H. DEQ agrees to:

1. Provide funding through reimbursements to ARP for their assistance with O&M responsibilities further outlined in the DEQ approved scope of work under this MOA not to exceed \$600,000, subject to the conditions and amendments thereto outlined in Section II.F., and will advise ARP with sufficient advance notice when approaching this cost ceiling to allow ARP to request an amendment, as outlined above in Section II.B, and allow DEQ to seek EPA approvals necessary to amend the budget cap if amendment is necessary. Due to ARP's submitted budget, the ceiling will not be sufficient for ARP's anticipated efforts under this Agreement during the term of this Agreement, and the parties agree to revisit future funding needs as appropriate and in good faith.

I. ARP and DEQ Liaisons: For the purposes of this Agreement,

1. ARP's designee is: Virginia P. Kocieda, 503 California Avenue, Libby, MT 59923, 406-283-2446, or her designee or successor.
2. DEQ's designee is Jason Rappe, 1225 Cedar Street, Helena, MT, 59620-0901, 406-444-6802, or his designee or successor.

J. Accounting and Reimbursement. Upon receipt of a properly documented billing statement submitted by ARP, DEQ shall review the billing statement (together with supporting documentation) and either approve it or provide ARP with notification of any amount in dispute. DEQ and ARP shall discuss any questions or issues regarding the submitted billing statement including, but not limited to, whether the charges are reasonable and appropriate under the terms of this Agreement, and whether additional documentation, clarifications, or revisions to the invoices are required prior to approval. DEQ will provide payment to ARP within thirty (30) calendar days after approval of appropriately invoiced actual costs.

K. Payment Process. DEQ will reimburse ARP according to the following process:

1. ARP will account for its authorized costs under this Agreement and will submit a detailed billing statement to the DEQ fiscal liaison for services performed under this Agreement

every month for which costs are incurred. The billing statement will include a performance status report of work completed and identify actual costs incurred by ARP for the billing period. The performance status report will be included in DEQ's reporting requirements for the Libby O&M CA. Billing statements must supply all information necessary to meet normal requirements State of Montana accounting and auditing requirements, and may require additional information according to EPA CA requirements. DEQ will have the right at any time to request additional documentation concerning ARP costs. DEQ will reimburse ARP for the allowable costs incurred during the billing period within 30 days.

2. The billing statements must itemize costs in sufficient detail to allow evaluation by DEQ of the reasonableness of the work and the charges, provide receipts and other substantiation as applicable, and including dates and time of travel. Itemized information shall include, without limitation:
 - i. The Agreement number, invoice number, site name, the billing period, and a general description of the services provided during the period.
 - ii. Names of all personnel who performed O&M activities during the billing period, the number of hours worked and the applicable personnel category and hourly rates for each person, the total paid each person, and the total paid all personnel per activity.
 - iii. All salary and overhead calculations and totals.
 - iv. An itemized description of all travel costs (using state and federal rates), indicating trip destinations, number of trips, cost of travel, meals, lodging, and total cost. Transportation costs must correspond with personnel services charged with the period. Receipts for lodging, airfare, baggage fees, and ground transportation must be provided.
 - v. An itemized description of all other direct expenses, including a description of any equipment or service purchased, and itemization of supplies purchased when their aggregate cost for the billing period exceeds \$100. Copies of receipts for all direct expenses must be provided.
 - vi. Copies of chain of custody forms for samples sent to approved labs.
 - vii. The signed certificate of ARP's authorized and responsible accounting or financial manager in effect stating:

"This billing statement is approved for (amount). I certify that it is mathematically and clerically correct, and that it is a legal, proper, and necessary charge in accordance with the Interagency Agreement."

3. DEQ shall have the right at any time to request additional documentation concerning ARP costs, including any records required to be kept by ARP pursuant to State and Federal law, additional information according to EPA grant requirements, or Section II.O (Records Maintenance and Retention) below. DEQ may dispute all or a portion of any billing statement, and may withhold the disputed portion of any payment until the dispute is resolved to the satisfaction of both parties. DEQ will notify ARP in writing within thirty (30) days of any disputed amounts in ARP's billing statements.

If ARP fails to comply with the recordkeeping requirements of this Agreement, all payments may be withheld until verification of compliance is acceptable to DEQ, or until a final settlement following termination of this Agreement.

4. DEQ may disapprove any request for payment or a portion of the request based upon a claim of:
 - i. Failure to comply with material provisions of this Agreement or accompanying documents;
 - ii. Unsatisfactory job progress;
 - iii. Disputed work;
 - iv. The existence of reasonable evidence that the work cannot be completed for the remaining balance of the Agreement and the work was begun after notification by DEQ in writing that remaining funding was low or unavailable for the work.; or
 - v. Any other reasonable and legitimate claim provided by this Agreement, statute, or common law.
 5. As provided herein, DEQ will reimburse ARP for the allowable costs incurred during the billing period within the time specified by law.
- L. ARP Personnel: Upon DEQ request, ARP will furnish DEQ with a resume or an experience statement with pertinent information as to education, experience with similar projects or programs, and other evidence as to qualifications for each employee that will work directly on or for the benefit of this Agreement. ARP will not assign any employee to any O&M activity under this Agreement, either initially or as a replacement, against whom DEQ may have a reasonable objection.
- M. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest.
- N. Resolution of Disagreements. If any dispute arises between DEQ and ARP over matters covered by this Agreement that cannot be resolved by the memorandum of understanding designees/staff attorney level, the matter shall be referred to the DEQ Director or designee and the Lincoln County Commissioners for an informal dispute resolution process. To initiate this informal process, each party shall identify and describe the disputed issues in writing and deliver this explanation to the other party. In the event that the dispute cannot be resolved within a reasonable time after discussions based upon the exchange of information, the matter will be decided in the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark, with Parties responsible for their own costs and attorneys' fees.
- O. Record Maintenance and Retention: ARP shall maintain all documentation in support of all of its costs incurred under this Agreement. Records required to be kept as part of such documentation include, without limitation, employee daily logs, employee timesheets, employee travel authorizations, and receipts for all direct expenses, procurement of materials, equipment, supplies, and services, travel, rental vehicles, and lodging. ARP shall provide copies of the documentation to DEQ within fifteen (15) calendar days of DEQ's request.

Records described in this Paragraph shall be maintained by ARP for ten (10) years or longer in accordance with 40 CFR § 35.6705.

P. Effective Date. As outlined in Section II.A above, this Agreement shall be effective July 1, 2020 or the award date, whichever is later.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set out below:

STATE OF MONTANA DEPARTMENT
OF ENVIRONMENTAL QUALITY

Date

BY: 
VICKI J. WOODROW, Contracts Officer
Financial Services Bureau
Centralized Services Division
P.O. Box 200901
Helena, MT 59620-0901

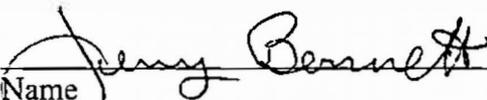
Approved for legal content by:


Jessica Wilkerson
DEQ Legal Counsel

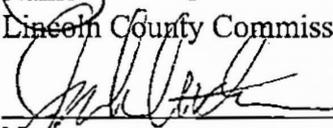
11/23/2020
Date

LINCOLN COUNTY MONTANA

10/21/20
Date

BY: 
Name
Lincoln County Commissioner

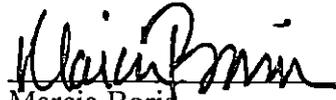
10/21/20
Date

BY: 
Name
Lincoln County Commissioner

10/23/2020
Date

BY: 
Name
Lincoln County Commissioner

Approved for legal content by:



Marcia Boris
County Attorney, Lincoln County

10/22/20

Date