

585299

NO. \_\_\_\_\_  
 AT THE REQUEST OF  
CITY OF MOSCOW  
 DATE & HOUR  
5.4.17 12:46  
 HENRIANNE K. WESTBERG  
 LATAH COUNTY RECORDER  
 FEE \$ 0 BY: [Signature]

Recording Requested By and  
 When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the matter of: ) COVENANT NOT TO SUE  
 217 West Sixth Street, Moscow, ) EXECUTED PURSUANT TO  
 Idaho, property ) IDAHO CODE § 39-7207 AND  
 Voluntary Cleanup Program ) IDAPA 58.01.18.25

This Covenant Not to Sue is executed by the Moscow Urban Renewal Agency, a public body, corporate and politic (hereinafter "MURA"), organized pursuant to the Idaho Urban Renewal Law of 1965, Title 50, Chapter 20, Idaho Code and the Idaho Department of Environmental Quality (Department) pursuant to the Idaho Land Remediation Act, Idaho Code § 39-7207, and the Idaho Land Remediation Rules, IDAPA 58.01.18.25 as the result of the successful completion of work pursuant to a Voluntary Remediation Agreement between MURA and the Department. This Covenant Not to Sue is subject to the following descriptions, terms and conditions:

1. On May 22, 2014, MURA and the Department entered into a Voluntary Remediation Agreement (Agreement) pursuant to the Idaho Land Remediation Act, Idaho Code § 39-7201, et seq., and the Idaho Land Remediation Rules, IDAPA 58.01.18. The purpose of the Agreement was to remediate the property located at 217 West Sixth Street, Moscow, County of Latah, State of Idaho (Site).
2. In accordance with the Agreement, MURA prepared and successfully implemented a Department-approved Voluntary Remediation Work Plan (Work Plan) for the Site addressing areas with elevated concentrations of nitrate and ammonia in site soil and shallow groundwater.
3. On March 30, 2017, pursuant to Idaho Code § 39-7207(1), the Department issued a Certificate of Completion to MURA. Then, on April 12, 2017, MURA recorded a copy of the Certificate of Completion with the deed for the site on which the remediation took place in accordance with Idaho Code § 39-7207(2) (instrument number 584888). Pursuant to Idaho Code § 39-7207(4) and IDAPA 58.01.18.25, and within the time period allowed by law, MURA has requested to enter into negotiations with the Department for a Covenant Not to Sue.
4. Idaho Code § 39-7207(4) and IDAPA 59.01.18.025 provide that once the Department issues a Certificate of Completion, the Department, upon request, shall negotiate and provide a Covenant Not to Sue for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully

implemented. Moreover, Idaho Code § 39-7207(4) provides that the Covenant Not to Sue shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release.

5. In accordance with the above-referenced Idaho laws and rules, the Department hereby agrees to provide MURA a Covenant Not to Sue at the Site for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of any and all chemicals that are the subject of the Work Plan. This Covenant Not to Sue is subject to all the condition(s) listed below. This Covenant Not to Sue, with the following condition(s), shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release.
  - a. Pursuant to Idaho Code § 39-7207(5), this Covenant Not to Sue shall not apply to claims for a condition or the extent of a condition that was: (i) present on the site involved in an approved and implemented voluntary remediation work plan; and (ii) not known to the Department at the time the Department issued the Certificate of Completion to the MURA.
  - b. Pursuant to Idaho Code § 39-7207(6), this Covenant Not to Sue shall not release a person from liability to the federal government for claims based on federal law.
  - c. Pursuant to Idaho Code § 39-7208 and IDAPA 58.01.18.025(2), the Department may rescind this Covenant Not to Sue if (i) the person implementing the work plan fails substantially to comply with the terms and conditions of the Agreement or this Covenant Not to Sue or (ii) a hazardous substance or petroleum release becomes an imminent and substantial threat to human health or the environment. If the Department rescinds this Covenant Not to Sue, it (i) may initiate administrative or judicial action as provided in Idaho Code § 39-7208 and (ii) must notify MURA of rescission of this Covenant Not to Sue for purposes of determining property exemptions provided under Idaho Code § 63-602BB.
  - d. This Covenant Not to Sue is also conditioned upon maintaining the Environmental Covenant recorded on March 21, 2017, at the Latah County Recorder's office and marked as instrument number 584888. As part of the work plan approved and incorporated into the Voluntary Remediation Agreement, the Environmental Covenant was executed by MURA and the Department pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015 which set forth activity and use limitations on the Property. This Covenant will apply to any future owner of any portion of the Property so long as such owner maintains the Environmental Covenant applicable to the particular portion of the Property it owns and complies with all other applicable terms and conditions of this Covenant Not to Sue.
6. The effective date of this instrument shall be the date the fully executed Covenant Not to Sue is recorded at the county recorder's office.



Signature and Acknowledgments

Accepted:

MURA

Signature: [Signature]

Printed Name: Steve McGeehan

Title: Chair

Date: 5-4-17

State of Idaho )  
County of Latah )ss.



On this 4th day of May, in the year 2017, before me, a Notary Public in and for said County and State, personally appeared Steve McGeehan (Insert name of officer of corporation), known or identified to me to be the Chair (Insert title) of the corporation that executed the instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: Annie Peterson  
Residing at: Moscow  
Commission Expires: 8-27-18

**CERTIFIED COPY**



I do hereby certify that the foregoing is a true copy of the original document on record in this office. Dated this 15th day of May 20 17  
Henrienne K. Westberg  
Exofficio Auditor & Recorder  
Latah County, Idaho

[Signature] Deputy