

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY MODEL GOOD SAMARITAN  
SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS AT ORPHAN  
MINE SITES<sup>1</sup>**

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<sup>1</sup> This model and any internal procedures adopted for its implementation and use are intended as guidance for employees of the U.S. Environmental Protection Agency and the Department of Justice. They do not constitute rulemaking by the Agency and may not be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. In applying this model to Good Samaritan cleanups, Agency and Department of Justice employees are strongly encouraged to consult the “Interim Guiding Principles for Good Samaritan Projects at Orphan Mine Sites” (June 2007). The Agency may take action at variance with this model or its internal implementing procedures.

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Good Samaritan Settlement Agreement and Order on Consent for Removal Action (the "Settlement Agreement") is entered into voluntarily by the EPA and [Name of Good Samaritan] (hereinafter "Good Samaritan"). This Settlement Agreement provides for the performance of a removal action by Good Samaritan in connection with the Property located in [Location of Site]. This Settlement Agreement requires Good Samaritan to conduct the removal action described herein to abate the actual or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606, 9607 and 9622, as amended (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the undersigned Regional official, and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. EPA has notified the State of [Name of State] of this action.

4. Good Samaritan's participation in this Settlement Agreement shall not constitute or be construed as an admission of liability, nor of EPA's findings or determinations contained in this Settlement Agreement, except in a proceeding to enforce the terms of this Settlement Agreement. Good Samaritan agrees to comply with and be bound by the terms of this Settlement Agreement. Good Samaritan further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

5. EPA and Good Samaritan agree that Good Samaritan's performance of the Work at the Property in accordance with this Settlement Agreement will constitute "rendering care or advice" at the Site in accordance with Section 107(d)(1) of CERCLA, 42 U.S.C § 9607(d)(1). In view of the nature and extent of the Work to be performed, however, and the risk of claims being asserted against Good Samaritan for costs or damages notwithstanding Section 107(d)(1) as a consequence of Good Samaritan's activities at the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVIII (United States Reservation of Rights), any potential liability of Good Samaritan under CERCLA for the Existing Contamination at the Site.

6. The resolution of this potential liability, in exchange for Good Samaritan's performance of the Work, is in the public interest.

## **II. PARTIES BOUND**

7. This Settlement Agreement applies to and is binding upon EPA and upon Good Samaritan. Good Samaritan shall ensure that its contractor, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Good Samaritan shall be responsible for any noncompliance with this Settlement Agreement.

## **III. DEFINITIONS**

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

a. "Effective Date" means the date upon which EPA issues written notice to the Good Samaritan that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

b. "Existing Contamination" means any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date; any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

c. "Orphan Mine Site" means an abandoned, inactive hardrock mine or primary metal processing mill site for which, despite reasonable and diligent efforts, no financially viable party (except, for purposes of this Settlement Agreement, the owner of the site who did not cause, contribute to, or exacerbate the Existing Contamination) is potentially liable to perform or pay for, or has been required to perform or pay for, environmental cleanup actions under applicable law.

d. "Parties" means EPA and Good Samaritan.

e. "Property" means that portion of the Site, encompassing approximately \_\_\_ acres, which is described in Exhibit \_\_\_ of this Settlement Agreement.

f. "Site" means the Site encompassing approximately \_\_\_ acres, located at [address or description of location] in [name of city, county, and State], and depicted generally on the map attached as Exhibit \_\_\_. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located [provide a more specific definition of the Site where possible].

g. "Work" means all activities Good Samaritan is required to perform under this Settlement Agreement, except those required by Section X (Record Retention, Documentation, And Availability of Information).

#### **IV. FINDINGS OF FACT**

9. Good Samaritan is \_\_\_\_\_ [insert relevant descriptive information – e.g., non-profit, corporation, etc.] in the State of [X] and is voluntarily agreeing, pursuant to this Settlement Agreement, to perform a removal action at an Orphan Mine Site.

10. Pursuant to Section XXVI, Good Samaritan certifies that it is not an owner or operator, generator, or transporter, or otherwise a liable party for this Site pursuant to CERCLA §§ 106 and 107. Good Samaritan also certifies that it is not a past or current owner of the Property, and that it does not intend to acquire ownership of the Property.

11. The [XYZ watershed] has been adversely affected by historic mining activity. Mine tailings from inactive or abandoned milling operations and waste rock from the development of the mines are located along and in close proximity to [XYZ River].

12. [XYZ River] is an [ephemeral or perennial] tributary of [X] located near [describe location]. [Add additional description as appropriate].

13. The Site is located near [X] and is an Orphan Mine Site. Mine waste rock and/or tailings at the Site are being eroded into [X]. These waste rock piles and/or tailings contribute metals such as [identify constituents, e.g. zinc, copper, cadmium, manganese, lead, and arsenic] to the river, especially during storms and periods of melting snow. These metals have a harmful effect on water quality and pose risks to human health or the environment.

[Note: Additional findings related to the property owner, access for EPA, environmental benefits of cleanup and value of the Work may be included].

14. The actual or threatened release of one or more hazardous substances from the facility may present an imminent and substantial endangerment to public health or welfare or the environment.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

15. Based on the Findings of Fact set forth above [and the Administrative Record] supporting this removal action, EPA has determined that:

- a. The [XYZ Site] is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. [Zinc, copper, cadmium, manganese, lead and arsenic] are "hazardous substances, pollutants or contaminants" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Good Samaritan is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance, pollutant or contaminant from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- e. The Work required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment, and if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.
- f. [If Good Samaritan will itself perform the Work, insert the following: Good Samaritan has submitted information to EPA demonstrating its qualifications to perform the Work.]
- g. [Note: Include the following when supported by the Action Memorandum/Administrative Record for the Site, to support the provisions of Paragraph 31 relating to water quality standards under the Clean Water Act.] As set forth in the Administrative Record, considering the exigencies of the situation and the limited scope of the removal action to be conducted, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable as provided in 40 CFR § 300.415(j). Given that attainment of water quality standards as a result of the Work is not practicable, Good Samaritan will comply with [XXX provisions of Work Plan] that address water quality issues in order to ensure environmental improvement at the Property.

## **VI. AGREEMENT**

16. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations [, and the Administrative Record] for this Site, and in consideration and exchange for the United States' covenant not to sue in Section XVII, it is hereby ordered and agreed that Good Samaritan shall comply with the following provisions, including but not limited to, all attachments to this Settlement Agreement, and all documents incorporated by reference into this Settlement Agreement, and perform the actions specified in Section VIII.

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

17. EPA has designated [Insert Name] as its On-Scene Coordinator (OSC). Good Samaritan shall direct all submissions required by this Settlement Agreement to [OSC Mailing Address].

18. Good Samaritan shall perform the Work required by this Settlement Agreement or retain contractors and/or subcontractors to perform the Work. Good Samaritan's contractors [and any subcontractors] must be approved by EPA prior to the commencement of any Work under this Settlement Agreement. Good Samaritan shall notify EPA of the names and qualifications of

such contractor(s) [or subcontractor(s)] not more than (X) business days after the Effective Date.

19. Not more than (X) days after the Effective Date, Good Samaritan shall designate a Project Coordinator who shall be responsible for administration of all Good Samaritan's actions required by the Settlement Agreement. Good Samaritan shall submit the designated Project Coordinator's name, address, telephone number, and qualifications to EPA at the time of designation [or] within (X) days of designation. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. Receipt by Good Samaritan's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Good Samaritan.

20. EPA shall have the right to change its designation of OSC. Good Samaritan shall have the right to change its designated Project Coordinator. Good Samaritan's initial notification of its intention to change its Project Coordinator designation may be orally made but it shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

21. Good Samaritan shall, at a minimum, perform the following activities as more fully described in the Work Plan, which has been approved by EPA and is incorporated in this Settlement Agreement by reference:

*[Example: Good Samaritan will remove the mine waste pile from the Site and dispose of the material in an environmentally-acceptable location. The removal will include grading and seeding of the hillside removal area and the placement of rock for stream bank protection].*

**[Note:** Because the Work Plan is approved by EPA in advance of the Effective Date of the Settlement Agreement, any consideration of applicable or relevant and appropriate requirements (ARARs) will need to take place in connection with drafting and review of the Work Plan.]

22. Work Plan and Implementation. The OSC may make minor modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties. The Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Settlement Agreement. Good Samaritan shall notify EPA at least [48] hours prior to performing any on-Site Work pursuant to the EPA-approved Work Plan.

23. Health and Safety Plan. The Attached Health and Safety Plan, prepared in accordance with EPA's current Standard Operating Safety Guide, has been approved by EPA, is incorporated by reference, and provides for protection of the public health and safety during performance of on-Site Work under this Settlement Agreement.

24. Quality Assurance and Sampling

**[Note:** Post-project sampling and post removal Site control obligations should be determined on a case by case basis. Good Samaritan will not own the Property and, in most cases, will not have control over the Property. Therefore, in most cases, post-project sampling and post-removal Site controls, if any, should be accomplished through agreements or other means with the party that maintains ownership/control.]

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Good Samaritan shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate provisions of EPA guidance. Good Samaritan shall follow the following

documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," "OSWER Directive Number 9360.4-01; and "Environmental Response Team Standard Operating Procedures," " OSWER Directive Numbers 9360.4-02 through 9360.4-08."

b. Upon request by EPA, Good Samaritan shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Good Samaritan while performing the Work. Good Samaritan shall notify EPA not less than [X] days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

25. Reporting. Good Samaritan shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every [\_\_\_\_\_] day after the Effective Date until submission of the Final Report pursuant to Paragraph 26, unless otherwise directed in writing by the OSC. These reports, which may be submitted via email to the designated EPA contact, shall describe all significant developments during the reporting period, including the actions performed and any problems encountered, analytical data received during the reporting period; and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems; and planned resolutions of past or anticipated problems.

26. Final Report. Not more than sixty (60) days after completion of all Work required under this Settlement Agreement, Good Samaritan shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, to the requirements set forth in 40 CFR § 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Work (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

*Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete.*

27. Off-Site Shipments. All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Settlement Agreement for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance with, as determined by EPA, 42 U.S.C. Section 9621(d)(3), and the off-site provisions found at 40 CFR § 300.440, and all applicable laws and regulations. Good Samaritan will provide EPA with prior notification of any out-of-state waste shipments.

[Note: off-Site disposal approval should be decided on a case by case basis]

**IX. SITE ACCESS** [Note: EPA expects that a Good Samaritan normally will obtain necessary Site access as a condition precedent to a Settlement Agreement.]

28. Good Samaritan shall use its best efforts to obtain and maintain all necessary access agreements for Good Samaritan, as well as for the United States on behalf of EPA and its representatives (including contractors), for the purpose of conducting any activity related to this Settlement Agreement. Good Samaritan shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Good

Samaritan shall describe in writing its efforts to obtain access. EPA may then assist Good Samaritan in gaining access, to the extent necessary to effectuate the Work described herein, using such means as EPA deems appropriate.

#### **X. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION**

29. Good Samaritan shall preserve all documents and information relating to the Work, or relating to the hazardous substances, pollutants or contaminants found on or released from the Site, and submit them to EPA upon completion of the Work.

30. Good Samaritan may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Settlement Agreement, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Good Samaritan. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2 Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Good Samaritan.

#### **XI. COMPLIANCE WITH OTHER LAWS**

31. [Except as provided below,] Good Samaritan shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA § 121(e) and 40 CFR §§ 300.400(e) and 300.415(j). In accordance with 40 CFR § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. [Note: Include the following when justified by site-specific factors set forth in the Action Memorandum/Administrative Record: As set forth in Paragraph 15(g) and documented in the Administrative Record, EPA has determined that attainment of water quality standards under the Federal Water Pollution Control Act, 33 U.S.C. 1251, et seq., as a result of the Work is not practicable. 40 CFR § 300.415(j). Good Samaritan will comply with [XXX provisions of Work Plan] that address water quality issues in order to ensure environmental improvement at the Property.]

#### **XII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

32. In the event of any action or occurrence during performance of the Work which causes or threatens a release of a hazardous substance from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Good Samaritan shall immediately take all appropriate action. Good Samaritan shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Good Samaritan shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Emergency Response Branch of the incident or Site conditions.

33. In addition, in the event of any release of a hazardous substance from the Site resulting from the actions conducted pursuant to this Settlement Agreement, Good Samaritan shall immediately notify EPA's OSC at [insert telephone number] and the National Response Center at telephone number (800) 424-8802. Good Samaritan shall submit a written report to EPA within seven (7) days after such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. EPA reserves the right to

take appropriate measures to mitigate the risk of or potential impact from a threatened or actual release.

### **XIII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

34. The OSC shall be responsible for overseeing Good Samaritan's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct the Work, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of the Work unless specifically directed by the OSC.

### **XIV. PAYMENT OF OVERSIGHT COSTS**

[Note: Where appropriate, EPA may request and negotiate with the Good Samaritan the reasonable reimbursement of all or a portion of the EPA oversight costs, e.g., an upfront not-to-exceed amount that is based on the Good Samaritan's available resources and nature and extent of EPA oversight.]

35. [Note: Regions should include or delete this paragraph on a case-by case basis.] Prior to commencing the Work pursuant to Section VIII, Good Samaritan shall pay EPA costs in connection with EPA's oversight of the removal action outlined herein, not inconsistent with the NCP [, in the amount of \$\_\_\_\_\_]. Good Samaritan shall not be liable for any oversight costs above \$\_\_\_\_\_. [Note: See CERCLA Model Agreement and Order on Consent for Removal Action by a Bona Fide Prospective Purchaser," issued November 27, 2006, for payment instructions. Note that, as an alternative to special accounts, oversight costs may be deposited to a Good Samaritan-controlled escrow account, with payments to be made to the Superfund upon certain specified contingencies. Any escrow agreement or provisions must be carefully drafted to avoid direct EPA control over funds in escrow contrary to the Miscellaneous Receipts Act.]

### **XV. DISPUTE RESOLUTION**

36. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally. To the extent needed, Parties will agree on the selection of a neutral to guide discussions and negotiations consistent with generally accepted mediation/dispute resolution practice. If the Parties are unable to reach an agreement regarding the dispute within a reasonable period, an EPA management official at the Associate Regional Administrator level [or equivalent] or higher will review the dispute and will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of the Settlement Agreement.

### **XVI. FORCE MAJEURE**

37. Good Samaritan agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Good Samaritan, or of any entity controlled by Good Samaritan, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Good Samaritan's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work [,] [or] increased cost of performance [insert, if applicable, ", or a failure to attain [performance standards/action levels] set forth in the Action Memorandum/Enforcement or Administrative Record."].

38. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the

*force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Good Samaritan in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Good Samaritan in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

#### **XVII. UNITED STATES COVENANT NOT TO SUE**

39. In consideration of the actions that will be performed [and the payments that will be made] by Good Samaritan under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Good Samaritan pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Good Samaritan of all obligations under this Settlement Agreement [, including, but not limited to, payment of Oversight Costs, pursuant to Section \_\_\_\_]. This covenant not to sue extends only to Good Samaritan and does not extend to any other person.

#### **XVIII. UNITED STATES RESERVATION OF RIGHTS**

40. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking any legal or equitable relief necessary to enforce the terms of this Settlement Agreement.

41. The covenant not to sue set forth in Section XVII above does not pertain to any matters other than those expressly identified therein. The scope of the reservations in this Section is premised on the voluntary nature and narrow scope of the actions to be undertaken pursuant to this Order, the fact that Good Samaritan does not currently own the Property, and on Good Samaritan's certification that it does not intend to own such Property in the future. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Good Samaritan with respect to the following:

- a. liability resulting from exacerbation of Existing Contamination due to willful, intentional or grossly negligent conduct by Good Samaritan, its successors, contractors, subcontractors, assignees, lessees or sublessees, except to the extent that the conditions constituting or contributing to the exacerbation were disclosed to EPA, or were readily observable by EPA, prior to issuance of the Notice of Completion;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for violations of federal law or regulations; and
- e. liability for releases of hazardous substances within or outside the Site caused by Good Samaritan's activities not within the scope of this Settlement Agreement.

42. Work Takeover.

a. In the event EPA determines that Good Samaritan has ceased implementation of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines

necessary. Prior to taking over the Work, EPA will issue a written notice to Good Samaritan specifying the grounds upon which such notice was issued and providing Good Samaritan with [ ] days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. Good Samaritan may invoke dispute resolution set forth in Section XV to dispute EPA's determination that takeover of the Work is necessary. However, notwithstanding Good Samaritan's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date (i) the Parties agree to a resolution of the dispute, or (ii) EPA management renders a written decision.

c. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XXII (Financial Responsibility) of this Settlement Agreement. In the event of such Work Takeover, Good Samaritan's liability for the Work Takeover shall not exceed \$[estimated cost of Work] consistent with Section XXII.

### **XIX. GOOD SAMARITAN'S COVENANT NOT TO SUE**

43. Except as otherwise specifically provided in this Settlement Agreement, Good Samaritan covenants not to sue or assert any claim or cause of action against the United States, or its contractors or employees, with respect to the Work, this Settlement Agreement, or Existing Contamination, including but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law.

### **XX. OTHER CLAIMS**

44. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Good Samaritan. The United States or EPA shall not be deemed a party to any contract entered into by Good Samaritan or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement. Except as expressly provided in Section XVII (Covenant Not To Sue), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Good Samaritan or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

45. This Settlement Agreement does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Good Samaritan waive(s) any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. § 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Settlement Agreement.

46. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right of judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

47. Good Samaritan is carrying out this agreement for its own benefit and waives all claims for compensation for services rendered to EPA for activities it performs in furtherance of this Settlement Agreement.

### **XXI. CONTRIBUTION**

48. In the event of a suit or claim for contribution brought against Good Samaritan notwithstanding the provisions of Section 107(d)(1) of CERCLA, 42 U.S.C. § 9607(d)(1), with

respect to Existing Contamination (including any claim based on the contention that Good Samaritan is not a person rendering care, assistance, or advice pursuant to Section 107(d)(1), or is no longer entitled to protection from liability pursuant to CERCLA Section 107(d)(1)) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Good Samaritan would be entitled, from the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

49. In the event Good Samaritan were found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a person rendering care, assistance, or advice or acting at the direction of an OSC pursuant to Section 107(d)(1), or to have lost its status as a person rendering care, assistance or advice or acting at the direction of an OSC pursuant to Section 107(d)(1) as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the OSC, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Good Samaritan has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination.

50. Good Samaritan agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

51. Good Samaritan also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify in writing the United States within [insert number] days of service of the complaint on it.

52. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any person not a party to this Settlement Agreement to obtain [additional] response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

## **XXII. FINANCIAL RESPONSIBILITY**

53. The Parties agree and acknowledge that, in the event Good Samaritan fails to complete the Work in accordance with this Settlement Agreement, Good Samaritan shall ensure that EPA is held harmless from or reimbursed for all costs required for completion of the Work. For these purposes, Good Samaritan shall maintain financial responsibility for the benefit of EPA in the amount of \$[insert estimated cost of Work] (hereinafter [“Estimated Cost of the Work”]), which must be satisfactory in form and substance to EPA before the Good Samaritan begins Work.

54. The commencement of any Work Takeover pursuant to Paragraph 42 shall trigger EPA's right to receive the benefit of financial responsibility mechanism(s) agreed to by the Parties, and at such time EPA shall have immediate access to resources guaranteed under any such financial responsibility mechanism(s), whether in cash or in kind, as needed to complete the Work.

## **XXIII. NOTICE OF COMPLETION**

55. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, EPA will provide notice to Good

Samaritan. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Good Samaritan, provide a list of the deficiencies, and require that Good Samaritan modify the Work Plan if appropriate in order to correct such deficiencies. Good Samaritan shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice.

**XXIV. PUBLIC COMMENT**

56. This Settlement Agreement shall be subject to a thirty (30)-day public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

**XXV. INTEGRATION/APPENDICES**

57. This Settlement Agreement [and its appendices] constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the matters addressed herein. The Parties acknowledge that there are no representations, agreements or understandings relating to the Settlement Agreement other than those expressly contained herein.

58. The following appendices are attached to and incorporated into this Settlement Agreement:

[Appendix 1. shall mean \_\_\_\_\_, etc.]

**XXVI. CERTIFICATIONS**

59. By entering into this Settlement Agreement, Good Samaritan hereby certifies that it is rendering care, assistance, or advice in accordance with the National Contingency Plan at the direction of an On-Scene Coordinator, by voluntarily agreeing to clean up Existing Contamination at an Orphan Mine Site, and further that it (a) is not a past owner or current owner of the Property and has no intention of purchasing the Property in the future; (b) is not potentially liable for the remediation of the Existing Contamination pursuant to Sections 106 or 107 of CERCLA; and (c) is not potentially liable under any other Federal, State or local law for the remediation of the Existing Contamination. If the United States determines that any information provided by Good Samaritan in connection with this Settlement Agreement is not materially accurate and complete, or if Good Samaritan becomes a Site owner or operator in the future, the Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

60. The undersigned representative of Good Samaritan certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

AGREED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

BY:

\_\_\_\_\_

Regional Administrator

Date

Region \_\_\_\_

**UNITED STATES DEPARTMENT OF JUSTICE**

BY:

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Assistant Attorney General

Date

Environment and Natural Resources Division

U.S. Department of Justice

BY:

**[GOOD SAMARITAN NAME]**

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[Title]

Date

EFFECTIVE DATE: \_\_\_\_\_