

FILED

Oct 05, 2023

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**U.S. EPA REGION 8
HEARING CLERK**

IN THE MATTER OF:)

SETTLEMENT AGREEMENT

Colorado Smelter Site)

U.S. EPA Region 8

Pueblo, Pueblo County, Colorado)

CERCLA Docket No. CERCLA-08-2023-0004

1000 South Santa Fe LLC and)

1100 South Santa Fe LLC)

SETTLING PARTIES)

PROCEEDING UNDER SECTION

122(h)(1) OF CERCLA,

42 U.S.C. § 9622(h)(1)

**CERCLA SECTION 122(h)(1) CASHOUT SETTLEMENT AGREEMENT FOR
PERIPHERAL PARTIES**

TABLE OF CONTENTS

I.	JURISDICTION	1
II.	BACKGROUND	1
III.	PARTIES BOUND	2
IV.	STATEMENT OF PURPOSE	2
V.	DEFINITIONS.....	2
VI.	PAYMENT OF RESPONSE COSTS.....	4
VII.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT	5
VIII.	COVENANTS BY EPA	6
IX.	RESERVATIONS OF RIGHTS BY EPA.....	6
X.	COVENANTS BY SETTLING PARTIES	7
XI.	EFFECT OF SETTLEMENT/CONTRIBUTION	8
XII.	PROPERTY REQUIREMENTS	9
XIII.	CERTIFICATION	11
XIV.	NOTICES AND SUBMISSIONS	11
XV.	INTEGRATION/APPENDICES	12
XVI.	PUBLIC COMMENT	12
XVII.	EFFECTIVE DATE.....	12

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders) and redelegated to the undersigned officials. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief and Deputy Chief for the Environmental Enforcement Section in the Environment and Natural Resources Division of the Department of Justice.

2. This Settlement Agreement is made and entered into by EPA and 1000 South Santa Fe LLC and 1100 South Santa Fe LLC (Settling Parties). Each Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Colorado Smelter Site (Site) located in Pueblo, Colorado. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). The Site includes the former Colorado Smelter facility and the surrounding community where arsenic and lead contamination has come to be located. The Site is organized into two geographic operable units. Operable unit 1 (OU1) consists of community properties within a one-half mile radius surrounding the former smelter facility, an area encompassing approximately 700 acres. Operable unit 2 (OU2) consists of approximately 45 acres that overlie the footprint of the former smelter facility.

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake additional response actions in the future.

5. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

6. Cecil H. Brown is the sole owner and manager of 1000 South Santa Fe LLC and 1100 South Santa Fe LLC (Settling Parties).

7. EPA alleges that each Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

8. On February 28, 2022, pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), EPA perfected liens against property located at 1103 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400003) and 1045-1049 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400002).

9. EPA has reviewed the financial information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred and to be

incurred at the Site. Based upon this financial information, EPA has determined that Settling Parties have limited cash flow to pay for response costs incurred and to be incurred at the Site.

10. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

11. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status of a Settling Party, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

12. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to make a cash payment to address their alleged civil liability for OU2 as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

13. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that 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 its appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site and any other real property, owned or controlled by Settling Parties, where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the following properties: 1101-1109 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400003) and 1045-1049 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400002).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

“Colorado Smelter Special Account” shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVII.

“EPA” shall mean the U.S. Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“OU2” means operable unit 2 of the Site, consisting of approximately 45 acres that overlie the footprint of the former Colorado Smelter facility, and generally depicted on the map attached hereto as Appendix A.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean EPA and Settling Parties.

“Potentially Responsible Party” or “PRP” shall mean any individual or company--including owners, operators, transporters, or generators--potentially responsible for, or contributing to a spill or other contamination at a Superfund site.

“Property” shall mean that portion of the Site that is owned by Settling Parties and is located at 1101-1109 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400003) and 1045-1049 South Santa Fe Avenue, Pueblo, Colorado 81006 (parcel number 1501400002).

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Settling Parties” shall mean 1000 South Santa Fe LLC, a Colorado Limited Liability Company, and 1100 South Santa Fe LLC, a Colorado Limited Liability Company.

“Site” shall mean the Colorado Smelter Site, encompassing approximately 745 acres, located in Pueblo, Pueblo County, Colorado, and generally shown on the map included in Appendix A.

“State” shall mean the State of Colorado.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

VI. PAYMENT OF RESPONSE COSTS

14. **Payment of Response Costs.** Settling Parties shall pay to EPA the amount of \$646,100, plus an additional sum for Interest on that amount calculated from the Effective Date through the date of payment (Payment Amount). Settling Parties will remit the Payment Amount to EPA upon the Transfer of the Property or within three years of the Effective Date, whichever occurs earlier.

15. Settling Parties shall remit the Payment Amount to EPA at <https://www.pay.gov> in accordance with the following payment instructions: enter “sfo 1.1” in the search field to access EPA’s Miscellaneous Payment Form – Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number R08/08UA/CON000802700. Settling Parties shall send to EPA, in accordance with Section XIV (Notices and Submissions), a notice of this payment including these references.

16. **Deposit of Payment.** The Payment Amount shall be deposited by EPA in the Colorado Smelter Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

17. **Maintenance of the Property.** Until the Property is sold, Settling Parties shall, at their own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property.

18. **Marketing of the Property.** Within 30 days after the Effective Date, Settling Parties shall commence using best efforts to sell the Property. “Best efforts” for purposes of this Paragraph includes: (i) entering into a listing agreement, for the purpose of marketing and selling the Property, with a real estate broker, dealer, or agent licensed in the State of Colorado who customarily deals with real property similar to the Property; (ii) advertising the Property for sale in appropriate publications; (iii) listing the Property with appropriate real estate listing services; (iv) maintaining the Property in a condition suitable for showing to prospective buyers; and (v) providing access to the Property, at reasonable times, to real estate brokers, dealers or agents and prospective buyers.

19. In the event of a sale or other transfer of the Property or any portion thereof, Settling Parties shall continue to be subject to all terms, conditions and benefits of this Settlement Agreement, except for Section XII (Property Requirements), to the extent it requires Settling Parties to provide access to, or to abide by any land, water, or other resource use restrictions regarding the Property or portion thereof that was sold or transferred. Settling Parties shall continue to be subject to the requirement to enforce any agreements, pursuant to Section XII, for the new owner to provide access to the Property or portion thereof that was sold.

20. Upon timely payment of the Payment Amount and any amounts due as provided in Paragraph 21 below, EPA agrees to release the CERCLA §107(l) liens against the Property.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

21. **Interest on Late Payments.** If any Settling Party fails to make any payment required by Paragraph 14 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

22. Stipulated Penalty

a. If any amounts due to EPA under Paragraph 14 (Payment of Response Costs) are not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 21 (Interest on Late Payments), \$100 per violation per day that such payment is late.

b. If Settling Parties fail to use best efforts to sell the Property in accordance with Paragraphs 17 (Maintenance of the Property) and 18 (Marketing of the Property), Settling Parties shall be in violation of this Settlement Agreement and shall pay, as a stipulated penalty, \$100 per day for each day of failure to use best efforts to sell the Property.

c. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Parties' receipt from EPA of a demand for payment of the penalties. Settling Parties shall make all payments under this Section at <https://www.pay.gov> using the following instructions: enter "sfo 1.1" in the search field to access EPA's Miscellaneous Payment Form - Cincinnati Finance Center. Complete the form including the Site Name, docket number, and Site/Spill ID Number R08/08UA/CON000802700 and indicate in the comment field that the payment is for stipulated penalties. Settling Parties shall send to EPA, in accordance with Section XIV (Notices and Submissions), a notice of this payment including these references.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

23. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, if any Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall

be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

24. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Section VI (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

25. The obligations of Settling Parties to pay amounts owed to EPA under this Settlement Agreement are joint and several. In the event of the insolvency of any Settling Party or the failure by any Settling Party to make the payments required under this Settlement Agreement, the remaining Settling Party shall be responsible for such payments.

VIII. COVENANTS BY EPA

26. **Covenants for Settling Parties by EPA.** Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to OU2. With respect to present and future liability, these covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the financial information provided to EPA by Settling Parties and the financial, insurance, and indemnity certification made by Settling Parties in Section XIII. These covenants extend only to Settling Parties and do not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

27. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within Paragraph 26 (Covenants for Settling Parties by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- 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, based on the ownership or operation of the Site by Settling Parties when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties;

e. liability based on Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties;

f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site; and

g. liability for performance of response action or for reimbursement of response costs if total response costs incurred or to be incurred at or in connection with the Property by the United States or any other person exceed \$646,100.

28. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the financial information provided by Settling Parties, or the financial, insurance, or indemnity certification made by Settling Parties in Section XIII, is false or, in any material respect, inaccurate.

29. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANTS BY SETTLING PARTIES

30. **Covenants by Settling Parties.** Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to OU2 and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA 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;

b. any claim arising out of response actions at or in connection with OU2, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to OU2.

31. Except as provided in Paragraph 33 (claims against other PRPs) and Paragraph 38 (res judicata and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 27.a (liability for failure to meet a requirement of the Settlement Agreement) or 27.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

32. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

33. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for response costs relating to OU2 against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

34. Except as provided in Paragraph 33 (claims against other PRPs), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section X (Covenants by Settling Parties), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement 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 such persons 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).

35. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “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, at or in connection with OU2, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 27.a (liability for failure to meet a requirement of the Settlement Agreement) or 27.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation.

36. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

37. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within

10 days after service of the complaint or claim upon Settling Party. In addition, each Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

38. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section VIII.

39. Effective upon signature of this Settlement Agreement by a Settling Party, such Settling Party agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Settling Party the payment(s) required by Section VI (Payment of Response Costs) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 35, and that, in any action brought by the United States related to the “matters addressed,” such Settling Party will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing 90 days after the date such notice is sent by EPA.

XII. PROPERTY REQUIREMENTS

40. **Agreements Regarding Access and Non-Interference.** Settling Parties shall, with respect to its Affected Property:

a. Provide the United States, the State, potentially responsible parties who have entered or may enter into an agreement with the United States or the State for performance of response actions at the Site (hereinafter “Performing Parties”), and their representatives, contractors, and subcontractors with access at all reasonable times to its Affected Property to conduct any activity relating to response actions at the Site including the following activities:

- (1) Verifying any data or information submitted to the United States or the State;
- (2) Conducting investigations regarding contamination at or near the Site;
- (3) Obtaining samples;
- (4) Assessing the need for, planning, implementing, or monitoring response actions;

- (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Parties or their agents;
- (6) Assessing Settling Parties' compliance with the Settlement Agreement;
- (7) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement; and
- (8) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Affected Property.

b. Refrain from using its Affected Property in any manner that EPA determines will (i) pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of response actions at the Site.

41. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed regarding the Affected Property, Settling Parties shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

42. Notice to Successors-in-Title.

a. Settling Parties shall, within 30 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Property in the appropriate land records. The notice must: (1) include a proper legal description of the Property; (2) provide notice to all successors-in-title: (i) that the Property is part of, or related to, the Site; (ii) that EPA has selected a response action for the Site; and (3) identify any documents requiring implementation of the response action, including, if applicable, the name and civil action or docket number of the matter. Settling Parties shall record the notice within 30 days after EPA's approval of the notice and submit to EPA, within 30 days thereafter, a certified copy of the recorded notice.

b. Settling Parties shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

- (1) Notify the proposed transferee that the Affected Property is within OU2, and EPA is performing a remedial investigation/feasibility study for OU2; and
- (2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

43. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Settling Parties shall continue to comply with its obligations under the Settlement Agreement.

44. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

45. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. CERTIFICATION

46. Settling Parties certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (including records, reports, documents and other information in electronic form) (other than identical copies) relating to their potential liability regarding the Site since notification of potential liability by the United States or the State and that they have fully complied with any and all EPA and State requests for information regarding the Site and Settling Parties' financial circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth Settling Parties' financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Parties execute this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XIV. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Sabrina Forrest
8SEM-RBA
US EPA Region 8
1595 Wynkoop Street

Denver, Colorado 80202
forrest.sabrina@epa.gov
303-312-6484

As to Settling Parties: Daniel L. Brown POA for Cecil Brown
1515 Winfield Ave.
Colorado Springs, CO 80906
deelby@earthlink.net
720-352-1066

XV. INTEGRATION/APPENDICES

48. This Settlement Agreement and its appendices constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is the map of the Site.

XVI. PUBLIC COMMENT

49. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may withhold its consent or seek to modify this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. EFFECTIVE DATE

50. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 49 has closed and the United States has determined not to withhold its consent or seek to modify this Settlement Agreement based on the comments received, if any.

IT IS SO AGREED:

Signature Page for Settlement Agreement Regarding Colorado Smelter Site

U.S. ENVIRONMENTAL PROTECTION AGENCY:

**BEN
BIELENBERG** Digitally signed by BEN
BIELENBERG
Date: 2023.07.03
11:20:40 -06'00'

Dated

Ben Bielenberg
Acting Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 8

**CHRISTOPHE
R THOMPSON** Digitally signed by
CHRISTOPHER THOMPSON
Date: 2023.07.06 08:10:02
-06'00'

Dated

Christopher A. Thompson
Associate Regional Counsel for Enforcement
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 8

Signature Page for Settlement Agreement Regarding Colorado Smelter Site

U.S. DEPARTMENT OF JUSTICE:

8/2/23
Dated

Ellen M. Mahan
Ellen M. Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Nicholas Morales
Nicholas Morales
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Signature Page for Settlement Agreement Regarding Colorado Smelter Site

1000 SOUTH SANTA FE LLC:

6-27-2023
Dated

Cecil H. Brown
Cecil H. Brown
Owner and Manager
1000 South Santa Fe LLC
2029 N. Cascade Avenue
Colorado Springs, CO 80907

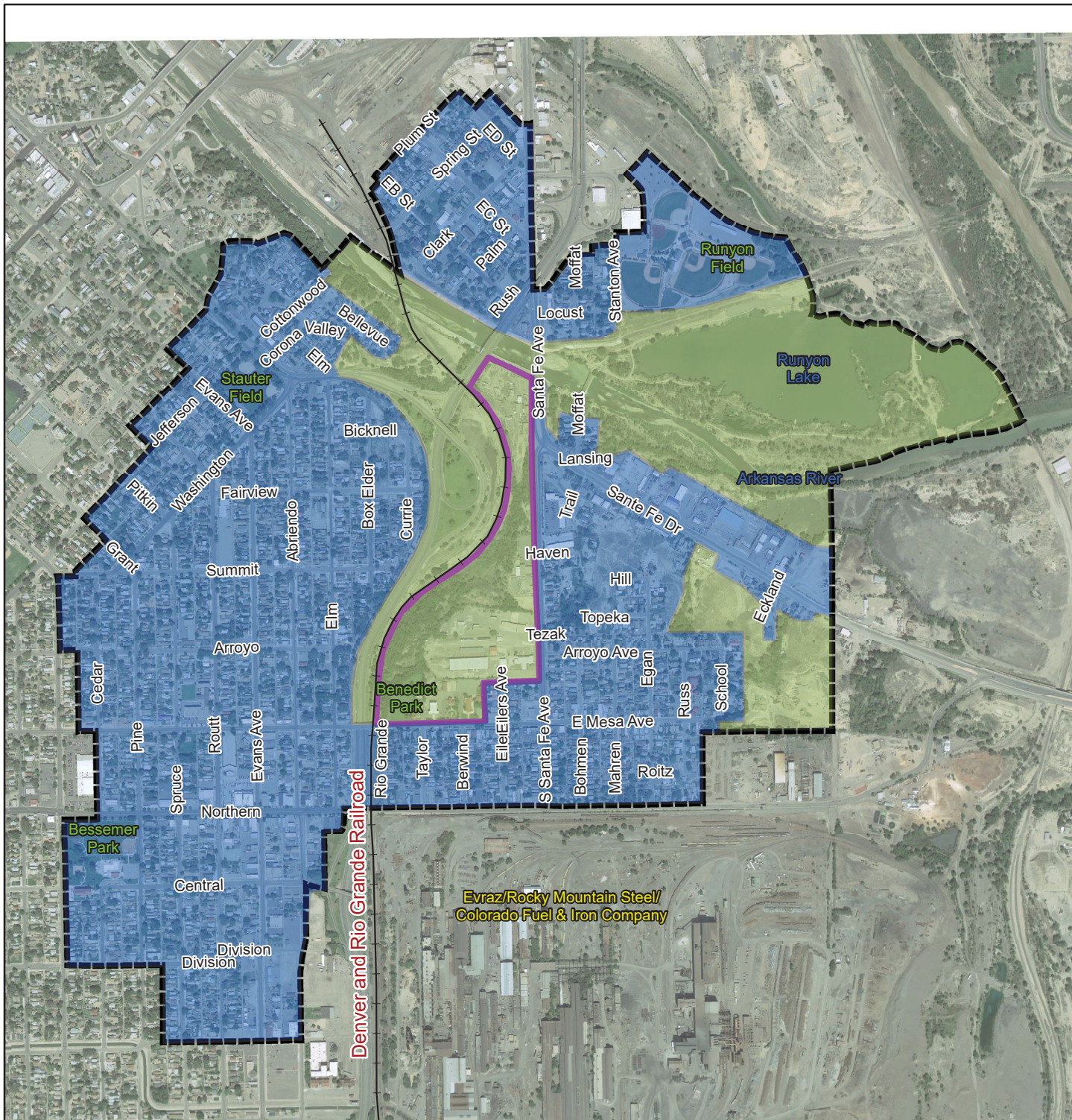
1100 SOUTH SANTA FE LLC:

6-27-2023
Dated

Cecil H. Brown
Cecil H. Brown
Owner and Manager
1100 South Santa Fe LLC
2029 N. Cascade Avenue
Colorado Springs, CO 80907

Appendix A

Site Map



Legend

-  OU2 Site Boundary
-  OU1 Study Area
-  Community Properties (OU1)
-  Former Smelter Area and Undeveloped Areas (OU2)

Colorado Smelter Superfund Site Pueblo, Colorado

Colorado Smelter Superfund Site

NAD 1983 StatePlane Colorado South FIPS 0503 Feet
Imagery: Google Earth dated August 2013
Data: City and County of Pueblo



0 550 1,100
Feet

PWT
PACIFIC WESTERN TECHNOLOGIES, LTD.



Map Created: 11/08/2022
Map Created By: CB