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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) dated December 19, 2022, is made by and between Environmental Restoration, LLC (“ER”) and Weston Solutions, Inc. (“Weston”), on the one hand (together, the “Contractor Defendants”), and the State of New Mexico (“State”), the New Mexico Environment Department (“NMED”) (the State and NMED are referred to herein together as “New Mexico”), and the New Mexico Office of the Natural Resources Trustee (“ONRT”), on the other hand (each a “Party,” and collectively, the “Parties”). Unless otherwise indicated, capitalized terms used in this Agreement are defined in Appendix A, attached and incorporated herein.

RECITALS

WHEREAS, New Mexico has made claims against the Contractor Defendants in the following litigation: *In re Gold King Mine Release in San Juan County, Colorado on August 5, 2015* (1:18-md-02824 (D.N.M.)) and *State of New Mexico v. USEPA, et al.* (1:16-cv-00465 (D.N.M.)), consolidated with 1:16-cv-00931 (D.N.M.)) (collectively, the “Litigation” as further defined in Appendix A), which litigation arose from the release that occurred on August 5, 2015 at the Gold King Mine (“Gold King Release” as further defined in Appendix A), which claims include, but are not limited to, tort claims and claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (“CERCLA”);

WHEREAS, ER has made counterclaims against New Mexico in the Litigation under CERCLA;

WHEREAS, the Parties desire to enter into this Agreement to have a full and final resolution of any and all claims that were brought or could have been brought by New Mexico or ONRT against the Contractor Defendants (including but not limited to Natural Resource Damages), or the Contractor Defendants against New Mexico or ONRT, in connection with the “Matters” as defined below in Section 6, to avoid the complication and expense of litigation of such claims between the Parties, and to avoid exposure to liability at trial;

WHEREAS, the Parties agree that this Agreement is fair, reasonable, and in the public interest;

WHEREAS, the Contractor Defendants and New Mexico do not admit any liability in the Litigation; and

WHEREAS, the Parties enter into this Agreement as a full and final settlement of all claims that have been brought or could have been brought with regard to the Matters.

THEREFORE, the Parties hereby agree as follows:

1. Payment. Payment of Five Million Dollars (\$5,000,000.00) USD by or on behalf of ER and Weston, in equal shares of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) USD each, shall be made to New Mexico, as directed by New Mexico, no later than 15 days from execution of this Agreement or Friday, December 30, 2022, whichever is

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earlier (the “Payment”); provided, however, that this Agreement must be executed prior to payment. This amount shall be allocated by New Mexico and ONRT as follows: (1) Three Million Dollars (\$3,000,000.00) USD for costs and fees, as approved by the Court, and/or in the sole discretion of the Attorney General to address harms to New Mexico and its communities resulting from the Gold King Release and to enhance law enforcement efforts to prevent and prosecute environmental contamination; and (2) Two Million Dollars (\$2,000,000.00) USD to ONRT for Natural Resource Damages claims arising from the Gold King Release.

2. Most Favored Nation. If, following or concurrent with the execution of this Agreement, either or both of the Contractor Defendants reach settlement(s) with the Navajo Nation in the Litigation that individually include payments exceeding \$2,500,000.00, then that Contractor Defendant shall increase its payment to New Mexico in an amount equal to the difference of the value of such settlement minus \$2,500,000.00 (“MFN Payment Amount”); provided, however, that if the Contractor Defendants reach a settlement (individually or collectively) after the empaneling of a jury at a trial in the Litigation, this provision shall not apply. If payment of the MFN Payment Amount under this Section 2 is required, the Contractor Defendant(s) involved in any such settlement with any other plaintiff shall notify New Mexico within ten (10) days of execution of the corresponding final settlement agreement. No later than thirty (30) days from the date of notification, the Contractor Defendant(s) shall make payment(s) totaling the MFN Payment Amount to New Mexico, as directed by New Mexico.

3. Release by New Mexico.

A. In consideration of the promises and covenants contained herein, the Payment and other good and valuable consideration, the sufficiency of which New Mexico hereby acknowledges, New Mexico, on its behalf, as *parens patriae*, and on behalf of its past, present, and future affiliates, agents, officers, directors, employees, members, representatives, consultants, attorneys, trustees, and related entities, as well as their heirs, predecessors, successors, and assigns, including, without limitation, ONRT, (hereafter collectively referred to as the “Releasing New Mexico Parties”) hereby forever releases and discharges Contractor Defendants, and Contractor Defendants’ past, present, and future insurers, reinsurers, affiliates, parents, subsidiaries, agents, officers, directors, employees, representatives, consultants, attorneys, and related entities, as well as their heirs, predecessors, successors, and assigns (hereafter collectively referred to as the “Released Contractor Defendant Parties”), from all claims, demands, obligations, judgments, Actions, liens, indebtedness, and liabilities, known or unknown, asserted or unasserted, accrued or unaccrued, in law or equity, for injuries, losses, or damages, of whatever kind or character, whether personal, property, economic, noneconomic, environmental, or natural resources, of all claims that have been brought or could have been brought with regard to the Matters.

B. The Releasing New Mexico Parties acknowledge that they may hereafter discover facts different from or in addition to those which they now know to be or believe to be true with respect to the Matters, and agree that this Agreement and the obligations imposed and the release contained in it shall remain in effect in all respects, notwithstanding such different or additional facts, or the subsequent discovery thereof. It is possible that other injuries, damages, losses, or future consequences or results relating to or arising from the Matters not now known will develop or be discovered. This release, and the compromise upon which it is based, is expressly

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intended to cover and include, and does cover and include, a release by the Releasing New Mexico Parties as to the Released Contractor Defendant Parties of all such future injuries, damages, losses, or future consequences or results of known or unknown injuries, including a release and waiver of all rights that may exist or arise in the future because of such future injuries, damages, losses, or future consequences or results of known or unknown injuries relating to or arising from the Matters. The Releasing New Mexico Parties are giving up any right they may have to bring any claim whatsoever, whether known or unknown, suspected or unsuspected, relating to or arising from the Matters against any of the Released Contractor Defendant Parties, except for claims based on breach of this Agreement. Nothing in this release shall prohibit or release any claims for breach of this Agreement.

C. New Mexico expressly consents and agrees that this release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown claims, injuries, demands or rights relating to or arising from the Matters.

4. Release by Contractor Defendants.

A. In consideration of the promises and covenants contained herein, and other good and valuable consideration, the sufficiency of which Contractor Defendants hereby acknowledge, each of the Contractor Defendants, on its behalf and on behalf of its past, present, and future affiliates, agents, officers, directors, employees, members, representatives, consultants, attorneys, trustees, and related entities, as well as their heirs, predecessors, successors, and assigns (hereafter collectively referred to as the “Releasing Contractor Defendant Parties”) hereby forever releases and discharges New Mexico, and New Mexico’s past, present, and future insurers, reinsurers, affiliates, parents, subsidiaries, agents, officers, directors, employees, representatives, consultants, attorneys, and related entities, as well as their heirs, predecessors, successors, and assigns (hereafter collectively referred to as the “Released New Mexico Parties”), from all claims, demands, obligations, judgments, Actions, liens, indebtedness, and liabilities, known or unknown, asserted or unasserted, accrued or unaccrued, in law or equity, for injuries, losses, or damages, of whatever kind or character, whether personal, property, economic, noneconomic, environmental, or natural resources, relating to or arising from the claims brought or which could have been brought with regard to the Matters.

B. Contractor Defendants acknowledge that they may hereafter discover facts different from or in addition to those which they now know to be or believe to be true with regard to the Matters, and agree that this Agreement and the obligations imposed and the release contained in it shall remain in effect in all respects, notwithstanding such different or additional facts, or the subsequent discovery thereof. It is possible that other injuries, damages, losses, or future consequences or results relating to or arising from the Matters not now known will develop or be discovered. This release, and the compromise upon which it is based, is expressly intended to cover and include, and does cover and include, a release by the Releasing Contractor Defendant Parties of all such future injuries, damages, losses, or future consequences or results of known or unknown injuries, including a release and waiver of all rights that may exist or arise in the future because of such future injuries, damages, losses, or future consequences or results of known or unknown injuries relating to or arising from the Matters. The Releasing Contractor Defendant Parties are giving up any right they may have to bring any legal claim whatsoever, whether known or unknown, suspected or unsuspected, relating to or arising from the Matters

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against any of the Released New Mexico Parties, except for claims based on breach of this Agreement. Nothing in this release shall prohibit or release any claims for breach of this Agreement.

C. Each Contractor Defendant expressly consents and agrees that this release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown claims, injuries, demands or rights relating to or arising from the Matters.

5. New Mexico and ONRT Covenants Not to Sue.

A. New Mexico, on behalf of itself and the Releasing New Mexico Parties, agrees and hereby covenants that it will not commence any Action against the Released Contractor Defendant Parties relating to the Matters. New Mexico, on its own behalf and on behalf of the Releasing New Mexico Parties, further agrees that the Released Contractor Parties are entitled to the immediate dismissal with prejudice or, in the event that relief is not granted, preliminary and permanent injunctive relief prohibiting the prosecution of any such Action as well as any resulting monetary damages, including but not limited to attorneys' fees and costs related to defending any such Action.

B. ONRT agrees and hereby covenants that it will not commence any Action against the Released Contractor Defendant Parties relating to or arising from the Matters, including but not limited to any Action for the recovery of Natural Resource Damages arising from the Gold King Release.

C. Any Action brought by New Mexico or ONRT to enforce (but not to rescind or reform) the terms of this Agreement is excepted from the covenants not to sue included in Sections 5.A and 5.B.

6. Matters. "Matters" as used herein shall mean all claims, whether known or unknown, which have been brought or could have been brought with regard to the matters in the Litigation, including without limitation New Mexico's claims against the Contractor Defendants in the Litigation, any claim by ONRT for Natural Resource Damages related to the Gold King Mine Release against the Contractor Defendants, and ER's counterclaims against New Mexico in the Litigation.

7. No Admissions. The Parties explicitly acknowledge that this Agreement represents a settlement of disputed claims, and the Parties understand and agree that nothing contained in this Agreement is to be considered as an admission of any alleged fact, liability or fault, and that all such allegations, liability and fault are expressly denied. Accordingly, neither this Agreement nor any of its terms shall be offered or received as evidence in any proceeding in any forum as an admission of liability or wrongdoing on the part of any Contractor Defendant or New Mexico.

8. Acknowledgements. Each of the Parties declares that it has read and understands the terms of this Agreement, that it has been represented by counsel in the negotiation, execution, and delivery of this Agreement, and that it executes this Agreement voluntarily after consultation

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with counsel. Each of the Parties participated in the drafting of this Agreement. In the event of any ambiguity, the Parties agree that it shall not be construed against any of them.

9. No Reliance on Extrinsic Facts. No Party (or any owner, member, manager, officer, director, partner, associate, employee, representative, attorney, or agent of any Party) has made any statement or representation to any other Party regarding any facts relied upon in entering into this Agreement other than those set forth in this Agreement. Likewise, no Party relies upon any statement, representation, or promise of any other Party (or any owner, member, manager, officer, director, partner, associate, employee, representative, attorney, or agent of any Party) in executing this Agreement, except as expressly stated in this Agreement. The Parties expressly assume the risk that the facts or law may be, or may become, different from the facts or law as presently believed or understood by the Parties.

10. Dismissal of Claims. The Parties shall file pleadings necessary to effect dismissal with prejudice of all claims in the Litigation against one another within five business days of the Payment.

11. Fees/Costs. Each Party shall bear its own costs, expenses, experts' fees, any mediator's fees, and attorneys' fees.

12. Remaining Litigation. This Agreement does not impact, interfere with, or limit any Party's claims or defenses against non-Parties in the remaining Litigation. Notwithstanding any other provision of this Agreement, each Party reserves all rights with respect to such remaining Litigation.

13. Representations and Warranties.

A. Each Party represents and warrants that this Agreement covers all claims and damages brought or which could have been brought between the Releasing New Mexico Parties and Released Contractor Defendants in the Litigation. Each Party further represents and warrants that it is the owner of all claims being released, and that such claims have not been assigned or transferred, and that it is not aware of any other person or entity that has any interest in the claims that have been or could have been asserted in the Litigation and that are referred to in this Agreement. Each Party further represents and warrants that it has been truthful and has acted in good faith in negotiating this Agreement.

B. New Mexico further represents and warrants that it is unaware of other agencies or instrumentalities of the State of New Mexico that now have any rights to proceed against the Contractor Defendants on any Action or controversy arising out of or relating to the claims and damages released in this Agreement, and agrees that New Mexico, through the Office of Attorney General, releases any additional claims against the Contractor Defendants for the same costs and damages addressed in this Agreement, and warrants that there are no other Actions pending or referred to the Office of the Attorney General by any agency of the State of New Mexico with respect to any such claim.

14. Authority to Execute. Each of the Parties represents and warrants that it has full power and authority to execute, deliver, and perform this Agreement and that it has taken all necessary steps for the execution and delivery of this Agreement. Each signatory to this

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Agreement represents and warrants that he/she has full power and authority to execute on behalf of the Party for whom he/she has executed this Agreement, and to bind legally such Party.

15. Further Assurances. The Parties agree to reasonably cooperate with each other in the implementation of this Agreement, and to execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary, appropriate or desirable to effectuate this Agreement.

16. Press Releases. The Parties agree that any Party may issue a press release after execution of this Agreement. New Mexico further agrees that its official press release(s) regarding this Agreement will not disparage the Contractor Defendants, and the Contractor Defendants further agree that their official press release(s) regarding this Agreement will not disparage New Mexico.

17. Applicable Law and Dispute Resolution.

A. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico, without giving effect to any choice or conflict of law provisions or rule that would cause the application of laws of any other than those of the State of New Mexico.

B. Any and all controversies, disputes, or claims between the Parties arising under or related to this Agreement, and any and all claimed breaches thereof, shall be resolved solely by proceedings before the Court, unless the Parties mutually agree to an alternative dispute resolution proceeding. The Parties irrevocably and unconditionally waive any objection to jurisdiction and venue of any proceeding before the Court and irrevocably waive and agree not to plead or claim that any such proceeding brought in the Court has been brought in an inconvenient forum.

18. Successors and Transferees. This Agreement shall be binding upon and inure to the benefit of each Party's current and former parent companies, subsidiaries, affiliates, successors, heirs, and assigns.

19. Damages for Breach. In the event of a breach of this Agreement, in addition to any other damage, the prevailing party is entitled to recover its reasonable costs and attorneys' fees to the extent authorized by law.

20. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision(s) shall be fully severable and the invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

21. Entire Agreement. Subject to Section 15 (Further Assurances), this Agreement is a fully integrated agreement which sets forth the entire agreement and understanding of the Parties concerning the subject matter of this Agreement. Accordingly, this Agreement supersedes and controls over the Binding Term Sheet entered into by the Parties on December 2, 2022. This Agreement may not be waived, rescinded, canceled, terminated, supplemented, amended, or modified in any manner without the prior written consent of all Parties.

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22. Counterparts. This Agreement may be executed in any number of counterparts, and by different Parties upon different counterparts with the same effect as if the signatures thereto were upon the same instrument. Each counterpart shall be deemed an original, but together all counterparts shall constitute one and the same instrument. The date of execution of this Agreement shall be the last date any individual counterpart was signed by either of the Parties. Facsimile and email .pdf copies shall be as valid as originals.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties enter into this Agreement.

STATE OF NEW MEXICO ex rel. Hector Balderas, ATTORNEY GENERAL for the State of New Mexico

By: P. Cholla Khoury

Dated: 12/19/2022

NEW MEXICO ENVIRONMENT DEPARTMENT

By: Bruce Baigel

Dated: 12/20/2022

Approved as to form:

William J. Jackson

William J. Jackson
Kelley Drye & Warren L.L.P.
Counsel for New Mexico

NEW MEXICO OFFICE OF THE NATURAL RESOURCES TRUSTEE

By: Maggi Hart 8700

Dated: 12-19-22

Approved as to form:

William Grantham

William Grantham
Assistant Attorney General
Counsel for ONRT

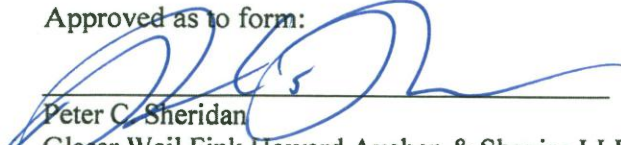
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ENVIRONMENTAL RESTORATION, LLC

By: 

Dated: DEC 19, 2022

Approved as to form:


Peter C. Sheridan
Glaser Weil Fink Howard Avchen & Shapiro LLP
Counsel for ER

WESTON SOLUTIONS, INC.

By: _____

Dated: _____

Approved as to form:

Jeffrey J. Wechsler
Montgomery & Andrews, P.A.
Counsel for Weston

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ENVIRONMENTAL RESTORATION, LLC

By: _____

Dated: _____

Approved as to form:

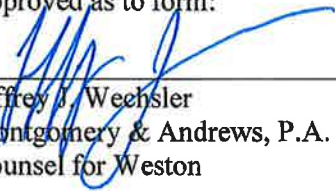
Peter C. Sheridan
Glaser Weil Fink Howard Avchen & Shapiro LLP
Counsel for ER

WESTON SOLUTIONS, INC.

By:  _____

Dated: December 21, 2022

Approved as to form:



Jeffrey J. Wechsler
Montgomery & Andrews, P.A.
Counsel for Weston

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APPENDIX A TO SETTLEMENT AGREEMENT BETWEEN NEW MEXICO AND CONTRACTOR DEFENDANTS

DEFINITIONS

1.1 “Action” means any claim, demand, cause of action, lawsuit, arbitration, administrative or regulatory proceeding, or other proceeding of any kind whatsoever, in law or in equity.

1.2 “CERCLA” has the meaning ascribed in the first Recital in the Agreement.

1.3 “Complaint” means the Second Amended Complaint filed by New Mexico on October 17, 2019 in the Litigation.

1.4 “Court” means the United States District Court for the District of New Mexico presiding over the Litigation.

1.5 “EPA” means the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

1.6 “ER” has the meaning ascribed in the initial paragraph of the Agreement.

1.7 “Gold King Release” means the incident on August 5, 2015 at the Gold King Mine, which is located within the Site, when an estimated three million gallons of water, approximately, exited the Gold King Mine Level 7 adit and ultimately flowed into the Animas River and downstream waterways, which is referenced in the Complaint.

1.8 “Litigation” means the litigation *State of New Mexico v. USEPA, et al.* (1:16-cv-00465 (D.N.M.)) consolidated with the litigation by the Navajo Nation (1:16-cv-00931 (D.N.M.)), which has been centralized in the United States District Court for the District of New Mexico with litigation by the Allen Plaintiffs’ (1:18-cv-00744 (D.N.M.)), and the State of Utah (2:17-cv-00866-TS, (D. Utah)), pursuant to an April 4, 2018 Transfer Order issued by the United States Panel on Multi-District Litigation as MDL Case No. 2824. The Litigation includes the Complaint, and all allegations made by New Mexico therein or otherwise asserted during the course of the Litigation.

1.9 “Matters” has the meaning ascribed in Section 6 of the Agreement.

1.10 “Contractor Defendants” has the meaning ascribed in the initial paragraph of the Agreement.

1.11 “Natural Resource Damages” means damages for purposes of CERCLA § 107(f)(1) and § 107(a)(4)(C) to “Natural Resources” as defined in CERCLA § 101(16), including those that may be recovered by a Natural Resource Trustee pursuant to 43 C.F.R. § 11.15.

1.12 “Natural Resource Trustee” means the official(s) or person(s) designated as natural resource trustee(s) with authority over Natural Resource Damages under 42 U.S.C. §

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107(f); 33 U.S.C. § 2706, or other applicable federal or state law, including the ONRT with respect to the State of New Mexico.

1.13 “New Mexico” has the meaning ascribed in the initial paragraph of the Agreement.

1.14 “ONRT” has the meaning ascribed in the initial paragraph of the Agreement.

1.15 “Party” and Parties” have the meaning ascribed in the initial paragraph of the Agreement.

1.16 “Payment” has the meaning ascribed in Section 1 of the Agreement.

1.17 “Released Contractor Defendant Parties” has the meaning ascribed in Section 3.A of the Agreement.

1.18 “Releasing Contractor Defendant Parties” has the meaning ascribed in Section 4.A of the Agreement.

1.19 “Released New Mexico Parties” has the meaning ascribed in Section 4.A of the Agreement.

1.20 “Releasing New Mexico Parties” has the meaning ascribed in Section 3.A of the Agreement.

1.21 “Weston” has the meaning ascribed in the initial paragraph of the Agreement.

1.22 “Site” means the Bonita Peak Mining District Superfund Site in San Juan County, Colorado, EPA Docket ID No. EPA-HQ-OLEM-2016-0152, as published in the Federal Register on September 9, 2016, 81 Fed. Reg. 62397. The definition for this Site will be construed to include all areas of the Site ever defined or described by EPA for purposes of or in relation to the National Priorities List, 40 C.F.R. Part 300, including any further expansion of such Site as may in the future be determined by EPA, including any land in the State of New Mexico in the Site.