

**MEMORANDUM OF AGREEMENT  
FOR SETTLEMENT FUNDS MANAGEMENT  
BETWEEN THE  
VERMONT AGENCY OF NATURAL RESOURCES  
AND  
UNITED STATES DEPARTMENT OF THE INTERIOR  
(FISH AND WILDLIFE SERVICE)  
REGARDING COORDINATION OF  
NATURAL RESOURCE DAMAGE RESTORATION  
ASSOCIATED WITH THE  
VERMONT ASBESTOS GROUP MINE SITE  
IN EDEN AND LOWELL, VERMONT**

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**I. INTRODUCTION**

This Memorandum of Agreement for Settlement Funds Management (the “Agreement”) is entered into by and between the Vermont Agency of Natural Resources (“VANR”), acting on behalf of the State of Vermont; and the United States Fish and Wildlife Service (“USFWS”), acting on behalf of the United States Department of the Interior (collectively referred to as the “Trustees”, “Trustee Parties” or “Parties”) in recognition of their common interests and responsibilities as Trustees of natural resources on behalf of the public to ensure the coordination and cooperation among the Trustees. The Trustees’ responsibilities include, but are not limited to: (1) restoration planning, implementation, and monitoring of restoration, replacement, rehabilitation, and/or acquisition of equivalent of the injured natural resources and/or their services; and (2) coordination of Trustee concerns and activities relating to impacted natural resources with removal, remedial, corrective or other response actions carried out by other Federal and state agencies in an effort to abate and/or minimize continuing and residual injury and to achieve or enhance restoration of injured natural resources.

This Agreement shall provide the framework for the coordination and cooperation of the Trustees for the use and expenditure of all natural resource damages recovered together with interest accruing (the “Settlement Funds”), following receipt jointly by the Trustees from parties responsible for damages to natural resources and resource services destroyed or lost as a result of hazardous substance releases at or from the Vermont Asbestos Group Mine and surrounding environment in Eden and Lowell, Vermont. Under this Agreement, the Trustee Parties will plan, implement and oversee the restoration, rehabilitation or acquisition of such lost natural resources and resource services.

The Settlement Funds are in settlement of the Trustees’ joint claim for natural resource damages asserted in *United States v. G-1 Holdings Inc., et al.*, United States Bankruptcy Court, District of New Jersey, Case Nos. 01-30135 (RG) and 01-38790 (RG), Adversary Proceeding No. 08-2531 (RG), pursuant to a Consent Decree entered on September 24, 2009 (hereafter, “Consent Decree”).

## II. AUTHORITY

The Trustees enter into this Agreement in accordance with the natural resource trustee authorities provided for each trustee under Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9607(f), and Section 311(f) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(f), and other applicable Federal and state law and authority including, but not limited to, the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), as amended, 40 CFR Part 300, and, to the extent appropriate and elected for use by the natural resource trustees, the DOI Natural Resource Damage Assessment and Restoration (“NRDAR”) regulations, as amended, 43 CFR Part 11.

In accordance with 42 U.S.C. § 9607(f), the Secretary of the Vermont Agency of Natural Resources has been designated by the State of Vermont, as the State’s sole trustee of natural resources in natural resource damage assessment and restoration activities undertaken in accordance with Federal law. This designation enables the Secretary, and the Secretary’s designated representative(s), to work with Federal co-Trustees to assess damages to natural resources in the case of injury to, destruction of, or loss of state natural resources; and to oversee the expenditure of natural resource damage funds for natural resources restoration and/or assessment activities.

## III. LOCATION

This Agreement is intended to cover, but is not limited to, natural resources as defined under the authorities cited above, Section 101 (16) of CERCLA, as amended, 42 U.S.C. 9601 (16), and other applicable Federal and state law, belonging to, managed by, controlled by, or appertaining to the Trustees, which may have been injured by releases of hazardous substances at or from the Vermont Asbestos Group Mine Site (“Site”), as defined under CERCLA, and other applicable Federal and state law. The “Site” includes the asbestos mine and downstream waters and wetlands impacted by the erosion and transport of mine tailings. This Agreement shall also apply to off-site restoration locations.

## IV. PARTIES AND ADVISORS

**A. Natural Resource Trustee Parties.** The following officials, or their designees, are Parties to this Agreement and act on behalf of the public as Trustees for natural resources under this Agreement:

1. the Secretary of the Vermont Agency of Natural Resources, for the State of Vermont, and;
2. the Northeast Regional Director of the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior, pursuant to Section 107(f)(2)(B) of CERCLA, as amended, 42 U.S.C. § 9607(f)(2)(A); Executive Order No. 12580 (January 23, 1987); and Subpart G of the NCP, 40 C.F.R. part 300.600, where the Secretary of the United States Department of the Interior has been designated as a Federal natural resource trustee for purposes of CERCLA, and otherwise has statutory responsibilities related to the natural resources injured, destroyed or lost as a result of the release of hazardous substances at the Site.

**B. Advisors.** As determined to be appropriate by the Trustee Parties, or as required by applicable Federal or state law, the Trustee Parties will coordinate with and seek the advisory participation of the following Federal and state government agencies and departments:

1. U.S. Department of Justice (“DOJ”);
2. U.S. Department of the Interior, Office of the Secretary (“DOI/OS”), Office of the Solicitor (“DOI/SOL”), Office of Policy Analysis (“DOI/PA”), and Office of Environmental Policy and Compliance (“DOI/OEPC”);
3. U.S. Geological Survey (“USGS”);
4. U.S. Environmental Protection Agency (“EPA”);
5. Office of the Vermont Attorney General (“VAGO”); and
6. other Federal, state, or tribal agencies and departments, and legal advisors as determined necessary and appropriate by the Trustees.

## **V. PURPOSE AND SCOPE**

This Agreement is intended to guide and provide a framework for cooperation and coordination among the Trustees, consistent with their duties and responsibilities as Trustees, and the terms of the Consent Decree, in the use and expenditure of jointly recovered natural resource damages, to plan and implement actions appropriate to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of releases of hazardous substances at or from the Site.

## **VI. RESTORATION GOAL**

The goal of restoration or compensation projects is to assure that no net loss of natural resources or their services occurs due to a release of hazardous substance. Prior to the consideration of restoration alternatives, the Trustees will determine whether actions to control any continuing releases would (1) impede the natural recovery of injured resources and services, or (2) limit the effectiveness of restoration activities that have been implemented at the Site. In addition, the restoration of the physical quality of the environment to baseline will be sought. When considering restoration alternatives, methods to accelerate the rate of return of injured natural resources and services to baseline will be used whenever possible. Key species should be restored to baseline levels and lost services should be replaced as directly as possible. The restoration of lost services shall be achieved, whenever possible, through the proper restoration of the injured natural resource which originally provided the services. All restoration activities funded by recovered natural resource damages shall have an equivalency with the natural resources and services that were injured or lost. As such, in accordance with the NRDAR regulations, all restoration activities shall, in some way, restore, rehabilitate, replace and/or acquire natural resources equivalent to those injured. Consistent with the guidelines above, the following hierarchy will be considered when the Trustees evaluate restoration or compensation project alternatives:

- 1) on-site and in-kind restoration - natural resources or services are restored at the Site of injury, as described above, and are physically or biologically the same or similar as those lost;
- 2) off-site and in-kind restoration - natural resources or services physically or biologically the same as those injured are restored at a site different than where injuries occurred, but preferably in the same watershed or ecosystem; and

3) on-site and out-of-kind restoration - natural resources or services are restored at the affected site, but are physically or biologically different than those injured.

The Trustees understand that circumstances may arise that may require the revision of this hierarchy of preferences. Such revision may include, but is not limited to, the consideration of additional restoration or compensation options that are within the scope of Trustees' authority and this MOA, such as, but in no order of priority:

1) off-site and out-of-kind restoration - natural resources that are physically or biologically different than those injured are restored on a site different than the one originally affected, but preferably in the same watershed or ecosystem; or

2) acquisition of equivalent natural resources and/or services - natural resources physically or biologically the same, or substantially similar, as those injured are acquired from private ownership and placed under public ownership and protection, which replaces the lost natural resources and/or services by reducing or preventing impending future losses.

The Trustee Council shall evaluate, choose, and fund restoration projects according to the Consent Decree, the decision-making process described in Section VII, and the guidelines provided by the CERCLA NRDAR regulations and other applicable laws.

## VII. NATURAL RESOURCE TRUSTEE COUNCIL

**A. Organization and Designation of Representatives.** The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently meet their respective Trustee responsibilities under applicable Federal and state law. Accordingly, the Trustees herein establish the Vermont Asbestos Group Mine Site Trustee Council ("Council") to implement this Agreement. Each Trustee shall designate a Primary Trustee Representative to the Council, who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act, and vote in the absence of the Primary Trustee Representative. At the execution of this Agreement, the representatives to the Trustee Council will be identified in Amendment 1 to the Agreement. Each Trustee may, by written notification to all other Trustees, change the Primary and Alternate Trustee Representative designees. The Council may create a Technical Work Group and/or additional subcommittees when they are deemed necessary to achieve the purposes of this Agreement. Non-designees (i.e., appropriate technical or other personnel) may be appointed to serve on work groups and subcommittees formed by the Council.

In addition to the voting Representatives, DOJ, VAGO, and in-house counsel for each of the Trustees, may each appoint one attorney who may attend all meetings of, or organized by, the Council in a legal/consultative role, but such attendance or participation by an attorney shall not create additional voting rights.

**B. Communications.** All correspondence and communications to, between, or among the Trustees pertaining to activities subject to coordination and cooperation under this Agreement shall be sent to the Primary Representative of each Trustee, as designated.

**C. Duties and Responsibilities.** The Council shall coordinate all Trustee activities and matters within the scope of this Agreement. Actions to be taken or authorized by the Council in implementing this Agreement include but are not limited to:

1. coordinating, planning, contracting for, or otherwise undertaking and overseeing the development and implementation of one or more plans (“Restoration Plan”) for the restoration, replacement, rehabilitation, and/or acquisition of equivalent resources to those injured by the release of hazardous substances at or from the Site;
2. coordinating Trustee decision-making, planning, and project contracting and implementation to ensure such actions are conducted in accordance with applicable administrative procedures and/or legal requirements (e.g., state/Federal permitting requirements);
3. making decisions and taking actions as necessary to manage, administer, and/or oversee projects being developed or implemented with the Settlement Funds and expending the Settlement Funds, as appropriate;
4. coordinating Trustee participation in removal, remedial, corrective or other actions under the authority of VANR or other Federal or state agencies in order to minimize residual injury to natural resources; and
5. designating a Lead Administrative Trustee (“LAT”). The Trustee Council shall designate a Trustee Party as the LAT for the Council. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties for the LAT include, but are not limited to, the following:
  - a. scheduling conference calls and meetings of the Council and any work groups or subcommittees, preparing agendas for those conference calls and meetings, and recording actions taken at those conference calls and meetings;
  - b. acting as central contact for the Council and any work groups or subcommittees;
  - c. maintaining the Administrative Record, including records and documents received or generated by the Council and/or any work groups or subcommittees;
  - d. preparing, issuing, and/or arranging for public notices or reports as determined to be necessary by the Council;
  - e. maintaining records of Settlement Funds expenditures and receipts related to this Agreement;
  - f. circulating documents among the Trustee Parties;
  - g. informing the other Trustee Parties of all pertinent developments on a timely basis;
  - h. keeping the Advisors under this Agreement directly and contemporaneously informed of, and involved in, when appropriate or required, all relevant and significant activities of the Trustee Parties under this Agreement;
  - i. such other duties as are agreed upon by the Council, which do not give the LAT decision-making rights beyond those normally held by each Trustee;
  - j. establishing protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of Settlement Funds from the Vermont Asbestos Group Mine Site Restoration Account described in Section VIII hereinafter;

- k. contracting with such entities as the Trustee Council, in its collective discretion, determines are necessary to implement this Agreement; and
- l. taking such other actions as the Council determines are necessary or appropriate to implement this Agreement, including actions necessary to fulfill responsibilities of the Trustees under applicable state or Federal laws.

**D. Decision-making and Dispute Resolution.** The members of the Council shall have equal authority and all decisions by the Council implementing this Agreement shall be made by consensus. The Trustees further agree that, while recognizing the areas of expertise and authority of each Trustee, decision-making deliberations will focus on the Trustees' mutual purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources. Significant decisions should be memorialized via Trustee Council Resolution, signed by the voting representatives of the Trustee Council.

In the event of a dispute involving any decisions under this Agreement, the Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees involved in the dispute and consensus by the Council as a whole. If unanimous consent cannot be reached, the matter shall be elevated to the signatories of this Agreement, within their respective agencies, who may expressly delegate their decision-making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved.

## **VIII. USE OF SETTLEMENT FUNDS**

**A. The Account.** The Settlement Funds shall be maintained, pending use, in the DOI NRDAR Fund, as administered by the DOI NRDAR Fund Manager (Washington, DC), and shall constitute the Vermont Asbestos Group Mine Site Restoration Account ("Account").

**B. General Use.** The Trustees agree to cooperate in good faith to utilize, to the extent consistent with applicable law, the United States Department of the Interior NRDAR Fund, for purposes of receiving, depositing, holding, disbursing, and expending all Settlement Funds, and the interest earned thereon. The Settlement Funds may be used by the Trustees only to plan, implement, and oversee appropriate actions to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, destroyed, or lost as a result of releases of hazardous substances at or from the Site. Such uses include Trustee administrative costs or expenses, including, but not limited to, costs, both direct and indirect, associated with preparation or review of documents pertinent to the development or implementation of the Restoration Plan; administration, management, or oversight of contracts or projects; and travel.

Under this Agreement, the Trustees may work with the DOI NRDAR Fund Manager, and/or his/her designee, in identifying risk-free investments, such as U.S. Treasury Bills, to earn a higher rate of return appropriate for unexpended Settlement Funds until their use is necessary. Appropriate investment activities will be determined through the consensus decision-making process set forth in Section VII of this Agreement and will be by unanimous written agreement of all Council members. Interest earned on any investment of Settlement Funds from the Account will be made available for use by the Trustees to compensate the public for injuries to natural resources and resource services consistent with this Agreement.

**C. Procedures Relating to Use or Access to Funds.** The Council, in accordance with the decision-making process identified in Section VII, shall identify protocols, standards, procedures, budgets, or other

directions as necessary to support access to or the use of damages, or interest thereon, and to otherwise effectuate the purposes of this Agreement. Disbursement of all Settlement Funds from the Account, including for reimbursement of administrative costs and expenses incurred by the Trustees jointly and separately, will be by unanimous written agreement of all Council members.

### **IX. RESERVATION OF RIGHTS**

Each Trustee has and reserves the right to take any action within the scope of its authority as a Trustee, including as may be necessary to pursue and/or to preserve any legal rights or remedies available to it as a Trustee. Nothing in this Agreement is intended to waive or foreclose any such rights.

### **X. MODIFICATION OF AGREEMENT**

A. This Agreement may be modified by the agreement of the Trustees.

B. Any modification of this Agreement shall be in writing, executed by the Trustees.

### **XI. TERMINATION**

A. This Agreement shall continue in effect until completion of all work required pursuant to the Restoration Plan(s) and/or until there are no remaining Settlement Funds or at such other time as the Trustees, in their sole discretion, determine appropriate.

B. In the event any Trustee withdraws from the Agreement, notification of such withdrawal must be made in writing to the other Trustee at least thirty (30) days in advance of the withdrawal. Such withdrawing Trustee forfeits all rights pursuant to this Agreement including, without limitation, the right to decide how Settlement Funds are to be expended and to authorize expenditures of Settlement Funds from the Account. Any withdrawing Trustee agrees to provide timely instructions to the DOI NRDAR Fund authorizing the remaining Trustees to enact future transactions from the Account without the participation of the withdrawing Trustee. Such withdrawing Trustee may recoup such administrative costs it has incurred as of the date of its withdrawal from this Agreement, as provided in and subject to the terms of Section VIII.C above. In the event of such withdrawal, this Agreement remains in full force and effect for the remaining Trustees.

### **XII. LIMITATION**

The Trustee Parties, Trustee Representatives (including Alternates) and the LAT are not authorized to enter into settlements on behalf of the other Trustees, and are not authorized to represent another Trustee in any litigation that may be commenced by the other Trustees. The responsibilities and commitments identified in this Agreement are wholly subject to the lawful availability of funds, including from the Account. Nothing in this Agreement shall be construed as obligating the United States, the State of Vermont, VANR, DOI, USFWS, or any other public agency, their officers, agents, or employees to expend any funds in excess of the Settlement Funds reimbursable from the Account or authorized by law.

### **XIII. THIRD PARTY CHALLENGES OR APPEALS**

The rights and responsibilities contained in this Agreement represent an operational agreement among the respective Parties. This Agreement does not confer any rights on third parties, is not a waiver of any Sovereign Immunity of any Trustee, and is not to be construed as providing the basis of any third party challenges or appeals.

#### **XIV. EXECUTION: EFFECTIVE DATE**

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute an original Agreement. The date of execution shall be the date of the last of the Trustees' representatives to sign.

#### **XV. ANTI-DEFICIENCY**

Nothing in this Agreement shall be construed as obligating the United States or any state or Federal signatory to this Agreement, their officers, agents or employees, to appropriate funds, or to expend any funds in excess of appropriations or other amounts authorized by law.

**IN WITNESS WHEREOF**, the parties hereto have signed this Settlement Funds Management Agreement on the date appearing with their signatures.



1 National Life Drive  
Davis 2  
Montpelier, VT 05620-3901

Tel: (802) 828-1294  
Fax: (802) 828-1250

[www.anr.state.vt.us](http://www.anr.state.vt.us)



**State of Vermont**  
**Agency of Natural Resources**

Deborah L. Markowitz  
Agency Secretary

Trey Martin  
Deputy Secretary

**STATE OF VERMONT**

A handwritten signature in black ink, appearing to read "Deborah Markowitz".

Deborah Markowitz, Secretary  
Vermont Agency of Natural Resources

1-6-15

Date

**UNITED STATES DEPARTMENT OF THE INTERIOR**



Wendi Weber  
Region 5 Regional Director  
U.S. Fish and Wildlife Service

May 19, 2015  
Date

**AMENDMENT 1**

**TRUSTEE COUNCIL MEMBERS**

**Trustee Party:** Vermont Agency of Natural Resources

**Primary Representative:** John Schmeltzer, VTDEC

**Alternate Representative:** Linda Elliott, VTDEC

**Trustee Party:** U.S. Department of the Interior

**Primary Representative:** Molly Sperduto, FWS

**Alternate Representative:** Andrew Major, FWS