

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8  
AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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FILED  
EPA REGION VIII  
HEARING CLERK

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IN THE MATTER OF: )

Quartz Hill Tailings Pile within the )  
Central City/Clear Creek Superfund Site )

Proceeding under Section 122(g)(4) )  
of the Comprehensive Environmental )  
Response, Compensation, and )  
Liability Act, 42 U.S.C. § 9622(g)(4) )  
\_\_\_\_\_ )

U.S. EPA Docket No. **CERCLA-08-2017-0002**

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT**

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## **I. JURISDICTION**

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (EPA), the Colorado Department of Public Health and Environment (CDPHE), and the City of Central, Colorado (Respondent). This Settlement Agreement is issued pursuant to the authority vested in the President by Section 122 of CERCLA, 42 U.S.C. § 9622, to reach settlements in actions under Section 106 or 107 of CERCLA, §§ 9606 or 9607. This authority has been delegated to the Administrator of the U.S. Environmental Protection Agency (EPA) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E and EPA Delegation 14-14-C and further delegated to supervisors in the Legal and Technical Enforcement Programs.

2. Respondent agrees to undertake all actions required by this Settlement Agreement. Respondent further consents to and will not contest EPA's jurisdiction to issue this Settlement Agreement or to implement or enforce its terms.

3. EPA, CDPHE, and Respondent agree that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Statement of Facts or Determinations contained in Sections V and VI, respectively, of this Settlement Agreement.

## **II. PARTIES BOUND**

4. This Settlement Agreement shall apply to and be binding upon EPA, CDPHE, and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate or other legal status of Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent'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 execute and bind legally the party represented by him or her.

## **III. STATEMENT OF PURPOSE**

5. By entering into this Settlement Agreement, the mutual objectives of the Parties are:

a. to reach a final settlement between the Parties to resolve any potential liability of Respondent for the Existing Contamination on the Acquired Parcel and Abandoned Parcel located within the Quartz Hill Tailings Pile (Quartz Hill) pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622;

b. to simplify any remaining administrative and judicial enforcement activities concerning Quartz Hill by eliminating a potentially responsible party from further involvement at Quartz Hill; and

c. to provide for full and complete contribution protection for Respondent with regard to Quartz Hill pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C.

§§ 9613(f)(2) and 9622(g)(5), or as otherwise may be provided by law, in accordance with Section XV (Effect of Settlement/Contribution) herein.

#### IV. DEFINITIONS

6. 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 meanings assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

“Abandoned Parcel” shall mean that property located within Quartz Hill transferred to the Respondent on or about June 13, 2003 by virtue of a quitclaim deed executed by Helen S. Lake, Marjorie C. Salzwedel, and Marvin C. Skagerberg recorded on June 13, 2003 at reception no. 117662 with the Gilpin County Clerk and Recorder.

“Acquired Parcels” shall mean that property within Quartz Hill acquired by Respondent by virtue of a special warranty deed executed by Pinnacle Entertainment, Inc. and recorded on March 15, 2016 at reception no. 155909 with the Gilpin County Clerk and Recorder.

“Central City/Clear Creek Site” or “Site” shall mean the Central City/Clear Creek Superfund Site, covering the 400 square mile drainage basin of Clear Creek, and shown generally in the map attached as Appendix A.

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

“CDPHE” shall mean the Colorado Department of Public Health and Environment and any successor departments of agencies of the State.

“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.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

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

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

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

“Existing Contamination” shall mean:

- a. Any hazardous substances, pollutants or contaminants present or existing on or under the Abandoned Parcel or Acquired Parcel as of the Effective Date;

- b. Any hazardous substances, pollutants or contaminants that migrated from the Abandoned Parcel or Acquired Parcel prior to the Effective Date; and
- c. Any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Abandoned Parcel or Acquired Parcel after the Effective Date.

“Force Majeure Event” shall mean any event arising from causes beyond the control of Respondent which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent’s best efforts to fulfill the obligation.

“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.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

“Parties” shall mean EPA, CDPHE, and Respondent.

“Property” shall mean the Abandoned Parcel and the Acquired Parcels located within Quartz Hill. The Property is located in Central City, Gilpin County, Colorado, and is designated by the property descriptions in Appendix E.

“Quartz Hill” shall mean the Quartz Hill Tailings Pile located within the Central City/Clear Creek Site, encompassing approximately 5 acres, located at immediately adjacent to the Central City business district within Central City, Gilpin County, Colorado, generally shown on the map attached as Appendix B.

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

“Respondent” shall mean the City of Central.

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

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“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.

“Work” shall mean all the activities Respondent is required to perform under Paragraph 21.

## V. STATEMENT OF FACTS

7. The Central City/Clear Creek Site was added to the National Priorities List in September, 1983. It covers the 400 square mile drainage basin of Clear Creek, and contains numerous inactive precious metal mines.

8. Quartz Hill is located within the Site. Contamination originated at Quartz Hill during the 1930s and 1940s as a result of the discharge of tailings from mills that processed gold ore extracted from numerous mines in the area.

9. The Quartz Hill tailings contain hazardous substances lead and arsenic, and were later re-graded into an approximately 500,000 cubic yard pile with steep side slopes covering approximately five acres.

10. The steep slopes caused the Quartz Hill tailings to erode into surface water during storm events, negatively impacting water quality within the Site.

11. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with Quartz Hill under Section 104 of CERCLA, 42 U.S.C. § 9604.

12. In 1991, EPA issued a Record of Decision that called for stabilization and capping of Quartz Hill. In 2014, EPA and CDPHE implemented the Record of Decision by re-contouring and placing a rock cap on Quartz Hill in order to prevent erosion into surface waters of the Site.

13. In performing these response actions, EPA has incurred response costs at or in connection with Quartz Hill.

14. A previous property owner abandoned its interests in a parcel on Quartz Hill to the Respondent and issued a quitclaim deed to the Respondent (Abandoned Parcel). The Respondent has no record of receiving consideration for or accepting the Abandoned Parcel. Respondent represents, and for the purpose of this Settlement Agreement EPA accepts, that Respondent involuntarily acquired the Abandoned Parcel.

15. The Respondent acquired certain additional parcels at and around Quartz Hill from November 2015 through March 2016 (Acquired Parcels). Respondent represents that it is a bona fide prospective purchaser (BFPP) as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), with respect to the Acquired Parcels, that it has and will continue to comply with section 101(40) during its ownership of the Acquired Parcels, and thus qualifies for protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1). In view, however, of the Work to be performed and the risk of claims under CERCLA being asserted against Respondent notwithstanding section 107(r)(1) as a consequence of Respondent's activities at Quartz Hill 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 XIII (Reservation of Rights by United States), any potential liability of Respondent for the Existing Contamination on the Acquired Parcels.

16. Respondent represents that it did not arrange for disposal of any tailings or other hazardous substances present at Quartz Hill or accept or arrange for transport of any such materials or substances for disposal at Quartz Hill.

17. EPA estimates that the total response costs incurred and to be incurred at or in connection with Quartz Hill by the EPA Hazardous Substance Superfund and by other persons is over \$1.4 million.

## VI. DETERMINATIONS

18. Based upon the Statement of Facts set forth above and on the administrative record for the Site, EPA has determined that:

a. Quartz Hill is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondent is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent is an “owner,” as defined in Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), of a “facility,” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened “release” of a “hazardous substance” from Quartz Hill as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened “release” caused the incurrence of response costs.

f. Prompt settlement with Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. Respondent is eligible for a *de minimis* settlement pursuant to Section 122(g)(1)(B) of CERCLA, 42 U.S.C. § 9622(g)(1)(B).

## VII. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the administrative record for the Central City/Clear Creek Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth in this Settlement Agreement, the following is hereby AGREED TO AND ORDERED:

## VIII. WORK TO BE PERFORMED AND PROPERTY REQUIREMENTS

20. CDPHE and Respondent agree that this Settlement Agreement supersedes and terminates the Memorandum of Understanding, Quartz Hill Waste Pile Remediation, Central City, Colorado, between the State and the City dated September 13, 2013. The Respondent will incorporate the Nevada Street storm sewer into its storm sewer maintenance activities, subject to the continuing availability of funding for said maintenance activities.

21. Agreements Regarding Institutional Controls and Operation and Maintenance. Respondent shall, with respect to Quartz Hill:

- a. Within thirty days of the Effective Date, pass and implement the Land Use Restriction Ordinance attached as Appendix C.
- b. Upon the Effective Date, follow the Work Plan attached hereto as Appendix D.
- c. Respondent shall not be required to perform any Work to the extent such Work would cause Respondent's total expenditures for routine operation and maintenance activity to exceed \$2,500 for any one year period (One Year Cap), where the first one year period commences on the Effective Date, or \$10,000 over a ten year period beginning on the Effective Date (Ten Year Cap). In addition, Respondent shall be entitled to a reasonable extension of time to complete required operation and maintenance activities during the period of any Force Majeure Event delays performance of Respondent's obligations under this Agreement.
- d. Respondent shall provide written notice to CDPHE at the time its total expenditures for the Work exceed either the One Year Cap or the Ten Year Cap, or upon the occurrence of a Force Majeure Event. Such notice shall include, as applicable, either (a) an accounting of such expenditures and a one-page report detailing the operations and maintenance activities taken during the then-current year as of the date of the notice and any remaining activities to be completed, or (b) a description of the Force Majeure Event and the anticipated repairs or replacement to the remedy required or the anticipated period of delay for Respondent's performance hereunder. Upon CDPHE's verification that a Force Majeure Event occurred, the City's obligation shall be deemed complete with respect to damages caused by that event. Alternatively, upon mutual agreement of CDPHE and City, the City may agree to perform such work and CDPHE may reimburse the City for the cost of such work. For purposes of calculating total expenditures, the City shall include (a) any out-of-pocket costs without markup and (b) costs for use of City equipment and tasks performed by City employees based on the unit prices attached hereto and as such rates may be reasonably updated.
- e. Respondent's obligations under this Paragraph extend only to funds appropriated annually by the City of Central City Council and encumbered for the purpose of this Settlement Agreement. Respondent does not, by this Settlement Agreement, irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Settlement Agreement does not, and is not intended to, create a multiple-fiscal year direct or indirect debt or financial obligation of the Respondent. Respondent shall provide written notice to EPA and CDPHE if no such annual appropriation is made, and the rights and obligations of the parties hereunder shall terminate.

22. Respondent shall provide the United States, CDPHE, and their representatives, contractors, and subcontractors with access at all reasonable times to its Property to conduct any activity relating to response actions at Quartz Hill including the following activities:

- a. Verifying any data or information submitted to the EPA or CDPHE;
- b. Conducting investigations regarding contamination at or near Quartz Hill;
- c. Obtaining samples;
- d. Assessing the need for, planning, implementing, or monitoring response actions;
- e. Assessing Respondent's compliance with the Settlement Agreement;
- f. Determining whether the 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
- g. Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Property.

23. Respondent shall refrain from using the Property in any manner that EPA and CDPHE determine 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 Quartz Hill. EPA and CDPHE consider compliance with the following requirements sufficient to satisfy the requirements of the preceding sentence and to constitute due care with respect to hazardous substances on the Property:

- a. Respondent shall not allow or conduct any activities on the Property that would damage any component of the response action implemented at Quartz Hill, including any excavation, drilling, grading, digging, tilling or any other soil-disturbing activity except as required for routine operation and maintenance outlined in Paragraph 21 and Appendix D.
- b. EPA and CDPHE acknowledge that Respondent may wish to make or authorize certain improvements to the Property in the future, including construction of buildings, utility infrastructure, or other structures, that may disturb existing mine waste or components of the response action. If Respondent or any others propose such activities, Respondent shall notify EPA and the State of proposed activities and obtain prior written approval for such proposed activities from EPA and CDPHE to ensure that no hazardous materials are released as a result of such activities and that any damage to the Quartz Hill response action is adequately repaired.
- c. Respondent shall otherwise comply with the Land Use Restriction Ordinance, and the requirements of Paragraph 21 and Appendix D.

24. Notice to Successors-in-Title.

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

(1) Notify the proposed transferee that EPA performed a response action regarding Quartz Hill, that potentially responsible parties are required to comply with institutional controls regarding Quartz Hill, including information identifying the Land Use Restriction Ordinance; and

(2) Notify EPA and CDPHE of the name and address of the proposed transferee and provide EPA and CDPHE with a copy of the above notice that it provided to the proposed transferee.

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

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

**IX. DUE CARE AND COOPERATION**

27. Nothing in this Settlement Agreement shall be construed to relieve Respondent of Respondent's duty to exercise due care with respect to the hazardous substances at Quartz Hill or Respondent's duty to comply with all applicable local, State, and federal laws and regulations.

28. Respondent agrees to cooperate fully with EPA in the implementation of response actions at Quartz Hill and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Respondent's operations by such entry and response. In the event Respondent becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

**X. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

29. If Respondent fails to comply with the requirements of Section VIII (Property Requirements), or Section IX (Due Care and Cooperation), the United States may, in addition to any other available remedies or sanctions, bring an action against Respondent seeking injunctive relief to compel compliance with this Settlement Agreement and/or seeking civil penalties under Section 122(I) of CERCLA, 42 U.S.C. § 9622(I), for the failure to comply.

## **XI. CERTIFICATION OF RESPONDENT**

30. By signing this Settlement Agreement, Respondent certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, that relates in any way to the ownership, operation, or control of Quartz Hill, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with Quartz Hill;

b. has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, documents, or other information (including records, reports, documents, or other information in electronic form) (other than identical copies) relating to its potential liability regarding Quartz Hill since notification of potential liability by the United States or the State; and

c. has and will comply fully with any and all EPA and State requests for information regarding Quartz Hill pursuant to Sections 104(e), 122(e)(3)(B), and 122(g)(8) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e)(3)(B), and 9622(g)(8), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

31. Pursuant to §25-15-320(3)(b), C.R.S., the State finds that (a) Respondent was not required to remediate the contamination at the Property; (b) Respondent has not granted an environmental covenant under § 25-15-320, C.R.S. for the Property; (c) the Land Use Restriction Ordinance, once adopted by Respondent, will impose use restrictions relevant to the Quartz Hill remedy and the Property; and (d) Respondent and the State intend that this Settlement Agreement serve as an intergovernmental agreement between Respondent and the State under § 29-1-203 C.R.S. as it relates to the Land Use Restriction Ordinance. Accordingly, subject to the adoption of the Land Use Restriction Ordinance, the State waives the requirement for an environmental covenant to be placed on Quartz hill (including the Property) under § 25-15-320, C.R.S. Further, Respondent hereby authorizes the State to enforce the Land Use Restriction Ordinance as it relates to Quartz hill by filing an action in district court seeking injunctive relief to require compliance with the Land Use Restriction Ordinance. Respondent agrees any amendments to the Land Use Restriction Ordinance shall incorporate such requirements as the State may recommend to ensure the Quartz Hill remedy continues to protect human health and the environment.

## **XII. COVENANTS BY UNITED STATES AND THE STATE**

32. Except as specifically provided in Section XIII (Reservations of Rights), the United States and the State covenant not to sue or take administrative action against Respondent pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, with respect to the Property or the Work. 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 Respondent of all obligations under this Settlement Agreement and the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with Quartz Hill. These covenants extend only to Respondent and do not extend to any other person.

### **XIII. RESERVATIONS OF RIGHTS**

33. The United States and the State reserve, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within Section XII (Covenants by United States and the State). Notwithstanding any other provision of the Settlement Agreement, the United States and the State reserve all rights against Respondent with respect to:

- a. liability for failure by Respondent 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 cost of any natural resource damage assessments;
- d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Work Plan, the Work, or otherwise ordered or approved by EPA or CDPHE;
- e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Property after the Effective Date, not within the definition of Existing Contamination;
- f. liability as a result of a failure to exercise due care with respect to hazardous substances at the Property;
- g. liability resulting from exacerbation of Existing Contamination by Respondent, its successors, assigns, lessees, or sublessees; and
- h. liability arising from the disposal, release or threat of release of hazardous substances outside the Site, not within the definition of Existing Contamination.

34. Nothing in this Settlement Agreement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States or the State, including EPA or CDPHE, to seek or obtain further relief from Respondent, and the Covenants by United States in Section XII are null and void, if information not currently known to EPA is discovered that indicates that Respondent fails to meet any of the criteria specified in Section 122(g)(1)(B) of CERCLA.

### **XIV. COVENANTS BY RESPONDENT**

35. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State or their contractors or employees with respect to Quartz Hill or this Settlement Agreement including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund 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 Quartz Hill including any claim under the United States Constitution, the Constitution of the State Colorado, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

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

36. Except as provided in Paragraph 38 (waiver of claims) and Paragraph 43 (waiver of claim-splitting defenses), the covenants in this Section shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIII (Reservations of Rights), other than in Paragraph 33.a (liability for failure to meet a requirement of the Settlement Agreement) or 33.b (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

38. Respondent agrees 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 Section 107(a) or 113 of CERCLA) that it may have for response costs relating to Quartz Hill against any other person who is a potentially responsible party under CERCLA at Quartz Hill. This waiver shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to Quartz Hill against Respondent; nor shall it apply to any defense, claim, or cause of action arising out of action undertaken by Respondent in response to a release or threat of release in accordance with Paragraph 28 (emergency response).

## **XV. EFFECT OF SETTLEMENT/CONTRIBUTION**

39. Except as provided in Paragraph 38 (waiver of claims), 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 XIV (Covenants by Respondent), the United States and Respondent expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to Quartz Hill against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 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).

40. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 122(g)(5), and is entitled, as of the Effective Date, to protection from

contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) 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 Quartz Hill, by the United States or any other person, provided, however, that if the United States exercises rights under the reservations in Section XIII (Reservations of Rights by United States), other than in Paragraph 33.a (liability for failure to meet a requirement of the Settlement Agreement) or 33.d (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.

41. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent 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).

42. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA and DOJ 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.

43. 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 Quartz Hill, Respondent 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 in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by United States set forth in Section XII.

44. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period after the date of its signature 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 40, and that, in any action brought by the United States related to the “matters addressed,” Respondent 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 after its signature of this Settlement Agreement. If EPA gives notice to Respondent 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.

## **XVI. INTEGRATION/APPENDICES**

45. This Settlement Agreement and its appendices constitute 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; “Appendix B” is the map of Quartz Hill; “Appendix C” is the Land Use Restriction Ordinance; “Appendix D” is the Work Plan; and “Appendix E” is the property descriptions. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

#### **XVII. RELEASE OF LIEN**

46. Within thirty days after the Effective Date, EPA agrees to release any lien it may have on the Acquired Parcels and the Abandoned Parcel by virtue of Section 107 of CERCLA, 42 U.S.C. § 9607.

#### **XVIII. PUBLIC COMMENT**

47. 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, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

#### **XIX. ATTORNEY GENERAL APPROVAL**

48. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

#### **XX. EFFECTIVE DATE**

49. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Respondent that the public comment period pursuant to Section XVIII (Public Comment) has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

#### **XXI. DISCLAIMER**

50. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment that may be posed by contamination at Quartz Hill nor constitutes any representation by EPA that Quartz Hill is fit for any particular purpose.

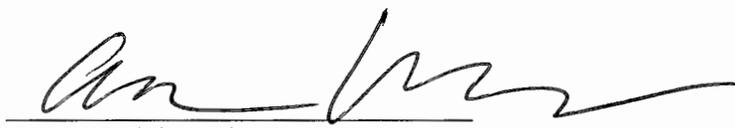
IT IS SO AGREED:

1/26/17  
Dated

1/30/17  
Dated

**U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
Andrea Madigan, CERCLA Supervisory Attorney  
Legal Enforcement Program  
U.S. Environmental Protection Agency, Region 8

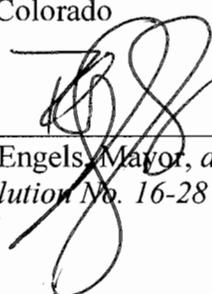
  
Aaron Urdiales, Director  
RCRA & CERCLA Technical Enforcement Program  
U.S. Environmental Protection Agency, Region 8

Signature Page for Settlement Agreement Regarding Central City/Clear Creek Superfund Site

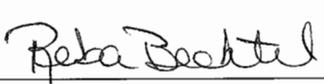
**RESPONDENT:**

**CITY OF CENTRAL**, a home rule municipality of  
the State of Colorado

By:

  
\_\_\_\_\_  
Ron Engels, Mayor, *authorized by*  
*Resolution No. 16-28 dated December 20,*  
*2016*

ATTEST:

  
\_\_\_\_\_  
Reba Bechtel, CMC, City Clerk

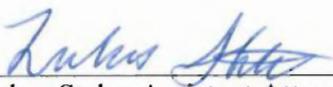
REVIEWED BY:

  
\_\_\_\_\_  
Marcus McAskin, City Attorney

Signature Page for Settlement Agreement Regarding Central City/Clear Creek Superfund Site

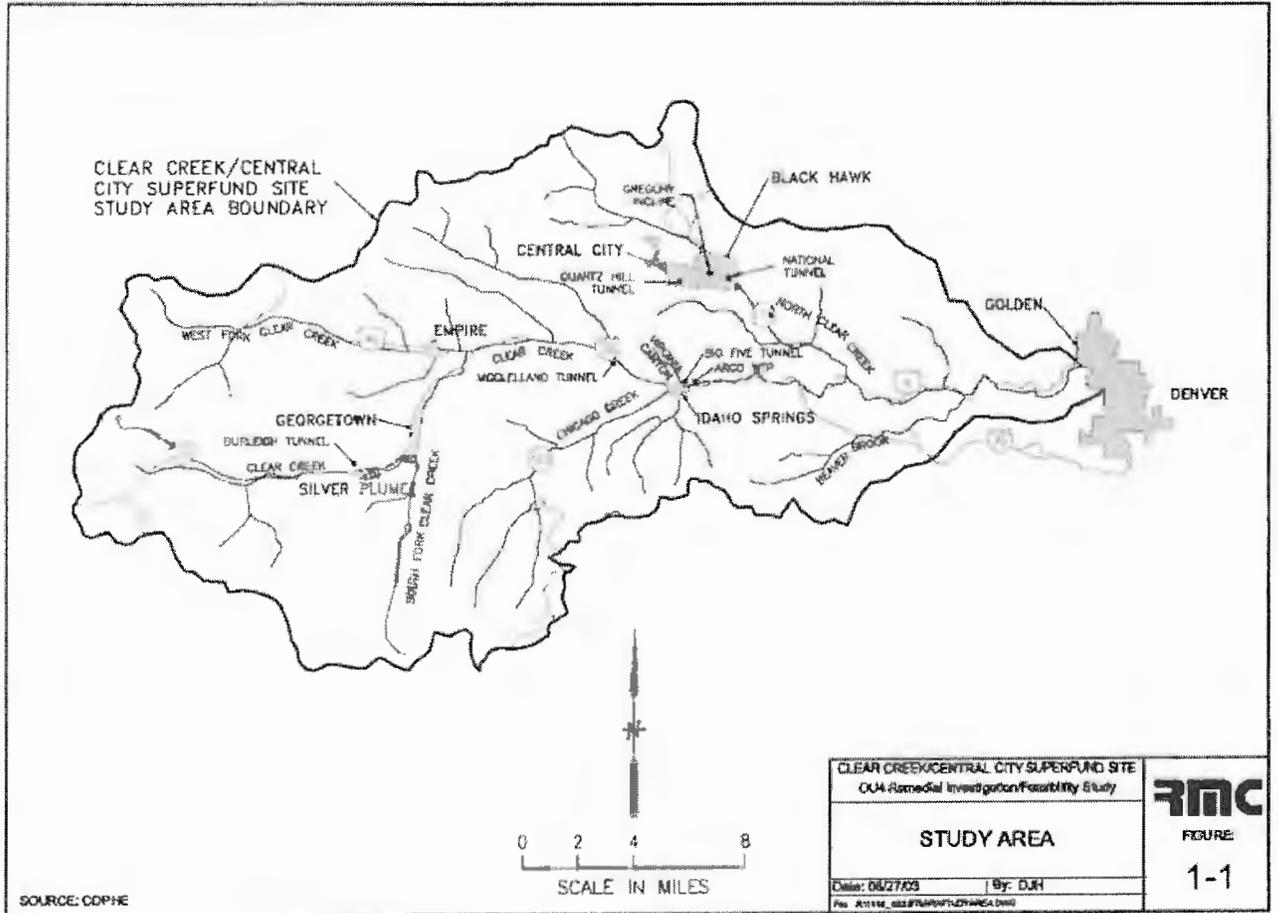
**STATE OF COLORADO:**

By:   
\_\_\_\_\_  
Gary Baughman, Director  
Hazardous Materials and Waste  
Management Division  
Colorado Department of Public Health and  
Environment

By:   
\_\_\_\_\_  
Lukas Staks, Assistant Attorney General  
Natural Resources & Environment Section  
Colorado Attorney General's Office

# APPENDIX A

## Clear Creek Site



**APPENDIX B**  
**Quartz Hill Site**



**APPENDIX C**  
**Land Use Restriction Ordinance**

**CITY OF CENTRAL, COLORADO  
ORDINANCE 16-03**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL,  
COLORADO ADOPTING A NEW ARTICLE XIII OF CHAPTER 16 OF THE  
CENTRAL CITY MUNICIPAL CODE TITLED *QUARTZ HILL OVERLAY  
DISTRICT*, ADOPTING REGULATIONS PERTAINING TO THE OVERLAY  
DISTRICT, AND AUTHORIZING A DELAYED EFFECTIVE DATE OF THIS  
ORDINANCE**

**WHEREAS**, the Quartz Hill tailings impoundment was developed in the 1930s and 1940s as a result of the discharge from mills that processed the gold ore extracted from numerous mines in the vicinity of Central City; and

**WHEREAS**, after mill operations ceased, the tailings impoundment was re-graded into an approximately 500,000 cubic yard pile with steep slopes covering approximately five acres; and

**WHEREAS**, in accordance with authority provided in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (CERCLA), the U.S. Environmental Protection Agency (EPA) prepared a Record of Decision (ROD) for Operable Unit 3 of the Central City/Clear Creek Superfund Site; and

**WHEREAS**, the ROD calls for in-place capping of the Quartz Hill tailings pile to stabilize the pile and improve Clear Creek surface water quality by preventing surface water from contacting mine waste; and

**WHEREAS**, following years of City and other stakeholder input, the Colorado Department of Public Health and Environment (“CDPHE”) completed the Quartz Hill Remediation Project in August of 2014; and

**WHEREAS**, the Quartz Hill Remediation Project consisted of re-grading the tailings pile, construction of a new storm sewer, and placement of a geotextile and rock cover; and

**WHEREAS**, disruption of the geotextile and rock cover and site drainage could result in mine tailings exposure and impacts to surface water; and

**WHEREAS**, CDPHE maintains as-built maps of the remedial project area; and

**WHEREAS**, C.R.S. § 25-15-320(2)(b) requires environmental covenants to maintain and protect the geotextile and rock cover and integrity of the Project; and

**WHEREAS**, C.R.S. § 25-15-320(3)(b) authorizes CDPHE to waive the requirement for environmental covenants for parcels of land where the owner does not grant an environmental covenant under C.R.S. § 25-15-320 if the governmental entity having land use regulatory

authority over the affected property has enacted an ordinance or resolution imposing the relevant environmental use restrictions; and

**WHEREAS**, the ownership of the Quartz Hill tailings impoundment is fragmented and complicated and CDPHE and the City have determined that placing covenants over the subject property would be burdensome; and

**WHEREAS**, the City of Central City has jurisdiction over the Quartz Hill property and desires to enact an Ordinance to implement the required environmental use restrictions that will contribute to the protection of human health and the environment and will contribute to the maintenance of CDPHE's environmental remediation action taken within the boundaries of the Quartz Hill property; and

**WHEREAS**, Central City contemplates that future uses of the Quartz Hill property, such as a parking lot, apartment building, hotel, ballfields or other recreational facilities and/or other similar uses and structures may be allowed; and

**WHEREAS**, the City Council finds that this Ordinance will further the health, safety and general welfare of the City's inhabitants; and

**WHEREAS**, this Ordinance has been prepared and enacted in accordance with the Home Rule Charter as well as applicable state statutes and is hereby declared to be adopted in accordance with all applicable provisions of the Home Rule Charter and applicable state statutes; and

**WHEREAS**, City Council conducted a public hearing, with proper notice provided, to consider adoption of this Ordinance as required by law.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO THAT:**

**Section 1.** Article XIII of Chapter 16 of the Central City Municipal Code, titled "Quartz Hill Overlay District" is hereby adopted to read in full as follows:

**CHAPTER 16**

**ARTICLE XIII  
Quartz Hill Overlay District**

**Article XIII Quartz Hill Overlay District**

Sec. 16-13-10	Intent.
Sec. 16-13-20	Purpose.
Sec. 16-13-30	Definitions.
Sec. 16-13-40	Overlay District established.
Sec. 16-13-50	Variances not allowable.

Sec. 16-13-60	Consultation to amend.
Sec. 16-13-70	Regulation of excavation activities.
Sec. 16-13-80	Quartz Hill Overlay District Permit – Application required.
Sec. 16-13-90	Application Review.
Sec. 16-13-100	No development without Overlay District Permit.
Sec. 16-13-110	Powers of City Manager.
Sec. 16-13-120	CDPHE Enforcement Authorization.
Sec. 16-13-130	Violations and penalties.

**Sec. 16-13-10. Intent.**

The Colorado Department of Public Health and Environment (“CDPHE”) completed Quartz Hill Remediation Project in 2014. The Project consisted of re-grading the tailings pile, construction of a new storm sewer, and placement of rock cover. These Quartz Hill Overlay District regulations have been adopted in accordance with the express authority set forth in C.R.S, § 25-15-320(3)(b)(II), authorizing the City to adopt an ordinance imposing relevant environmental use regulations, and authority set forth in the Home Rule Charter and Title 31, C.R.S.

**Sec. 16-13-20. Purpose.**

The purpose of this Article is to protect the integrity of the existing geotextile and rock installed as part of the Quartz Hill Remediation Project in 2014 while allowing for reasonable and appropriate future use of lands situated within the Quartz Hill Overlay District. The implementation of the regulations set forth in this Article which require an application for the issuance of an Overlay District Permit prior to any development or other soil-disturbing activity within the boundaries of the Quartz Hill Overlay District will ensure that human health and public safety are adequately protected.

**Sec. 16-13-30. Definitions.**

“*Central City/Clear Creek Superfund Site*” or “*Site*” shall mean those areas that are designated as the Central City/Clear Creek Superfund Site by the U.S. Environmental Protection Agency (EPA) pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, as amended. EPA added the Central City/Clear Creek Superfund Site to the National Priorities List in 1983 and the Site was subsequently divided by the EPA and CDPHE into four operable units (OU).

“*CDPHE*” shall mean the Colorado Department of Public Health and Environment.

*“Quartz Hill Remediation Project”* or *“Project”* shall mean the Quartz Hill Mine Waste Pile Remediation Project completed in 2014 by the EPA and CDPHE in accordance with OU3 ROD dated September 30, 1994.

*“Quartz Hill Property”* shall mean all property located within the boundaries of the Quartz Hill Overlay District, being coterminous with the boundaries of the Project’s remedial area, as depicted on the as-built maps of the remedial area maintained by CDPHE and on file with the City Clerk’s Office and the area currently covered by the geotextile and rock cap.

*“Quartz Hill Overlay District”* or *“Overlay District”* shall mean the overlay district established by this Article, constituting all of the Quartz Hill Property, being coterminous with the boundaries of the Project’s remedial area, as depicted on the as-built maps of the remedial area maintained by CDPHE and on file with the City Clerk’s Office.

**Sec. 16-13-40. Overlay District established.**

The Quartz Hill Overlay District is hereby established as an overlay district that includes within its boundaries the area on the Quartz Hill Property map on file with the City Clerk which shall be the same as the area depicted on the as-built maps maintained by CDPHE. The boundaries of the Quartz Hill Overlay District shall be depicted on the City of Central Zoning Map. The provisions of this Article shall apply to any applications for building permit, zoning, subdivision, planned unit development, use by right, special review use, or any other development activity that will result in any soil-disturbing activity for all properties located within the Quartz Hill Overlay District. The application of these regulations is in addition to the regulations of the underlying zoning district and of this Code and shall be considered by the appropriate decision-maker in conjunction with any application for development occurring within the Quartz Hill Overlay District. The boundaries of the Quartz Hill Overlay District are shown in Diagram 1-A below:

Diagram 1-A:



To the extent of any discrepancies between the boundaries of the Overlay District set forth in Diagram 1-A and the boundaries set forth on the Quartz Hill Property map on file with the City Clerk, the map on file with the City Clerk shall control.

**Sec. 16-13-50. Variances not allowable.**

The regulations set forth in this Article shall not be subject to any authority to vary the zoning regulations or City of Central Building Code. No variances are permitted from this Article of the Code.

**Sec. 16-13-60. Consultation to amend.**

Prior to the Planning and Zoning Commission or City Council considering any amendment to this Article, the City shall consult with CDPHE and shall incorporate such requirements as CDPHE may recommend to ensure the Project continues to protect human health and the environment.

**Sec. 16-13-70. Regulation of excavation activities.**

No excavation, drilling, grading, digging, tilling, moving or relocating of the geotextile or rock cap material or any other soil-disturbing activity is allowed within the Quartz Hill Overlay District, except as authorized in a remedial decision document or with the prior written consent of CDPHE and the City Manager.

**Sec. 16-13-80. Quartz Hill Overlay District Permit – Application Required.**

- (a) Any application for any building permit, zoning, subdivision, planned unit development, use by right, special review use, or any other development activity that will result in any soil-disturbing activity within the boundaries of the Quartz Hill Overlay District shall be preceded by an application for an Overlay District Permit.
- (b) An application for approval of an Overlay District Permit may be filed by a person having an interest in the property for which the Overlay District Permit is requested, with the written consent of the owner(s) of the property, and shall be made on a form provided by the City. At a minimum, the application must include:
  - (1) A general site plan showing the major details of the proposed development, consisting of the location of buildings and structures, off-street parking and loading areas, service and refuse areas, means of ingress and egress, major landscaping or screening proposals, and signs and pedestrian areas, or a relevant summary of the development activity proposed to be conducted within the boundaries of the Quartz Hill Property;
  - (2) A time schedule for the proposed development;
  - (3) A plan for maintaining the integrity of rock cap installed as part of the Quartz Hill Remediation Project or a plan to relocate the tailings material to a new site as approved by CDPHE and other regulatory agencies, as applicable;
  - (4) Any other information the applicant believes will support his or her request;
  - (5) A letter from an authorized representative of CDPHE confirming that CDPHE has been informed of the proposed development activity within the boundaries of the Overlay District;
  - (6) Accompanying the application shall be a filing fee which shall be equal to the City's zoning amendment fee. Prior to the City's acceptance of the application, the applicant shall be required to enter into a consultant reimbursement agreement with the City to cover the City's costs related to reviewing and processing the application. The City may contract for professional assistance to review the application and provide consulting or other professional services related to reviewing

the application. Any such professional fees incurred by the City shall be reimbursed by the applicant in accordance with the terms and conditions of the required consultant reimbursement agreement. Any and all fee(s) and other charges shall be paid in full by the applicant prior to the date on which the City Manager conducts application review pursuant to Sec. 16-13-90 below.

(c) The following activities shall be exempt from the Overlay District Permit application process established by this Article:

- (1) Operations, inspection and maintenance activities associated with the Project undertaken within the boundaries of the Quartz Hill Property by CDPHE or its duly authorized contractor(s).
- (2) Operations, inspection and maintenance activities associated with the Project undertaken within the boundaries of the Quartz Hill Property by the City Manager or his or her designee.
- (3) Removal or repositioning of the yellow structure currently within the boundaries of the Quartz Hill Property (the "Yellow House"), provided that the Yellow House shall be required to remain on skids and above the geotextile and rock cap.
- (4) Any other activity exempted from the provisions of this Article pursuant to joint written consent of the City Manager and a duly authorized representative of CDPHE.

**Sec. 16-13-90. Application review.**

Following receipt of the application submitted pursuant to Sec. 16-13-80, the City Manager may request supplemental materials or information from the applicant. The application shall not be deemed complete until such time as all supplemental materials or information requested by the City Manager have been received. The City Manager shall, within sixty (60) days following the date on which the application has been deemed complete, proceed to review the Overlay District Permit application and shall either approve the application in whole or in part, shall approve the application subject to conditions set forth in a writing, or shall deny the Overlay District Permit application. Approval of an Overlay District Permit shall require CDPHE's written consent for any soil-disturbing activity, unless otherwise authorized in a remedial decision document.

**Sec. 16-13-100. No development without Overlay District Permit.**

No application for any building permit, zoning, subdivision, planned unit development, use by right, special review use, or any other development activity that will result in any soil-disturbing activity within the boundaries of the Quartz Hill Overlay District shall be allowed until such time as the property owner or applicant has secured an Overlay District Permit and has fully complied with any conditions set forth in the Permit. The issuance of an Overlay District Permit shall be a condition precedent to any soil-disturbing activity within the boundaries of the Quartz Hill Overlay District.

**Sec. 16-13-110. Powers of City Manager.**

- (a) The City Manager shall have and exercise such powers as may be necessary and convenient to carry out and effectuate the purpose and provisions of this Article, including but not limited to the following powers:
- (1) to investigate the Quartz Hill Property to determine compliance with these Overlay District regulations;
  - (2) to enter upon the Quartz Hill Property for the purpose of making examinations, provided, however, that such entries shall be made in such manner as to cause the least possible inconvenience to persons in possession of the Quartz Hill Property;
  - (3) to undertake the routine operation and maintenance of the Project remedy, as specified in the Administrative Settlement and Order and Consent (“AOC”) entered into by and between the City, CDPHE and the EPA;
  - (4) to undertake any other activity required to be undertaken by the City as set forth in the AOC;
  - (5) to appoint and fix the duties of such officers, agents, contractors and employees as the City Manager deems necessary and convenient to carry out the purpose and provisions of this Article; and
  - (6) to delegate any of the powers and functions of the City Manager under this Article to such officers and agents as the City Manager may designate.

**Sec. 16-13-120. CDPHE Enforcement Authorization.**

CDPHE may enforce the restrictions described in Sec. 16-13-70 above by filing an action in district court seeking injunctive relief.

**Sec. 16-13-130. Violations and penalties.**

It is unlawful for any person, firm, or corporation to violate any provisions of this Article. Any person failing to comply with the provisions of this Article shall be subject to the penalty provisions set forth in Section 1-4-20 of the Municipal Code. The City may seek restitution for any and all expenses related to the enforcement of this Article or of any damage to public property. The City reserves the right to refer any violation of this Article to the CDPHE or EPA for additional enforcement action(s).

**Section 2.** This Ordinance adopting the Quartz Hill Overlay District regulations shall not take effect unless and until City Council has considered and adopted a Resolution (the “Approving Resolution”) approving an Administrative Settlement Agreement and Order on Consent by and between the City, the United States Environmental Protection Agency and the Colorado Department of Public Health and Environmental (the “Settlement Agreement”), which Settlement Agreement shall contain terms and conditions acceptable to the City. If the Approving Resolution approving the Settlement Agreement has not been approved by City Council on or prior to February 7, 2017, this Ordinance shall be deemed automatically void without need for any further or subsequent action by City Council and the Quartz Hill Overlay District regulations as set forth herein shall not be incorporated into the Central City Municipal Code.

**Section 3. Codification Amendments.** Following the Effective Date of this Ordinance, the codifier of Central City’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Central City Municipal Code.

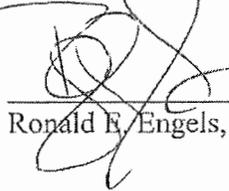
**Section 4. Severability.** Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

**Section 5. Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

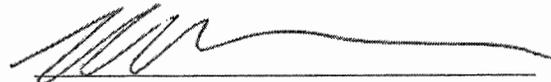
**Section 6. Effective Date.** This Ordinance shall not become effective unless and until the Approving Resolution, as that term is defined in Section 2 above, has been approved by City Council. The City Clerk is hereby instructed to withhold publication of this Ordinance (by title and summary after final passage) until after approval of the Approving Resolution by City Council, if and as applicable. This Ordinance shall thereafter become effective immediately following publication in accordance with applicable provisions of Sections 5.9 and 5.10 of the City Charter.

**INTRODUCED AND READ** by title only on first reading at the regular meeting of the City Council of the City of Central on the 20<sup>th</sup> day of September, 2016, at Central City, Colorado.

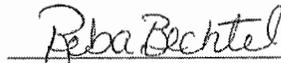
**CITY OF CENTRAL, COLORADO**

  
\_\_\_\_\_  
Ronald E. Engels, Mayor

Approved as to form:

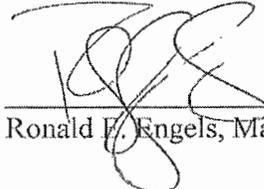
  
\_\_\_\_\_  
Marcus McAskin, City Attorney

ATTEST:

  
\_\_\_\_\_  
Reba Bechtel, City Clerk

**PASSED AND ADOPTED** on second reading, at the regular meeting of the City Council of the City of Central on the 15<sup>th</sup> day of November, 2016.

**CITY OF CENTRAL, COLORADO**

  
\_\_\_\_\_  
Ronald E. Engels, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Reba Bechtel, City Clerk

**POSTED IN FULL AND PUBLISHED BY TITLE AND SUMMARY in the Weekly Register Call newspaper on September 22, 2016.**

**POSTED AND PUBLISHED BY TITLE [AND SUMMARY IF AMENDED ON SECOND READING] in the Weekly Register Call newspaper on \_\_\_\_\_, 2016.**

**[NOTE DELAYED PUBLICATION DATE AS REQUIRED BY SECTION 6 OF THIS ORDINANCE ABOVE].**

**APPENDIX D**  
**Work Plan**

## Quartz Hill – Work Plan

The Quartz Hill remedy will be inspected annually in May and October and after weather events of sufficient severity that they could damage the remedy. Inspections of the Quartz Hill remedy will include inspection of all remedy components to confirm that each component continues to fulfill its intended purpose, to document conditions needing repair, and to document any other site conditions that may impact the functionality of the remedy. This document provides a detailed narrative of required inspection tasks and cover maintenance activities.

Fences and Gates: Inspection of the Spring Street chain gate will include inspection of the chain and latch to insure proper operation, inspection of connecting hardware, inspection of the wood posts at both ends of the gate, and inspection of the large boulders beyond the posts. The City will be responsible for routine maintenance and repairs of the Spring Street chain gate.

Surface Water Channels: Sediment in drainage areas should be periodically removed so they do not impair the proper function of the drainage areas. Exposed black geotextile should be covered as provided for below. Damaged geotextile must be cut out, patched over with new materials, and recovered. Any repair to the geotextile should be coordinated with the CDPHE Project Manager.

Culverts; Inlets and Drains: Inspection of the storm sewer will include inspection of each of the seven manhole covers for cracks or movement and opening each manhole cover and inspecting the interior of each manhole for condition of the concrete and accumulation of sediment. Routine storm sewer inspection is not intended to include personnel entering each manhole or entering the storm sewer pipe. Inspection will also include inspection of each of the three storm sewer inlets for accumulated debris or sediment and overall condition of the inlet grate and structure. If excessive sediment accumulation is observed in any component of the storm sewer system, the City will be responsible for removing and properly disposing of such sediment.

Roads: Inspection of the Nevada Street guardrail will include inspection of the guardrail components, including the rail sections, posts, and connection hardware, including connections from rails to post and rails to the concrete barrier at the north end of the guardrail. The City will be responsible for routine maintenance and repairs of the Nevada Street guardrail.

Inspection of the Nevada Street reflectors will include inspection of the reflectors to check for damaged or missing reflectors, and inspection of posts to insure that posts are firmly supported in the ground and are not damaged by corrosion or impact from vehicles. The City will be responsible for routine maintenance and repairs of the Nevada Street reflectors.

Cover Material: Inspection of the rock cover will include a visual inspection of the entire covered area. It is not necessary for the inspector to walk the entire area, but it is necessary for the inspector to look at every part of the cover. Typically, a walking inspection along all site access roads and site perimeter roads should be adequate. The inspector will make note of areas where the rock cover is thinner than the originally specified thicknesses (12 inches on the slopes and 6 inches on the roads and flatter areas) and areas where the underlying black geotextile is exposed. Cover inspection will also include inspection of all surface water ditches, with specific focus on accumulation of sediment in the ditches.

If additional soil cover or general fill is required, the City should use silty to sandy gravel with a maximum particle size of 4 inches. Soil cover material shall be free of clay and deleterious material. If additional rock cover is required, the City should use a sound, dense, angular rock well graded with a maximum size of 10 inches, a minimum size of 1 inch, and a median (D50) size of 4 to 6 inches. If additional fill is required around structures and pipes; small diversions, sediment traps, or other embankments; or if fill is required for bedding material or riprap-lined ditches, the City should consult with the CDPHE Project Manager regarding suitable materials and placement methods.

Sediment Disposal: Sediment removed in accordance with this Work Plan may be disposed of at the Church Placer repository or another location approved by the CDPHE Project Manager in writing.

**CLEAR CREEK SUPERFUND SITE  
REMEDIATION PROJECT INSPECTION FORM**

<b>PROJECT TITLE:</b> Quartz Hill
<b>DATE OF INSPECTION:</b>
<b>PREPARED BY:</b>

<b>FEATURES INSPECTED:</b>	
<input type="checkbox"/> FENCES AND GATES	<input type="checkbox"/> ROADS
<input type="checkbox"/> SURFACE WATER CHANNELS	<input type="checkbox"/> COVER MATERIAL
<input type="checkbox"/> CULVERTS	<input type="checkbox"/> OTHER:
<input type="checkbox"/> INLETS AND DRAINS	<input type="checkbox"/> OTHER:

<b>OBSERVED PROBLEMS OR DEFICIENCIES:</b>
---

<b>RECOMMENDED CORRECTIVE WORK:</b>
-------------------------------------

<b>PHOTOGRAPHS ATTACHED:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
---

<b>SITE MAP WITH NOTES ATTACHED:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
---

QUARTZ HILL - WORK PLAN EQUIPMENT AND LABOR RATES

EQUIPMENT RATES					LABOR RATES		
Equipment ID	Department	Description	Model	Cost/Hour	Employee ID	Title	Hourly Wage
3	PW	PICKUP	4X4 3500	\$30.00	507	Senior Fleet Worker	\$27.70
16	PW	INTERNATIONAL	4900 5-TON	\$55.00	512	PW Supervisor	\$27.70
17	PW	SWEEPER	SWEEPER	\$74.00	527	Sr. Maintenance Worker	\$24.01
22	PD	TAHOE	TAHOE	\$16.25	528	Sr. Maintenance Worker	\$24.01
23	PD	RADAR TRAILER	RADAR TRAILER	\$3.15	533	Sr. Maintenance Worker	\$24.31
24	PD	TAHOE	TAHOE	\$16.25	536	PW Director	
27	PD	HUMMER	H3	\$16.25	544	Sr. Maintenance Worker	\$21.90
28	PD	HUMMER	H3	\$16.25	545	Sr. Maintenance Worker	\$21.90
29	PW	COLORADO	COLORADO	\$14.00	600	Seasonal Gardener	\$15.14
31	PW	INTERNATIONAL	7600	\$65.00			
33	PW	INTERNATIONAL	5600 4X4	\$60.00			
34	PW	PULL BEHIND	SWEEPER	\$10.25			
35	PW	ATV	ATV	\$3.00			
37	PW	WATER TRAILER	WATER TRAILER	\$11.00			
38	PW	310 SG	BACKHOE	\$38.00			
42	PW	BOMAG	ROLLER	\$17.50			
43	PW	AIR COMPRESSOR	AIR COMPRESSOR	\$20.00			
45	PW	TRAILER	TRAILER	\$8.00			
46	PW	TRAILER	40X48	\$7.00			
47	MD	STAGE	STAGE	\$30.00			
55	PW	2-TON	S500	\$22.00			
56	PW	2-TON	S500	\$22.00			
57	PW	Message Board	VMB	\$8.50			
58	PW	624K	LOADER	\$52.00			
59	PW	2015	FREIGHTLINER	\$55.00			
60	PW	PRESSURE WASHER	PRESSURE WASHER	\$7.00			
61	WD	TRUCK	F-250	\$30.00			
5555	PW	TRAILER	TRAILER	\$8.00			
60000	PW	ARROW BOARD	ARROW BOARD	\$3.15			
80427	PW	527	Bobcat	\$22.00			
B1	FD	INFLATEABLE BOAT		N/A			
B2	WD	BOAT	BOAT	\$14.00			
Brush 31	FD	Type 6 Engine	C3500 4x4	N/A			
Brush 32	FD	Type 6 Engine	F550 4x4	N/A			
Command 31	FD	RAM	3500 4x4	N/A			
Command 32	FD	BLAZER	BLAZER 4x4	N/A			
Engine 1	FD	400 GPM/400 tank	FIRE TRUCK	N/A			
Engine 31	FD	Type 3 Engine	PUMPER	N/A			
Engine 32	FD	Type 1 Engine	FIRE ENGINE	N/A			
Engine 33	FD	Type 1 Engine	4X4 PUMPER	N/A			
P1	FD	FIRE TRUCK	FIRE TRUCK	N/A			
Rescue 31	FD	Light Duty Rescue	3500 4x4	N/A			
Support 1	FD	TRAILER/ENCLOSED	TRAILER	N/A			
Support 2	FD	TRAILER/ENCLOSED	TRAILER	N/A			
Tender 31	FD	4x4 Tender	4X4 1800	N/A			
Tender 32	FD	C 60 Tender		N/A			
	PW	\$6.75 plus truck cost	Aerial Lift	\$28.75			

## APPENDIX E

### Property Descriptions

#### Acquired Parcels:

That certain real property located within Quartz Hill acquired by Respondent by virtue of a special warranty deed executed by Pinnacle Entertainment, Inc. and recorded on March 15, 2016 at reception no. 155909 with the Gilpin County Clerk and Recorder, being described as follows:

#### Parcel I:

Lot 1, EXCEPT that portion covered by Highway 279, also known as Spring Street, All Lots 2, 3, 4, 5, 6, 7, and the Northeasterly six (6) feet of Lot 8, including that part of the Montana Mill Site lying within the boundaries of the said Northeasterly six (6) feet of said Lot 8, which lies between and extends from Spring Street to Nevada Street, Block 20.

#### Parcel II:

The PIERCE LODGE and MILL SITE, U.S. Survey No. 105 A and B, as created by United States Patent recorded on June 13, 1872, in Book 53 at Page 262, County of Gilpin, State of Colorado.

#### Parcel III:

Lot 16,  
Block 20,  
City of Central,  
County of Gilpin,  
State of Colorado.

**Abandoned Parcel:**

That certain real property located within Quartz Hill transferred to the Respondent on or about June 13, 2003 by virtue of a quitclaim deed executed by Helen S. Lake, Marjorie C. Salzwedel, and Marvin C. Skagerberg recorded on June 13, 2003 at reception no. 117662 with the Gilpin County Clerk and Recorder, being described as follows:

**PARCEL 1:**

All that property described in Book 125, Page 577 as "a certain lot situated on the south east side of Nevada street, directly opposite and south east of lot 14 in block 22 according to the survey of T.H. Lowe of the City of Central. Said lot fronting on Nevada Street 30 feet and the back line of said lot is thirty (30) feet and the depth of said lot is fifty feet, and bounded on the North East by lot of Alexander Riltmaster."

**PARCEL 2:**

All that property described in Book 122, Page 124 as "situated near the portal of the Quartz Hill Tunnel bounded and described as follows: On the north by Nevada street, on the East by the Lot described in Book 125 at page 577 of the records in the office of the County Clerk and Recorder of said Gilpin County and by the Mammoth Mill Site Survey Lot No. 114B, on the South by the Quartz hill Tunnel No. 3 Lode mining Claim Survey No. 895 and on the West by the Golden Gate Lode mining Claim Survey Lot no. 896, the Argo Lode Mining Claim Survey Lot No. 567 and the Copper Bottom Lode Mining Claim Survey Lot No. 766, containing one-fourth acre of land, more or less."

Together with all interests in said parcels 1 and 2 and all improvements thereon.

**And further described as: That parcel of land described in Book 122 At Page 124 in the official records of the Clerk and Recorder's office of Gilpin County, Colorado, schedule no. 009709, and That parcel of land known as Lot 14, aka, part of the Couch lot, schedule no. 009708 as recorded in the official records of the Clerk and Recorder's office of Gilpin County, Colorado.**