

PUBLIC COMMENT DRAFT

REMEDY COORDINATION, FUNDING, AND

SETTLEMENT AGREEMENT

BY AND BETWEEN

ANACONDA-DEER LODGE COUNTY

AND

ATLANTIC RICHFIELD COMPANY

Effective _____

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REMEDY COORDINATION, FUNDING, AND SETTLEMENT AGREEMENT

This REMEDY COORDINATION, FUNDING, AND SETTLEMENT AGREEMENT (“Agreement”), is entered into by and between Anaconda-Deer Lodge County (“ADLC”) and Atlantic Richfield Company (“AR”) as of the Effective Date to set forth agreements relating to the Anaconda Smelter NPL Site (“Site”).

WITNESSETH:

WHEREAS, AR and its predecessors owned and/or operated copper milling and smelting facilities at the Upper and Lower Works and the Washoe Reduction Works in Anaconda-Deer Lodge County, Montana, from the late 1800s to 1980, and AR or its affiliate, ARCO Environmental Remediation LLC (“AERL”), continue to own some of the property associated with these former milling and smelting operations; and

WHEREAS, commencing in 1982, the United States Environmental Protection Agency (“EPA”) and the State of Montana initiated certain actions pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, as amended (“CERCLA”), to investigate and address contamination arising from the former milling and smelting operations by AR’s predecessors at, on, and under certain areas within Anaconda-Deer Lodge County; and

WHEREAS, in September 1983, EPA placed the Anaconda Smelter Site, an area comprising approximately 300 square miles in and around the town of Anaconda, Montana, on the National Priorities List, set forth at 40 CFR part 300, Exhibit B, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605; and

WHEREAS, AR is identified as a potentially responsible party for certain releases of hazardous substances at the Site; and

WHEREAS, AR has conducted, is now conducting, and will hereafter conduct, Response actions on certain properties within the Site; and

WHEREAS, EPA’s selected Response actions for the Site include certain institutional controls to provide assurance that EPA’s selected remedies will be maintained and will be implemented, if necessary, when property within the Site is developed; and

WHEREAS, ADLC and AR have implemented EPA’s selected institutional controls within the Site; and

WHEREAS, ADLC and AR have determined that ADLC’s continued involvement in and cooperative implementation of certain institutional controls and remediation of certain residential attics within the Site is in the public interest; and

WHEREAS, ADLC and AR have determined that the conveyance and/or reconfiguration of certain land parcels within the Site and the modification of certain restrictive covenants

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contained in existing recorded real property instruments with respect to such parcels will facilitate the implementation of the Response actions and is in the public interest; and

WHEREAS, ADLC and AR also wish to settle and resolve any and all claims they may have against one another, now or in the future, arising out of or relating to Environmental Conditions within the Site and ADLC's past involvement with and past implementation of the institutional controls within the Site or the 1994 Conveyance Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is acknowledged, it is hereby understood and agreed as follows:

ARTICLE I. DEFINITIONS AND REFERENCES

Section 1.1 Definitions. Unless otherwise defined herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in the exhibits attached hereto and incorporated hereunder, the following definitions shall apply:

1.1.1. "**1994 Conveyance Agreement and Memorandum of Conveyance Agreement**" shall mean the Real Property Conveyance/Transfer Agreement among Atlantic Richfield Company Grantor, Anaconda-Deer Lodge County Grantee and Old Works Golf Course, Inc. dated as of May 5, 1994 and the associated and Memorandum of Real Property Conveyance/Transfer Agreement dated as of May 5, 1994 and recorded in the real property records of ADLC at Book 95 page 945.

1.1.2. "**ACC**" shall mean the Anaconda Country Club, a Montana public benefit corporation with members.

1.1.3. "**ACC Golf Course**" shall mean the nine (9) hole golf course located in Sections 9 and 10 of Township 4 North, Range 10 West.

1.1.4. "**Access Agreement**" shall mean that certain Access Agreement dated May 5, 1994, and recorded on May 5, 1994, at Book 96, Page 146 in the real property records of ADLC, as modified by the Golf Course Parcel Reconfiguration Agreement.

1.1.5. "**ADLC**" shall mean the local government of Anaconda-Deer Lodge County, Montana, and any successors thereto, including all officers, employees, agents, representatives, boards, departments, commissions, programs, and authorities thereof.

1.1.6. "**ADLC Default**" shall have the meaning ascribed to the term in Section 10.1.

1.1.7. "**ADLC ICMS Plan**" shall mean the ADLC Institutional Controls Management System Plan attached as Appendix J to the ICIAP.

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1.1.8. “**AERL**” shall mean ARCO Environmental Remediation, L.L.C., a Delaware limited liability company, together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries, and assigns.

1.1.9. “**Alternative Domestic Water Supply Funding Account**” shall mean a segregated and separate account maintained for the benefit of ADLC, with a financial institution acceptable to ADLC and AR, that is established pursuant to Section 5.1.

1.1.10. “**AR**” shall mean Atlantic Richfield Company, a Delaware corporation, together with all of its predecessors, successors (merged, acquired or otherwise), subsidiaries, and assigns, including, but not limited to, its affiliate AERL.

1.1.11. “**AR ICMS Plan**” shall mean the AR Institutional Controls Management System Plan attached as Appendix I to the ICIAP.

1.1.12. “**Arbitration Notice**” shall have the meaning ascribed to the term in Section 10.6.1.

1.1.13. “**AR Default**” shall have the meaning ascribed to the term in Section 10.2.

1.1.14. “**Assistance MOU**” shall mean that certain Memorandum of Understanding between AR and ADLC dated October 1, 2012, as amended and extended by that certain First Extension Agreement dated July 1, 2013, that certain Second Extension Agreement dated January 31, 2014, that certain Third extension Agreement dated July 1, 2014, that certain Fourth Extension Agreement dated January 1, 2017, that certain Addendum No. 1 to Fourth Extension Agreement dated November 1, 2017, that certain Fifth Extension Agreement dated January 1, 2018, that certain MOU Addendum and Sixth Extension Agreement dated June 1, 2018, that certain MOU Addendum and Seventh Extension Agreement dated November 1, 2018, that certain MOU Addendum and Eighth Extension Agreement dated July 1, 2019, and any subsequent addenda and extension agreements mutually agreed to by the Parties that provide for legal and technical assistance needed by ADLC to satisfy its support obligations under Section 12.1.

1.1.15. “**CERCLA**” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, and any amendments thereto.

1.1.16. “**CNSA**” shall mean the Agreement and Covenant Not to Sue between ADLC, EPA and the State dated May 12, 1994, and any amendments thereto or replacements thereof agreed to by ADLC, EPA, and the State.

1.1.17. “**Economic Development Funding Account**” shall mean a segregated and separate account maintained for the benefit of ADLC, with a financial institution acceptable to ADLC and AR, that is established pursuant to Section 5.1.

1.1.18. “**Consent Decree**” shall mean a judicially enforceable Consent Decree executed by AR, United States, and the State that includes remedial action for: (i) the Old Works Golf Course portion of the Anaconda Smelter National Priorities List (NPL) Site, (ii) surface water

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within the Anaconda Regional Water, Waste, and Soils Operable Unit, and (iii) the Main Granulated Slag Pile and West Stack Slag Pile in Anaconda.

1.1.19. “**CPI**” shall mean the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics for All Urban Consumers (CPI-U), U.S. City Average, all items not seasonally adjusted, a copy of which, as published through [REDACTED] of 2020, is attached to the Funding Spreadsheet.

1.1.20. “**CPI Adjustment Figure**” shall mean the most current CPI monthly index figure published prior to the due date for a payment.

1.1.21. “**CPI Base Figure**” shall mean the CPI index figure published for the month that corresponds with the Effective Date of this Agreement.

1.1.22. “**CSOU RAWP**” shall mean the Community Soils Operable Unit (CSOU) Remedial Action Work Plan/Final Design Report (RAWP/FDR) dated [REDACTED], 2020 attached as Exhibit 1 and any amendments thereto required and/or approved by EPA and agreed to by AR and ADLC.

1.1.23. “**CSOU ROD**” shall mean the Record of Decision for the Community Soils Operable Unit of the Anaconda Smelter NPL Site dated September 25, 1996, as amended by the Record of Decision Amendment for the Community Soils Operable Unit of the Anaconda Smelter NPL Site dated September of 2013, and any additional amendments required and/or approved by EPA and agreed to by AR.

1.1.24. “**Development Repository**” shall mean the area depicted in Figure 1 of the Development Repository O&M Plan and any additions thereto or expansions thereof.

1.1.25. “**Development Repository O&M Plan**” shall mean the Anaconda Smelter Development Repository Operation and Management (O&M) Plan dated January 9, 2009, and any amendments thereto required and/or approved by EPA and agreed to by AR.

1.1.26. “**Domestic Well Monitoring Plan**” shall mean Final Domestic Well Monitoring Plan dated [REDACTED], 2020, and any amendments thereto required and/or approved by EPA and agreed to by AR.

1.1.27. “**DPS Ordinance**” shall mean ADLC’s Development Permit System ordinance codified at Articles II, XXX, XXXI, and XXXIV of Chapter 24 of the Anaconda-Deer Lodge County Code. The term shall include the DPS Ordinance Amendments following adoption pursuant to Section 3.1 and any additional amendments adopted pursuant to Section 3.1.

1.1.28. “**DPS Ordinance Amendments**” shall mean the Amendments to the DPS Ordinance attached to the ICIAP as Appendix A.

1.1.29. “**Effective Date**” shall mean the date on which this Agreement is fully executed by the Parties.

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1.1.30. “**Environmental Conditions**” shall mean and include, without limitation, any condition, circumstance, quality, quantity, or other state of the land, subsurface, strata, air, surface water, groundwater, fish, wildlife, or biota arising out of, related to, or resulting from the Release or threatened Release, generation, transport, handling, treatment, storage, disposal, management, presence of, or exposure to any Mine Waste.

1.1.31. “**Environmental Director**” shall mean the Person employed by ADLC to serve as Environmental Director under the DPS Ordinance.

1.1.32. “**EPA**” shall mean the United States Environmental Protection Agency and any successor agency thereto.

1.1.33. “**Fiscal Year**” shall mean a twelve (12) month period commencing on July 1 and ending on June 30.

1.1.34. “**Force Majeure**” shall mean any event arising from causes beyond the control of a Party, of any entity controlled by a Party, or of a Party’s contractors, which delays or prevents the performance of any obligation under this Agreement despite the Parties’ best efforts to fulfill the obligation. The requirement that a Party exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (i) as it is occurring and (ii) after the potential Force Majeure event, such that the delay is minimized to the greatest extent possible. Any event that constitutes a Force Majeure event as defined in any order or decree to which EPA is a party shall also constitute a Force Majeure event for purposes of this Agreement, *provided, however,* that Force Majeure does not include a Party’s inability to complete its obligations under this Agreement due to its financial condition or insufficient human resources.

1.1.35. “**Funding Spreadsheet**” shall mean the Funding Spreadsheet attached as Exhibit 2.

1.1.36. “**Golf Course Parcel Reconfiguration Agreement**” shall mean that certain Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Golf Course Parcel) between the Parties dated December 13, 2019, and recorded on February 14, 2020, at Book 372, Page 971 in the real property records of ADLC.

1.1.37. “**Governmental Entity**” shall mean any Federal or State government administrative agency or commission, or other governmental authority or instrumentality having jurisdiction over the Parties and the subject matter of this Agreement. For purposes of this Agreement, the term shall not include ADLC.

1.1.38. “**ICIAP**” shall mean the Anaconda Smelter NPL Site Institutional Controls Implementation and Assurance Plan dated [REDACTED], 2020 attached as Exhibit 3 and any amendments thereto required and/or approved by EPA and agreed to by AR.

1.1.39. “**Institutional Controls Ancillary Costs**” shall mean costs and expenses reasonably incurred by ADLC in connection with the implementation and performance of its institutional controls obligations under Article III, excluding any costs payable under Section 5.3 (attorneys’ fees and costs for DPS enforcement), Section 5.10.1 (salary, benefits, and costs for

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Environmental Director, his/her assistant, and ADLC Planning Department personnel), and Section 5.10.2 (Institutional Control Contractor Services).

1.1.40. “**Institutional Controls Ancillary Costs Budget**” shall mean an annual budget prepared by ADLC in the form of the approved initial budget for the Fiscal Year beginning July 1, 2020, attached as Exhibit 4, which sets forth ADLC’s Institutional Controls Ancillary Costs for a Fiscal Year.

1.1.41. “**Institutional Controls Contractor**” shall mean a Person selected and retained pursuant to Section 3.3 to provide the Institutional Controls Contractor Services.

1.1.42. “**Institutional Controls Contractor Agreement**” shall mean a written agreement between ADLC and the Institutional Controls Contractor for the provision and full implementation of the Institutional Controls Contractor Services on commercially reasonable terms. The agreement shall include the Institutional Controls Contractor Compensation Schedule.

1.1.43. “**Institutional Controls Contractor Compensation Schedule**” shall mean the Compensation Schedule submitted by each Institutional Controls Contractor selected and retained pursuant to Section 3.3 in response to the Institutional Controls Contractor RFP, the form of which is attached as Exhibit B to the Institutional Controls Contractor RFP.

1.1.44. “**Institutional Controls Contractor RFP**” shall mean the Institutional Controls Contractor Request for Proposal attached as Exhibit 5, as the same may be modified or amended in the future by mutual agreement of the Parties.

1.1.45. “**Institutional Controls Contractor Services**” shall mean all services that ADLC requires to fully implement the DPS Ordinance, the “Interior Dust Program,” the “Soil Swap Program,” and the “Community Protective Measures Program,” as each such program is described in the ICIAP and its appendices. The term shall also include any services that ADLC requires to maintain and update the ADLC ICMS Plan in a manner consistent with the requirements of the ICIAP and the ADLC ICMS Plan and to prepare the annual reports required pursuant to Section 3.5.

1.1.46. “**Institutional Controls Program Annual Performance Evaluation Report**” shall mean the performance evaluation report to be prepared annually by EPA pursuant to the ICIAP, the form of which is attached as Appendix K to the ICIAP.

1.1.47. “**Institutional Controls Program MOU**” shall mean that certain Memorandum of Understanding between AR and ADLC dated January 1, 2011, as amended and extended by that certain First Extension Agreement dated January 8, 2013, that certain Second Extension Agreement dated July 1, 2014, that certain Third Extension Agreement dated January 1, 2017, that certain Fourth Extension Agreement dated July 1, 2017, that certain Fifth Extension Agreement dated July 1, 2018, and that certain Sixth Extension Agreement dated July 1, 2019.

1.1.48. “**Institutional Controls Funding Account**” shall mean a segregated and separate account maintained for the benefit of ADLC, with a financial institution acceptable to ADLC and AR, that is established pursuant to Section 5.1.

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1.1.49. “**Mine Waste**” shall mean waste materials that contain hazardous substances generated by or resulting from the operations and activities of AR and that are addressed by one or more Response actions pursuant to the RODs. These substances may include, but are not limited to, waste rock, overburden, tailings, slag, flue dust, metals, contaminated soils, contaminated water, and other solid, liquid, or gaseous waste materials, and their constituents resulting from or related to mining, milling, smelting, refining operations, or other mineral extraction, beneficiation, or processing, and any former milling and smelting structures and debris associated with such operations.

1.1.50. “**Old Works Golf Course Agreement**” shall mean that certain Old Works Golf Course Agreement between AR, ADLC, and Old Works Golf Course, Inc., dated December 13, 2019 and filed on February 14, 2020, in the permanent files of the Anaconda-Deer Lodge County Clerk & Recorder at Miscellaneous Files #5807.

1.1.51. “**Opportunity Triangle Industrial Park**” shall mean the real property described in Subdivision Plat 459-A, recorded on June 3, 2016, at Reception No. 197688 in the real property records of ADLC.

1.1.52. “**Parties**” or “**Party**” shall mean AR and/or ADLC.

1.1.53. “**Person**” shall mean an individual, trust, firm, joint venture, consortium, commercial entity, partnership, association, or corporation. The term shall not include the Parties or any Governmental Entity.

1.1.54. “**Preexisting Environmental Conditions**” shall mean those Environmental Conditions that existed and were present within the Site on the Effective Date.

1.1.55. “**Reimbursement Agreement**” shall mean that certain Old Works/East Anaconda Development Area O&M Obligations Reimbursement Agreement between AR and ADLC dated May 5, 1994.

1.1.56. “**Release**” shall have the meaning ascribed to the term in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

1.1.57. “**Residential Attic Remediation Funding Account**” shall mean a segregated and separate account maintained for the benefit of ADLC, with a financial institution acceptable to ADLC and AR, that is established pursuant to Section 5.1.

1.1.58. “**Residential Attic Abatement Implementation Plan**” shall mean the implementation plan developed by AR and ADLC and approved by EPA describing the methods and procedures to be used by ADLC in performing the sampling and remediation of residential attics required under Article IV of this Agreement.

1.1.59. “**Response**” shall have the meaning ascribed to the term in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

1.1.60. “**RODs**” shall mean all Records of Decision issued by EPA with respect to selection of the Response actions for each of the Site Operable Units prior to the Effective Date,

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together with all attachments thereto, and all nonsignificant/minor modifications and explanations of significant differences thereto that are issued by EPA before or after the Effective Date, and all implementing documents and work plans that are approved by EPA pursuant to the Records of Decisions and related modifications, and explanations of significant differences.

1.1.61. “**Site**” shall mean the Anaconda Smelter NPL Site as depicted on Exhibit 6 and any area within Deer Lodge County hereafter added thereto by EPA.

1.1.62. “**Site Operable Units**” shall mean the Mill Creek Operable Unit, the Flue Dust Operable Unit, the Old Works/East Anaconda Development Area Operable Unit, the Community Soils Operable Unit, and the Anaconda Regional Water, Waste and Soils Operable Unit.

1.1.63. “**South Storm Drain System Funding Agreement**” shall mean that certain South Storm Drain System Funding Agreement between AR and ADLC dated April 13, 2015.

1.1.64. “**State**” shall mean the State of Montana, all agencies thereof, and any successors thereto.

1.1.65. “**Superfund Domestic Well Overlay**” shall mean the area within Deer Lodge County, Montana, depicted as the “Superfund Domestic Well Overlay” on the map attached as Appendix G to the DPS ordinance and any amendments thereto required and/or approved by EPA and agreed to by AR and ADLC.

1.1.66. “**Superfund Overlay**” shall mean the area within Deer Lodge County, Montana, depicted as the “Superfund Overlay” on the map attached as Appendix F to the DPS Ordinance and any amendments thereto required and/or approved by EPA and agreed to by AR and ADLC.

1.1.67. “**Third-Party Litigation**” shall mean a claim asserted by a person or entity unrelated to and not in privity with the person or party against whom the claim is asserted.

1.1.68. “**Funding Accounts**” shall mean the Institutional Controls Funding Account, the Residential Attic Remediation Funding Account, the Alternative Domestic Water Supply Funding Account, and the Economic Development Funding Account.

1.1.69. “**Type A Cover Material**” shall mean cover soil which meets the suitability criteria for Type A Material pursuant to the requirements of the RODs.

1.1.70. “**Type B Fill Material**” shall mean fill material which meets the suitability criteria for Type B Material pursuant to the requirements of the RODs.

1.1.71. “**Weed Spraying MOU**” shall mean that certain Memorandum of Understanding between AR and ADLC dated September 30, 2011, as amended and extended by that certain First Extension Agreement dated February 1, 2012, that certain Second Extension Agreement dated February 1, 2013, that certain Third Extension Agreement dated February 1, 2014, that certain Addendum No. 1 to Third Extension Agreement dated December 15, 2015, that

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certain Fourth Extension Agreement dated February 1, 2016, that certain Addendum No. 1 to Fourth Extension Agreement dated November 1, 2016, that certain Fifth Extension Agreement dated February 1, 2017, that certain Sixth Extension Agreement dated January 1, 2018, and that certain Seventh Extension Agreement dated January 1, 2018.

Section 1.2 References. All references herein to Sections, subsections, and Exhibits will be deemed references to Sections and subsections of, and Exhibits to, this Agreement unless the context otherwise requires.

ARTICLE II. REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of the Parties. Each Party represents and covenants as follows:

2.1.1. This Agreement has been duly authorized, executed, and delivered by such Party and, upon the valid execution and delivery hereof by the other Party, is a valid and binding obligation of such Party, enforceable pursuant to its terms.

2.1.2. The execution and delivery of this Agreement and the consummation of the agreements contemplated hereby and the fulfillment of the terms hereof will not conflict with, or constitute on the part of such Party, a breach of, or a default under, any law, charter, legislative act, or other proceeding, articles of incorporation, bylaws, agreement, indenture, mortgage, lease, or other instrument, as applicable, to which such Party is a party or by which it or its property is bound.

2.1.3. No officer or elected official of such Party who is authorized to take part in any manner in making this Agreement or any contract contemplated hereby has a personal financial interest in or has personally and financially benefited from the Agreement or any such contract; provided, however, officers and elected officials may participate in the programs provided for under his Agreement on the same terms and conditions as other participants therein.

2.1.4. There is not pending or, to the best knowledge of the officers of such Party, threatened any suit, action, or proceeding against or affecting such Party before or by any court, arbitrator, administrative agency, or other governmental authority that may materially and adversely affect the validity of this Agreement.

2.1.5. Each of the individuals executing this Agreement on behalf of such Party is authorized to do so and has the full right, capacity, power, and authority to enter into this Agreement and the transactions contemplated herein.

ARTICLE III. INSTITUTIONAL CONTROLS

Section 3.1 Adoption and Implementation of DPS Ordinance Amendments. Within ninety (90) days after the Effective Date, ADLC shall take such actions as may be required to adopt the DPS Ordinance Amendments. To ensure the uninterrupted implementation of the work described in the ICIAP, the ADLC resolution authorizing such adoption shall specify that the

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effective date of the DPS Ordinance Amendments will coincide with and not precede the effective date of the Institutional Controls Contractor Agreement. Following such adoption, ADLC may propose additional amendments to the DPS Ordinance, as may be necessary from time to time, that are consistent with the ICIAP, the RODs, and this Agreement. ADLC shall provide AR, EPA, and the State with a copy of any such proposed additional amendments at the same time the notice of public hearing is provided to the public and shall provide AR, EPA, and the State with an opportunity to review and comment on all such proposed additional amendments. ADLC shall give due consideration to any comments that AR, EPA, or the State provides before adopting any additional amendments to the DPS Ordinance and promptly provide AR, EPA, and the State with a copy of all adopted amendments. During the term of this Agreement, ADLC shall implement, comply with, and enforce the provisions of the DPS Ordinance.

Section 3.2 Prohibition on DPS Ordinance Fees. In consideration of the funds provided by AR to ADLC pursuant to Sections 5.2.1 and 5.2.2, permittees under the DPS Ordinance shall not be charged any fee by ADLC for ADLC's review, issuance, and/or processing of a development permit.

Section 3.3 Initial Selection and Retention of Institutional Controls Contractor. All Institutional Controls Contractor Services shall be provided by an Institutional Controls Contractor selected and retained by the Parties in accordance with this Section 3.3.

3.3.1. Within thirty (30) days after the Effective Date, ADLC shall issue the Institutional Controls Contractor RFP.

3.3.2. As soon as reasonably possible after the close of the bidding process under the Institutional Controls Contractor RFP, ADLC shall provide AR with copies of the responses received. Within fourteen (14) days after receiving all such responses, AR shall notify ADLC of any responses that AR has identified as unreasonably expensive relative to the other proposals received or failing to satisfy the requirements of the Institutional Controls Contractor RFP, which input ADLC shall consider in good faith.

3.3.3. Within sixty (60) days after issuance of the Institutional Controls Contractor RFP, ADLC shall (i) select a Person to serve as the initial Institutional Controls Contractor whose response is commercially reasonable and best satisfies the requirements of and evaluation criteria set forth in the Institutional Controls Contractor RFP, (ii) enter into an Institutional Controls Contractor Agreement with the Person so selected upon terms mutually acceptable to the Parties and such Person, and (iii) provide AR with a copy of the fully executed copy of the Institutional Controls Contractor Agreement. During the term of this Agreement, ADLC shall take all reasonable efforts to cause the Institutional Control Contractor Services to be fully implemented and performed in accordance with the material terms and conditions of, and ADLC shall perform its obligations and enforce its rights under, the Institutional Controls Contractor Agreement with reasonable diligence.

3.3.4. All fees and costs charged by the Institutional Controls Contractor for the Institutional Controls Contractor Services shall be paid by ADLC to the Institutional Controls Contractor in accordance with the agreed upon terms of the Institutional Controls Contractor

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Agreement with funds paid by AR into the Institutional Controls Funding Account pursuant to Section 5.2.2.

3.3.5. The material terms of the Institutional Controls Contractor selection and retention process described in Sections 3.3.1 through 3.3.5 (excluding the initial timing requirements) shall apply to the selection and retention of a new Institutional Controls Contractor in the event of any non-renewal or termination of an existing Institutional Controls Contractor Agreement. The Parties shall use their best efforts to commence the selection and retention process no later than ninety (90) days prior to the non-renewal or termination of the current Institutional Controls Contractor Agreement.

Section 3.4 Delivery and Review of Institutional Controls Ancillary Costs Budget.

ADLC has provided and AR hereby confirms its approval of the Institutional Controls Ancillary Costs Budget for the Fiscal Year starting July 1, 2020, a copy of which is attached as Exhibit 4. On or before June 1 of each subsequent Fiscal Year during the term of this Agreement, ADLC shall provide AR with a proposed Institutional Controls Ancillary Costs Budget for the applicable Fiscal Year. Each proposed budget shall be subject to approval by AR, which approval shall not be unreasonably withheld by AR. If agreement cannot be reached with respect to any portion of a proposed budget, the Parties may proceed with dispute resolution pursuant to Section 10.5 and Section 10.6 with respect to the disputed portion of the budget. Implementation of Institutional Controls Management System Plans. During the term of this Agreement, AR shall fully implement the AR ICMS Plan and ADLC shall fully implement the ADLC ICMS Plan in a manner consistent with the requirements of the ICIAP.

Section 3.5 Reporting and Performance Evaluations. In addition to any reporting required by the ICIAP and by Section 12.6 with respect to the institutional controls implemented by ADLC or the Institutional Controls Contractor under this Article III, ADLC shall by March 1 of each year provide to AR, EPA, and the State a written report which summarizes all activities undertaken by ADLC pursuant to this Article III and the ICIAP during the prior calendar year including all information required pursuant to Section 10.0 of the ICIAP. Within sixty (60) days after receipt of each annual report, appropriate representatives of AR, ADLC, EPA, the State, and the Institutional Controls Contractor shall attend and participate in a meeting for the purpose of reviewing and evaluating ADLC's performance of its obligation under this Article III during the prior Fiscal Year. Within thirty (30) days of each performance evaluation meeting, EPA will issue an Institutional Controls Annual Performance Evaluation Report pursuant to terms of the ICIAP. ADLC shall take all reasonable actions, if any, that may be required to timely correct any and all deficiencies legitimately identified by EPA in any Institutional Controls Annual Performance Evaluation Report. Nothing contained in this Section 3.5 or in any of the Institutional Controls Annual Performance Evaluation Reports will serve in any way to limit or preclude AR from commenting on such annual reports and exercising any and all of AR's rights and remedies under Article X with respect to any failure by ADLC to perform any of ADLC's duties and obligations under this Agreement.

Section 3.6 Acceptance of Mine Waste at Development Repository. Except as otherwise provided in this Section 3.6 and subject to the terms and conditions of the Development Repository O&M Plan, AR shall, without charge, accept Mine Waste encountered by a permittee or its contractor under the DPS Ordinance that is delivered for disposal at the Development

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Repository by or at the direction of the Institutional Controls Contractor or ADLC. Nothing contained in this Section 3.6 shall require AR to accept any Mine Waste or other materials or debris for disposal at the Development Repository in the event the Mine Waste or other materials or debris (i) was generated at locations outside the geographic boundaries of the Site, or (ii) was generated after December 31, 1983 within the Site by a Person or Governmental Entity engaged in the exploration for, mining, or processing of minerals.

Section 3.7 Provision of Replacement Cover and Fill Material. Within ninety (90) days after the Effective Date, AR shall deliver a quantity of one hundred (100) cubic yards of Type A Cover Material and a quantity of one hundred (100) cubic yards of Type B Fill Material to a secure location designated by ADLC at the Anaconda-Deer Lodge County Landfill. Following the initial delivery of Type A Cover Material and Type B Fill Material, the Institutional Controls Contractor will be authorized to make an annual request to AR to deliver such additional quantities of Type A Cover Material and Type B Fill Material as may be necessary to maintain stockpiled supplies at one hundred (100) cubic yards each. ADLC shall not use or permit the use of, including by the Institutional Controls Contractor, any Type A Cover Material or Type B Fill Material delivered by AR under this Section 3.7 for any purpose other than the replacement of, in an equivalent amount, contaminated material removed by permittees from their respective properties and disposed of at the Development Repository in accordance with the DPS Ordinance. Type A material shall only be made available for use within the upper twelve (12) inches below the final surface grade for non-garden excavations and twenty-four (24) inches for residential gardens.

ARTICLE IV. RESIDENTIAL ATTIC REMEDIATION

Section 4.1 Sampling and Remediation of Residential Attic Dust. Subject to ADLC's right to terminate pursuant to Section 10.9, ADLC shall perform all actions that may be required pursuant to the applicable portions of the CSOU ROD and CSOU RAWP and the Residential Attic Abatement Implementation Plan to sample and, if necessary, remediate dust in eligible residential attics located within the Superfund Overlay. All such actions shall be performed by ADLC in a professional and workmanlike manner and in accordance with and in a manner consistent with generally accepted standards and practices for the nature of the sampling and remedial actions and in accordance with the requirements of the CSOU ROD, CSOU RAWP, Residential Attic Abatement Implementation Plan, and applicable laws including, without limitation, the Montana Occupational Safety and Health Act, Mont. Code Ann. §§ 50-71-112, et seq., and the administrative rules promulgated thereunder. ADLC shall provide all necessary and appropriate equipment, labor, and materials to perform the sampling and remedial actions required under this Section 4.1.

Section 4.2 Residential Attic Remediation Schedule. During the first and second complete Fiscal Years following the Effective Date (July 1, 2020 to June 30, 2021 and July 1, 2021 to June 30, 2022), ADLC shall use its best efforts to complete the remediation required pursuant to Section 4.1 for a total of no fewer than forty-four (44) eligible residential attics per Fiscal Year. Commencing with the third Fiscal Year following the effective Date (July 1, 2022 to June 30, 2023), ADLC shall use its best efforts to complete the remediation required pursuant to Section 4.1 at the rate of eighty-eight (88) eligible residential attics per Fiscal Year on average (44 attics per each of two crews). In selecting the residential attics to be remediated during any Fiscal Year

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under this Article IV, ADLC shall prioritize those residential attics having a current exposure pathway, as defined in the CSOU RAWP. If, during any Fiscal Year, ADLC is unable to identify a sufficient number of residential attics having a current exposure pathway to satisfy the annual quota specified in this Section 4.2, ADLC shall use its best efforts to fill the annual quota with residential attics lacking a current exposure pathway. If ADLC fails to complete the remediation of eighty-eight (88) or more residential attics per Fiscal Year during any two (2) consecutive Fiscal Years after the Third Fiscal Year, AR shall have the option, after first conferring with ADLC regarding the reasons for such deficiency, to reduce the amount of the payment required under Section 5.2.5 for the following Fiscal Year by an amount proportional to the average number of residential attics actually remediated during the prior two (2) year period. No such payment reduction option shall be available to AR if ADLC fails to complete the remediation of the targeted number of residential attics during the first and second complete Fiscal Years following the Effective Date.

Section 4.3 Inspection of Work. ADLC shall obtain access agreements from all residential landowner(s) on whose property ADLC performs the sampling and remedial actions required pursuant to Section 4.1. Each such agreement shall grant to AR, EPA, and their respective agents, employees, representatives, and contractors the right to inspect the sampling and remedial actions performed by ADLC to ensure that the requirements of this Agreement are being met.

Section 4.4 Completion of Work and Reporting. ADLC's obligations with respect to an eligible residential attic shall not be deemed complete until EPA has confirmed in writing that all performance standards, specifications, and other requirements of the CSOU RAWP and Residential Attic Abatement Implementation Plan have been satisfied by ADLC with respect to that attic. ADLC shall promptly provide AR with copies of such written confirmation(s) received from EPA. In addition to any reporting required by the CSOU RAWP and by Section 12.6 with respect to the sampling and remediation of residential attics performed by ADLC under this Article IV, ADLC shall by September 1 of each year provide to AR a written reporting of the residential attics for which sampling and remediation was completed in the prior Fiscal Year, including the following information for each completed residential attic: property address, work commencement date, work completion date, date that confirmation of work completion was received from EPA, materials costs and expenses incurred, and labor costs incurred.

ARTICLE V. FUNDING AND FINANCIAL ASSURANCE

Section 5.1 Establishment of Bank Accounts. Within thirty (30) days after the Effective Date, ADLC shall establish the Institutional Controls Funding Account, Residential Attic Remediation Funding Account, Alternative Domestic Water Supply Funding Account, and the Economic Development Funding Account.

Section 5.2 Funding Account Payments. Unless and until this Agreement is sooner terminated pursuant to Article X, as illustrated in the Funding Spreadsheet, AR shall make payments to ADLC, for deposit into the Funding Accounts, in the amounts and on the dates set forth below:

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5.2.1. On or by July 1, 2020, and on or by July 1 of each subsequent Fiscal Year during the first ten (10) years of this Agreement (through July 1, 2029), AR shall pay \$175,000 to ADLC for deposit into the Institutional Controls Funding Account. On or by July 1, 2030, and on or by July 1 of each subsequent Fiscal Year during the term of this Agreement, AR shall pay \$150,000 (adjusted for inflation or deflation under Section 5.9 commencing on the Effective Date) to ADLC for deposit into the Institutional Controls Funding Account.

5.2.2. Subject to adjustments made pursuant to Section 5.7, on or by July 1, 2020, or on or by fourteen (14) after the date on which AR receives the initial Institutional Controls Contractor Agreement from ADLC, whichever occurs later, and on or by July 1 of each subsequent Fiscal Year during the term of this Agreement, AR shall pay to ADLC for deposit into the Institutional Controls Funding Account an amount equal to the total “Annual Costs Estimate” set forth in the Institutional Controls Contractor Compensation Schedule for the Fiscal Year.

5.2.3. Subject to increases approved pursuant to Section 5.8, on or by July 1, 2020, and on or by July 1 of each subsequent Fiscal Year during the term of this Agreement, AR shall pay to ADLC for deposit into the Institutional Controls Funding Account an amount equal to the total amount of the Institutional Controls Ancillary Costs set forth in the approved Institutional Controls Ancillary Costs Budget for the applicable Fiscal Year.

5.2.4. Within 30 days after the Effective Date, AR shall pay \$250,000 to ADLC for deposit into the Residential Attic Remediation Funding Account.

5.2.5. On or by July 1, 2020, and on or by July 1 of each subsequent Fiscal Year during the term of this Agreement, AR shall pay \$450,000 to ADLC for deposit into the Residential Attic Remediation Funding Account, or such lesser amount as may be allowed pursuant to Section 4.2 in the event ADLC fails to complete the remediation of eighty-eight (88) or more residential attics per Fiscal Year during any two (2) consecutive Fiscal Years.

5.2.6. On or by (i) July 1, 2027, and (ii) July 1, 2035, AR shall pay \$250,000 to ADLC for deposit into the Residential Attic Remediation Funding Account.

5.2.7. Within 30 days after the Effective Date, AR shall pay \$500,000 to ADLC for deposit into the Alternative Domestic Water Supply Funding Account.

5.2.8. AR shall make the following payments to ADLC for deposit into the Economic Development Funding Account:

- a) In the amount of \$1,000,000 within 30 days after the Effective Date; and
- b) In the amount of \$2,000,000 on or by July 1, 2020; and
- c) If the “effective date” of the Consent Decree, as such term is defined therein, is July 1, 2021 or sooner, in the amount of \$1,000,000 on or by July 1, 2021 and on or by July 1 of each subsequent Fiscal Year through and including 2031, provided

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however that no such annual payment shall be due or payable on July 1, 2024; or

- d) If the “effective date” of the Consent Decree, as such term is defined therein, is after July 1, 2021: (i) in the amount of \$1,000,000 within 30 days after the “effective date” of the Consent Decree, as such term is defined therein, (ii) in the amount of \$1,000,000 for each July 1 anniversary starting with July 1, 2022 and ending with the Fiscal Year in which such entry occurs, with such payment due within 30 days after the “effective date” of the Consent Decree, as such term is defined therein, and (iii) in the amount of \$1,000,000 on or by July 1 of each subsequent Fiscal Year through and including 2031, again provided however that no annual payment of \$1,000,000 shall be due or payable in 2024 if the Consent Decree is entered by the Court before July 1, 2024 or for the July 1, 2024 anniversary if the Consent Decree is entered by the Court after July 1, 2024; and
- e) So long as the Consent Decree becomes effective as a final judgment without a further right of appeal by July 1, 2032, in the amount of \$750,000 on or by July 1, 2032, and on or by July 1 of each subsequent Fiscal Year through and including 2043.

5.2.9. Within 30 days after the “effective date” of the Consent Decree, as such term is defined therein, AR shall pay \$4,000,000 to ADLC for deposit into the Economic Development Funding Account.

5.2.10. Regardless of timing, and for the avoidance of doubt, the total number of payments to be made by AR into the Economic Development Funding Account under Section 5.2.8 shall be twenty-four (24) payments, and the total amount of the payments to be made by AR under Section 5.2.8 shall be \$22,000,000 before adjustment for inflation or deflation. Deposits made into the Economic Development Funding Account shall not be refundable to AR once paid, including in the event this Agreement is later terminated.

Section 5.3 Reimbursement of Attorney’s Fees and Costs for DPS Ordinance Enforcement. AR shall reimburse ADLC for the attorneys’ fees and costs reasonably incurred by ADLC in connection with the enforcement of the DPS Ordinance pursuant to Section 3.1. In order to secure such reimbursement, ADLC shall, at least annually by August 1 of each Fiscal Year, submit to AR a statement, including reasonably detailed backup documentation, of the attorneys’ fees and costs incurred by ADLC for such purpose, if any, during the preceding Fiscal Year or period. Subject to AR’s right to inspect and audit ADLC’s records and dispute any fees or expenses, AR shall remit payment to ADLC within sixty (60) days of receiving the required statement.

Section 5.4 Reimbursement for Materials Costs and Expenses. AR shall reimburse ADLC for materials costs and expenses reasonably incurred by ADLC in connection with the remediation of residential attics pursuant to Section 4.1 in the lump sum amount of \$1,200 per

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completed residential attic. In order to secure such reimbursement, ADLC shall by August 1 of each Fiscal Year submit to AR a reasonably detailed statement itemizing the number of residential attics remediated by ADLC and deemed complete by EPA in accordance with Section 4.4 during the preceding Fiscal Year. Subject to AR's right to inspect and audit ADLC's records, AR shall remit payment to ADLC within sixty (60) days of receiving the required statement.

Section 5.5 Reimbursement for Building Construction Costs. Within thirty (30) days of the Effective Date, AR shall pay \$250,000 to ADLC to be used to pay for the purchase or construction of a building that ADLC shall use to accommodate all personnel (including the Institutional Controls Contractor) engaged in the performance of the services and activities required under Article III and Article IV. ADLC shall not include any costs for rental of office or equipment storage space in its Institutional Controls Ancillary Costs Budget, and AR shall not be responsible under Section 5.2.3 or Section 5.8 for the payment of such costs, in or after the Fiscal Year commencing July 1, 2021.

Section 5.6 Reimbursement for ADLC Wastewater Treatment Plant Repair Costs. Within 30 days after the Effective Date, AR shall pay \$1,500,000 to ADLC as partial reimbursement for incremental costs and expenses incurred and to be incurred by ADLC to make certain repairs to the ADLC Wastewater Treatment Plant, which incremental costs ADLC contends are attributable to the wind-borne migration of slag from the Main Granulated Slag Pile and West Stack Slag Pile occurring prior to the Effective Date.

Section 5.7 Adjustment of Institutional Controls Contractor Payment Amount. Either Party may propose adjustments to the amount to be paid by AR to ADLC pursuant to Section 5.2.2 for a Fiscal Year to address actual or anticipated material changes (increases or decreases) to the scope or costs of the Institutional Controls Contractor Services. Such proposals may be made either prior to the commencement or during the course of the Fiscal Year. All proposed adjustments shall be accompanied by a reasonably detailed narrative explanation of the reasons for the proposed adjustment including, at a minimum, a proposed revised Institutional Controls Contractor Compensation Schedule. Adjustments proposed by either Party shall not be effective unless approved in writing by the other Party, which approval shall not be unreasonably withheld. If an agreement is reached during the course of a Fiscal Year to increase the total amount of the funding for Institutional Control Contractor Services for that Fiscal Year, AR shall pay to ADLC for deposit into the Institutional Controls Funding Account the amount of the agreed upon increase within sixty (60) days of the Parties' agreement. If agreement cannot be reached with respect to any proposed adjustment, the Parties shall proceed with dispute resolution pursuant to Section 10.5 and Section 10.6.

Section 5.8 Adjustment of Institutional Controls Ancillary Costs Payment Amount. During the course of any Fiscal Year, ADLC may propose to increase the amount paid by AR to ADLC pursuant to Section 5.2.3 to address Institutional Controls Ancillary Costs incurred or to be incurred by ADLC in such Fiscal Year that were not included in the approved Institutional Controls Ancillary Costs Budget for that Fiscal Year. All proposed increases shall be accompanied by a reasonably detailed narrative explanation of the reasons for the proposed increase. Increases proposed by ADLC shall not be effective unless approved in writing by AR, which approval shall not be unreasonably withheld. If agreement is reached with respect to any proposed increase, AR shall pay to ADLC for deposit into the Institutional Controls Funding

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Account the amount of the agreed upon increase within sixty (60) days of the Parties' agreement. If agreement cannot be reached with respect to any proposed adjustment, the Parties shall proceed with dispute resolution pursuant to Section 10.5 and Section 10.6.

Section 5.9 Adjustment of Other Payment Amounts. All amounts to be paid by AR to ADLC on or after July 1, 2021 pursuant to Section 5.2 and Section 5.4 other than the amounts to be paid pursuant to Section 5.2.2 and Section 5.2.3 shall be adjusted prior to payment (increased or decreased as appropriate) in order to account for inflation or deflation, as the case may be, in an amount equal to the percentage difference between the CPI Base Figure and the CPI Adjustment Figure, as illustrated in the Funding Spreadsheet.

Section 5.10 Authorized Uses of Funding Account Funds. Unless otherwise agreed to in writing by AR, the amounts paid to ADLC pursuant to Section 5.2 shall be held in the applicable Funding Accounts and may be drawn upon and used by ADLC solely and exclusively for the purposes set forth below.

5.10.1. Funds deposited into the Institutional Controls Funding Account each Fiscal Year pursuant to Section 5.2.1 may be used to pay for the salary, benefits, and other costs reasonably incurred by ADLC for (i) the employment of the Environmental Director and one assistant to the Environmental Director, and (ii) other ADLC personnel performing remedy support tasks (*e.g.* utility locate services) through June 30, 2030.

5.10.2. Funds deposited into the Institutional Controls Funding Account each Fiscal Year pursuant to Section 5.2.2 may be used to pay the fees and costs charged by the Institutional Control Contractor for the provision of Institutional Control Contractor Services pursuant to the terms of the Institutional Controls Contractor Agreement.

5.10.3. Funds deposited into the Institutional Controls Funding Account each Fiscal Year pursuant to Section 5.2.3 and Section 5.8 may be used to pay the Institutional Controls Ancillary Costs incurred by ADLC during such Fiscal Year. If ADLC intends to spend funds under this Section 5.10.3 to reimburse a developer for incremental development costs incurred to comply with the requirements of the DPS Ordinance in an amount greater than \$2,500, ADLC shall provide timely prior notice to AR.

5.10.4. Up to \$250,000 of the funds deposited initially and in 2027 and 2035 into the Residential Attic Remediation Funding Account may be used over time (for a combined total of \$750,000) to pay for residential attic sampling and remediation project start up, acquisition of equipment and tools, and personnel training.

5.10.5. Up to \$450,000 of the funds deposited into the Residential Attic Remediation Funding Account each Fiscal Year may be used to pay for the salary, benefits, and other costs reasonably incurred by ADLC for employment of sampling and remediation personnel.

5.10.6. Funds deposited into the Domestic Water Supply Funding Account may be used to provide financial assistance to residential landowners within the Superfund Domestic Well Overlay with the procurement or development of an alternative supply of domestic water in the event that AR's implementation of the Response actions required under the Domestic Well

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Monitoring Plan do not serve to provide the landowner with a supply of drinking water that meets EPA's applicable arsenic action level.

5.10.7. Up to \$4,000,000 of the funds deposited into the Economic Development Funding Account pursuant to Section 5.2.9 may be used for the reduction of the property tax burden of ADLC citizens related to infrastructure improvement projects including, without limitation, past and future sewer infrastructure projects.

5.10.8. The remainder of the funds deposited into the Economic Development Funding Account may be used for the funding of (i) economic development projects (*i.e.*, projects that contribute to the property tax revenues of ADLC) within the Superfund Overlay including, without limitation, reimbursement of incremental increased development costs incurred by developers on or with respect to real property owned by ADLC within the Superfund Overlay, and (ii) costs and expenses incurred by ADLC and/or Old Works Golf Course, Inc. for the operation, management, and maintenance of the Old Works Golf Course. ADLC may use the funds deposited into the Economic Development Funding Account: (a) pursuant to Section 5.2.8.a to support the development of a hotel or lodging facility in the community, and (b) pursuant to Section 5.2.8.b as a perpetual revolving loan fund which may initially be made available as supplemental loans to a hotel or lodging facility. In the event the funds described in the prior sentence are not used for the specified purposes within thirty-six (36) months of the effective Date, such funds may be used as otherwise provided in this Section 5.10.8. Notwithstanding the foregoing, the Parties hereby expressly acknowledge that none of the funds deposited by AR into the Economic Development Funding Account may be used by ADLC for any land acquisitions, infrastructure, or other improvements (including water, sewer, gas, or electric utilities) for any new residential development project without the prior written consent of AR.

Section 5.11 Institutional Controls Cost Savings. Any funds paid by AR to ADLC for a Fiscal Year pursuant to Section 5.2.1, Section 5.2.2, and Section 5.2.3 which are not expended by ADLC during that Fiscal Year for the purposes authorized under Section 5.10.1, Section 5.10.2, and Section 5.10.3, respectively, shall be reflected in the annual accounting report provided by ADLC to AR pursuant to Section 5.12 and shall serve to reduce on a dollar-for-dollar basis the total amount of the next payments that would otherwise be payable by AR to ADLC pursuant to Section 5.2.1, Section 5.2.2, and Section 5.2.3, respectively.

Section 5.12 Funding Account Accounting Reports. ADLC shall, within sixty (60) days after the end of each Fiscal Year, prepare and provide to AR one or more annual accounting reports, in a form acceptable to ADLC and AR, documenting all amounts withdrawn by ADLC from each of the Funding Accounts during the prior Fiscal Year.

Section 5.13 Funding Account Books of Record; Inspection and Audit. ADLC will keep, or cause to be kept, proper books of record separate from all other records, in which complete and correct entries shall be made of ADLC's transactions relating to each of the Funding Accounts. Upon not less than ten (10) days' notice from AR to ADLC, such books of record shall be at all times during business hours available for and subject to inspection and audit by AR, at AR's expense.

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Section 5.14 Financial Assurance for Economic Development Payments. Within 120 days after the “effective date” of the Consent Decree, as such term is defined therein, AR shall arrange for and provide ADLC with documentation of financial assurance for the Economic Development payments that AR is required to make in and after Fiscal Year 2021 pursuant to Section 5.2.8, using one or more of the types of financial assurance methods listed below:

5.14.1. A surety bond guaranteeing to make the payments required under Section 5.2.8 in and after Fiscal Year 2021, to be issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

5.14.2. An irrevocable letter of credit guaranteeing the payments required under Section 5.2.8 in and after Fiscal Year 2021 issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

5.14.3. A trust fund with a principal balance sufficient to guarantee the payments required under Section 5.2.8 in and after Fiscal Year 2021 established for the benefit of ADLC and administered by a trustee with authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

5.14.4. A policy of insurance, for the benefit of ADLC guaranteeing the payments required under Section 5.2.8 in and after Fiscal Year 2021, to be issued by an insurance carrier that is eligible to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

5.14.5. A demonstration that AR has sufficient financial assets to pay its obligations in and after Fiscal Year 2021 under Section 5.2.8, which may include (but is not limited to) the production of financial statements demonstrating that AR’s total assets exceed its total liabilities (including the guaranteed liabilities) by a ratio of 1.5 or more; or;

5.14.6. A guarantee to make the payments required under Section 5.2.8 in and after Fiscal Year 2021 issued by a direct or indirect parent company or affiliate with a substantial business relationship to AR whose audited financial statements demonstrate that the guarantor’s total assets exceed its total liabilities (including the guaranteed liabilities) by a ratio of 1.5 or more.

AR shall have the right to choose any one or more of the six financial assurance methods listed herein. AR may use multiple methods, and multiple financial assurance instruments of the same method, and switch between any one or more of these approved methods, at any time under this Agreement.

Section 5.15 Annual Changes to the Amount of Financial Assurance. The amount of the financial assurance required under this Agreement shall be updated each year to reflect changes in the total Economic Development payments that remain to be paid in and after Fiscal Year 2021 under Section 5.2.8. Each annual update shall include: (i) a reduction for all Economic Development payments previously made by AR pursuant to Section 5.2.8; (ii) adjustments for inflation and deflation pursuant to Section 5.9; and (iii) any other changes that AR and ADLC may agree upon in writing. AR shall arrange to complete any annual increase in the required

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amount of the financial assurance and provide ADLC with documentation of same by or on each anniversary of the Effective Date of this Agreement. AR shall have the discretion to determine whether and when to complete any annual reduction in the amount of the financial assurance that is required under this Agreement.

Section 5.16 ADLC Access to Payment under the Financial Assurance. ADLC shall have the right to seek payment from the financial assurance provided pursuant to Section 5.14 when all of the following conditions are met:

5.16.1. AR has failed to make an Economic Development payment in or after Fiscal Year 2021 when it is due under Sections 5.2.8; and

5.16.2. ADLC has provided AR with a notice of default pursuant to Section 10.2; and

5.16.3. AR has failed to make the payment described in ADLC's notice of default within the thirty (30) day cure period permitted under Section 10.2; and

5.16.4. At least one of the events listed below has occurred:

- (a) AR has not disputed the occurrence of the AR Default pursuant to Section 10.2 hereof; or
- (b) AR has disputed the occurrence of the AR Default pursuant to Section 10.2 hereof, the occurrence of the AR Default has been confirmed in whole or in part by the final decision of the arbitrator, and AR failed to pay ADLC the amount determined to be owed to ADLC pursuant to such final decision within twenty (20) days of the date such final decision; or
- (c) AR has filed for bankruptcy under the United States Bankruptcy Code; or
- (d) A Person or Governmental Entity has petitioned a court to place AR into bankruptcy under the United States Bankruptcy Code, that petition has been granted, and AR has not filed a timely appeal of the order granting that petition, or the order granting the petition has been upheld on appeal; or
- (e) A federal or state court has issued a final judgment finding that AR is insolvent under applicable laws.

ARTICLE VI. REAL PROPERTY

Section 6.1 Real Property Agreements. For and in consideration of the mutual covenants and promises contained herein including, without limitation, the payments to be made by AR to ADLC pursuant to Article V for economic developments, the Parties shall each cause

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the following agreements and deeds to be fully executed and recorded in the real property records of ADLC within sixty (60) days after the Effective Date:

6.1.1. The Old Works Historic Trail Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (an un-executed copy of which is attached as Exhibit 7);

6.1.2. The Red Sands Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (an unexecuted copy of which is attached as Exhibit 8);

6.1.3. The Drag Strip Parcel Modification of Restrictive Covenants Agreement (an unexecuted copy of which is attached as Exhibit 9);

6.1.4. The East Anaconda Yards Parcel Modification of Restrictive Covenants Agreement (an unexecuted copy of which is attached as Exhibit 10);

6.1.5. The Mill Creek Parcel Modification of Restrictive Covenants Agreement (an unexecuted copy of which is attached as Exhibit 11);

6.1.6. The Stucky Ridge (a/k/a “Stuckey Ridge”) Parcel Modification of Restrictive Covenants Agreement (an unexecuted copy of which is attached as Exhibit 12);

6.1.7. The Termination Agreement relating to the 1994 Conveyance Agreement and Memorandum of Conveyance Agreement (an unexecuted copy of which is attached as Exhibit 13).

Section 6.2 Opportunity Triangle Industrial Park Conveyance. Before December 31, 2020, or as soon as reasonably possible thereafter: (i) AR will cause AERL to convey to ADLC the Opportunity Triangle Industrial Park pursuant to a quitclaim in a form mutually agreeable to the Parties , and (ii) the Parties shall take such actions as may be necessary to provide: (a) ADLC with easements for appropriate ingress, egress, and utilities to the Opportunity Triangle Industrial Park; and (b) AR with easements for appropriate ingress, egress, and utilities across the Opportunity Triangle Industrial Park. Within thirty (30) days after the execution of the quitclaim deed, the Parties shall cause such executed quitclaim to be recorded in the real property records of ADLC. Immediately after such conveyance, ADLC shall lease to AR Lot 1 of the Opportunity Triangle Industrial Park pursuant to a lease agreement in a form mutually agreeable to the Parties, provided that any rent payment required by such lease agreement shall not exceed \$100 per year.

Section 6.3 East Anaconda Yards Conveyance. Within one (1) year after the Effective Date, the Parties shall cause a certificate of survey to be completed and recorded that serves to divide the AR East Anaconda Yards Parcel (as depicted on the map attached as Exhibit 14) from the ADLC East Anaconda Yards Parcel (as depicted on the map attached as Exhibit 14). Within thirty (30) days after the recording of the certificate of survey, the Parties shall each cause the AR East Anaconda Yards Parcel Quitclaim Deed (an unexecuted copy of which is attached as Exhibit 15) to be fully executed and recorded in the real property records of ADLC.

Section 6.4 ACC Golf Course Water Right Conveyance. Within one (1) year after the Effective Date, ADLC shall cause a hydrogeologic report to be prepared pursuant to the requirements of Mont. Code Ann §§ 85-2-360 and 361 to identify the net depletions to the flows

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in the Clark Fork River at the confluence of Silver Bow Creek and Warm Springs Creek that will result from irrigating forty-three (43) acres of the ACC Golf Course. AR shall reimburse ADLC for the reasonable costs incurred for the preparation of that required hydrogeologic report. Upon completion of the hydrogeologic report, ADLC shall tender the hydrogeologic report to AR. In the event AR disagrees with the hydrogeologic report in any respect, AR shall, within thirty (30) days after AR's receipt of the hydrogeologic report, so notify ADLC and shall include in such notice an explanation of the basis for AR's disagreement. In the event and to the extent that ADLC and AR are unable to resolve any such disagreements within a reasonable time, either ADLC or AR, at their election, may pursue dispute resolution pursuant to Section 10.5 and Section 10.6. AR shall, within sixty (60) days after AR's receipt of the hydrogeologic report or within thirty (30) days after a final decision of the arbitrator, whichever occurs later, cause AERL to convey an irrigation water right owned by AERL on Warm Springs Creek to ACC in an amount not greater than the amount specified in the hydrogeologic report or by the arbitrator, provided that such amount shall not in any event be greater than one (1) cubic foot per second. The conveyance from AERL to ACC shall be in the form of the ACC Golf Course Water Right Quitclaim Deed (an unexecuted copy of which is attached as Exhibit 16). Following such conveyance, ADLC and/or ACC, shall be responsible for the preparation of all applications and the prosecution of all attendant proceedings before the Montana Department of Natural Resources and Conservation related to the acquisition of a new water use permit and a change of water right, the reasonable costs of which shall be paid by AR. AR will reasonably cooperate with ADLC and/or ACC in the preparation of such applications and the prosecution of such attendant proceedings.

ARTICLE VII. INSURANCE

Section 7.1 ADLC. During the term of this Agreement, ADLC shall provide and continuously maintain in effect the types and amounts of insurance set forth in the ADLC Certificate of Insurance attached as Exhibit 17. The amounts of insurance required under this Section 7.1 shall be increased, as appropriate, in the event and to the extent that the limitations on ADLC's liability for damages in tort, as currently set forth in Mont. Code Ann. § 2-9-108, are increased.

Section 7.2 Institutional Controls Contractor. ADLC shall require the Institutional Controls Contractor to purchase and maintain in effect, the minimum insurance required under Section 7.4 with insurance companies having an A.M. Best Financial Strength Rating of A- or better and Financial Size Category of X (10) or better.

Section 7.3 ADLC Contractors. In the event ADLC uses other contractors to perform actions required of ADLC under Articles III or IV, ADLC shall require such contractors to purchase and maintain in effect, at all times during their performance of the actions, the minimum insurance required under Section 7.4 with insurance companies having an A.M. Best Financial Strength Rating of A- or better and Financial Size Category of X (10) or better.

Section 7.4 Minimum Insurance Requirements. The minimum insurance required under Section 7.2 and Section 7.3 shall include: (i) Workers' Compensation Insurance in compliance with all statutory limits; (ii) Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident; (iii) Commercial or General Liability Insurance, including coverage

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for premises and operations, contractual liability, completed operations, with limits as required by law or with a combined single limit of not less than \$1,000,000 per occurrence, whichever is greater; (iv) Automobile Liability Insurance (including owned, non-owned, and hired vehicles) with limits as required by law or with a combined single limit for bodily injury, death, and property damage of not less than \$1,000,000 per occurrence, whichever is greater, (v) Excess Liability Insurance above said employer's liability, commercial, or general liability, and automobile liability insurance with a combined single limit for bodily injury, death, and property damage of not less than \$2,000,000 per occurrence/aggregate; and (vi) Professional Liability Insurance with limits of at least \$3,000,000 per claim and \$3,000,000 annual aggregate (if such insurance is appropriate taking into account the nature of the activities being performed by the contractor). The Parties hereby acknowledge that the insurance required under this Section 7.4 is based upon insurance available in the market as of the Effective Date and that the policy limits for such insurance are minimum amounts. The Parties shall meet and confer from time to time to determine whether additional or different types of insurance coverages should be required to reflect the current insurance market for similar activities and higher minimum limits to adjust for such factors as inflation and/or the nature and extent of the activities being performed.

Section 7.5 Additional Insurance Requirements. The following additional terms shall apply with respect to each of the policies of insurance required pursuant to this Article VII:

7.5.1. Except for Workers' Compensation Insurance, AR, as to the insurance required in Section 7.1, and the Parties, as to the insurance required in Section 7.2 and Section 7.3, shall be named as additional named insured(s) in each of the policies, and the additional named insured endorsement shall state that coverage is afforded the additional named insured(s) with respect to claims and occurrences arising out of the actions performed by or on behalf of the Parties, as applicable, pursuant to this Agreement. Each Party will be responsible for payment of any reasonable incremental costs charged by the insurer(s) for including such Party as an additional named insured on such policies.

7.5.2. Upon request at any time, ADLC shall use all reasonable efforts to obtain and shall furnish certificates of insurance to AR evidencing the insurance required in Section 7.1, Section 7.2, and Section 7.3.

7.5.3. Each certificate of insurance shall: (i) provide that at least 30 days' prior written notice shall be given to any additional named insured(s) in the event of cancellation or material change in the policies, and (ii) contain references to endorsements of the additional named insured(s) as required pursuant to Section 7.5.1.

7.5.4. In no event shall any failure of an additional named insured to receive certificates of insurance or to demand receipt of such certificates be construed as a waiver by such Party of the insurance obligations and requirements in this Article VII.

7.5.5. Upon request in the event of a claim against AR, as to the insurance required in Section 7.1, or either of the Parties, as to the insurance required in Section 7.2 or Section 7.3, ADLC or the Institutional Controls Contractor or other ADLC contractor, as applicable, shall use or shall be required to use all reasonable efforts to obtain, and shall provide to the Party against whom the claim is brought, copies of policies for the required insurance.

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ARTICLE VIII. INDEMNIFICATION

Section 8.1 Indemnification of ADLC.

8.1.1. Scope of Indemnification of ADLC. Except as otherwise provided in Section 8.1.2, AR hereby agrees to defend, protect, indemnify, and hold harmless ADLC from any and all claims, causes of action, demands, administrative actions by a Governmental Entity, damages, liabilities, losses, penalties, fines, costs, and expenses (including attorneys' fees and other litigation expenses) arising or resulting from (i) AR's implementation and performance, or material failure to implement and perform, any obligations required of AR pursuant to Article III, (ii) any exacerbation of Preexisting Environmental Conditions caused by AR or its contractors, and (iii) any EPA or State action requiring ADLC to implement or pay for the remedies selected in the RODs for Environmental Conditions within the Site.

8.1.2. Exceptions to Indemnification of ADLC. AR's agreement to indemnify ADLC pursuant to Section 8.1.1 shall not apply to the extent that such claims, causes of action, demands, damages, liabilities, losses, penalties, fines, costs, and expenses arise or result from (i) ADLC's implementation and performance, or material failure to implement and perform, any obligations required of ADLC pursuant to Articles III and IV, (ii) any exacerbation to Preexisting Environmental Conditions caused by ADLC or its contractors, (iii) any negligent, reckless, or willful misconduct on the part of ADLC or its contractors, (iv) a claim or cause of action brought by EPA or the State pursuant to their reservations of rights set forth in the CNSA, or (v) termination of the CNSA pursuant to its terms. AR acknowledges: (a) it is not a third-party beneficiary of the CNSA; (b) AR has no contractual right to enforce ADLC's compliance with the CNSA; and (c) ADLC's entry into the CNSA shall not, of itself, relieve AR of any legal obligations that AR has for Environmental Conditions within the Site.

Section 8.2 Indemnification of AR.

8.2.1. Scope of Indemnification of AR. Except as otherwise provided in Section 8.2.2, ADLC hereby agrees to defend, protect, indemnify, and hold harmless AR from any and all claims, causes of action, administrative actions by a Governmental Entity, demands, damages, liabilities, losses, penalties, fines, costs, and expenses (including attorneys' fees and other litigation expenses) arising or resulting from (i) ADLC's implementation and performance, or material failure to implement and perform, any obligations required of ADLC pursuant to Articles III and IV, and (ii) any exacerbation of Preexisting Environmental Conditions caused by ADLC or its contractors.

8.2.2. Exceptions to Indemnification of AR. ADLC's agreement to indemnify AR pursuant to Section 8.2.1 shall not apply to the extent that such claims, causes of action, demands, damages, liabilities, losses, penalties, fines, costs, and expenses arise or result from (i) AR's implementation and performance, or material failure to implement and perform, any obligations required of AR pursuant to Article III, (ii) any exacerbation of Preexisting Environmental Conditions caused by AR or its contractors, or (iii) any negligent, reckless, or willful misconduct on the part of AR or its contractors.

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Section 8.3 Survival of Indemnification Rights and Obligations. The rights and obligations of the Parties under Section 8.1 and Section 8.2 shall survive the termination of this Agreement, in whole or in part, pursuant to Article X, and the expiration of the term of this Agreement pursuant to Article XI, but only with respect to those claims, causes of action, demands, damages, liabilities, losses, penalties, fines, costs, and expenses that accrued prior to the termination or expiration of the term of this Agreement.

ARTICLE IX. RELEASES AND COVENANTS NOT TO SUE

Section 9.1 Release and Covenant Not to Sue of ADLC.

9.1.1. Scope of ADLC Release and Covenant Not to Sue. Except as otherwise provided in Section 9.1.2, Section 9.1.3, and Section 9.3, and subject to ADLC's rights and remedies under Article X, for and in consideration of the mutual covenants and promises contained herein including, without limitation, the payments to be made by AR to ADLC pursuant to Article V for economic developments, ADLC hereby agrees to unconditionally, fully, and forever release and discharge, and covenant not to sue AR and AR's shareholders, directors, officers, employees, attorneys, affiliates, parents, and agents from and for any and all known or unknown, present, and future, claims, demands, losses, damages, and any and all actions and rights of action of any kind or nature that ADLC has or may have arising out of or relating to: (i) Environmental Conditions within the Site; (ii) all matters addressed in this Agreement, including, without limitation, all costs and expenses associated with past and ongoing operation, maintenance, and repairs to the ADLC Wastewater Treatment Plant incurred by ADLC as a result of alleged migration of slag that occurred prior to the Effective Date; and (iii) past (*i.e.*, prior to the Effective Date) performance or non-performance by AR of any obligations related to the 1994 Conveyance Agreement, Memorandum of Conveyance Agreement, Reimbursement Agreement, and any other agreements between the Parties.

9.1.2. Exceptions to ADLC Release and Covenant Not to Sue. Nothing in Section 9.1.1 shall release, or discharge AR or its contractors, from any claims, demands, losses, damages, or any actions or rights of action of any kind or nature which may arise as a result of any of the following, provided however that any such excepted claims, demands, or actions may only be brought by ADLC against AR by mediation/arbitration in accordance with the provisions of Section 10.5 and Section 10.6:

- a) A situation in which (i) ADLC has met its obligations under Section 12.1 to support the remedies selected in the RODs, and (ii) EPA or the State has brought civil or administrative action against ADLC requiring ADLC to implement or pay for the remedies selected in the RODs, a ROD amendment, or a new record of decision addressing Environmental Conditions within the Site;
- b) AR's unlawful failure to implement ROD remedies for Environmental Conditions within the Site after the Effective Date;

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- c) The exacerbation of Preexisting Environmental Conditions within the Site caused by AR or its contractors after the Effective Date;
- d) Any negligent, reckless, or willful misconduct on the part of AR or its contractors after the Effective Date; and
- e) Damage to the equipment, infrastructure, operation, and/or maintenance of the ADLC Wastewater Treatment Plant or other ADLC-owned structures or equipment located within one-half mile of the Main Granulated Slag Pile and constructed or installed after the Effective Date, to the extent ADLC can prove in arbitration that such damage was the direct and incremental result of (i) wind-borne migration of slag (ii) from the Main Granulated Slag Pile (iii) that occurred after the Effective Date and prior to completion of the final closure of the Main Granulated Slag Pile in accordance with the Consent Decree.

9.1.3. ADLC Reservation of Rights with Respect to Third-Party Claims. ADLC and AR hereby agree that the Releases and Covenants Not to Sue set forth in Section 9.1.1 above shall not preclude ADLC from asserting a claim against AR for indemnity or contribution under Montana law or CERCLA if all of the following conditions are met:

- a) The claim asserted by ADLC against AR arises from an alleged injury or damage to a parcel or parcels of real property not owned by ADLC;
- b) The claim asserted by ADLC against AR arises from a claim asserted in litigation against ADLC by a person or entity unrelated to and not in privity with ADLC ("Third-Party Litigation");
- c) The alleged injury or damage asserted in such Third-Party Litigation does not arise as a result of ADLC's implementation and performance, or ADLC's material failure to implement and perform, any duty or obligations required of ADLC under this Agreement, the CNSA, or any other agreement between AR and ADLC that remains in force and effect after the Effective Date (*see* Section 12.5, "Coordination with Other Agreements"); and
- d) The alleged injury or damage asserted in such Third-Party Litigation arises from an exacerbation of a Preexisting Environmental Condition caused by an act of God or a Person other than AR, ADLC, or their respective contractors.

Section 9.2 Release and Covenant Not to Sue of AR.

9.2.1. Scope of AR Release and Covenant Not to Sue. Except as otherwise provided in Section 9.2.2 and Section 9.3, and subject to AR's rights and remedies under Article X, for and in consideration of the mutual covenants and promises contained herein, AR hereby agrees to unconditionally, fully and forever release and discharge, and covenant not to sue ADLC from and for any and all known or unknown, present and future, claims, demands, losses, damages,

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and any and all actions and rights of action of any kind or nature that AR has or may have arising out of or relating to: (i) Environmental Conditions within the Site; (ii) all matters addressed in this Agreement; and (iii) past (*i.e.*, prior to the Effective Date) performance or non-performance by ADLC of any obligations related to the 1994 Conveyance Agreement, Memorandum of Conveyance Agreement, and any other agreements between the Parties.

9.2.2. Exceptions to AR Release and Covenant Not to Sue. Nothing in Section 9.2.1 shall release, or discharge ADLC or its contractors, from any claims, demands, losses, damages, or any actions or rights of action of any kind or nature which may arise as a result of any of the following, provided however that any such excepted claims, demands, or actions may only be brought by AR against ADLC by arbitration in accordance with the provisions of Section 10.6:

- a) The exacerbation of any Preexisting Environmental Conditions within the Site by ADLC or its contractors (excluding the Institutional Controls Contractor) after the Effective Date; and
- b) Any negligent, reckless, or willful misconduct on the part of ADLC or its contractors after the Effective Date.

9.2.3. AR Reservation of Rights with Respect to Third-Party Litigation. AR reserves, and this Agreement is without prejudice to, all rights and defenses available to AR under applicable law with respect to any claim asserted by ADLC against AR pursuant to Section 9.1.3. Nothing in this Agreement shall be deemed to create an admission or presumption of AR's liability in any litigation or with respect to any claim addressed by Section 9.1.3, nor shall any of the terms of this Agreement be admissible in such litigation or with respect to such claims to prove the validity or amount of any disputed claim.

Section 9.3 Survival of Releases and Covenants Not to Sue. The releases and covenants not to sue set forth in Section 9.1 and Section 9.2 shall survive the termination of this Agreement as long as AR has, as of the termination, either (i) made all payments into the Economic Development Funding Account required under Sections 5.2.8 and 5.2.9, or (ii) elected to continue making any then remaining payments required under Sections 5.2.8 and 5.2.9 after an early termination of this Agreement pursuant to Section 10.10.

ARTICLE X. DEFAULT/REMEDIES/TERMINATION

Section 10.1 ADLC Default. In the event that ADLC materially fails to perform any duty or obligation required of ADLC during the term of this Agreement, then AR may at any time provide ADLC with a written notice that identifies the material failure and requests that the material failure be corrected or cured. Upon receipt of a notice of default from AR, ADLC shall correct or cure the identified material failure within thirty (30) days, or such longer period reasonably required by ADLC and agreed to in writing by AR, which agreement shall not be unreasonably withheld. If ADLC does not correct the identified material failure within the time allowed under the preceding sentence, an ADLC Default shall occur and AR shall have the right to proceed in accordance the terms of Section 10.3. If ADLC disputes the occurrence of an alleged ADLC Default, ADLC shall provide written notice of the dispute to AR within fourteen (14) days

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of receipt of any written notice of material default from AR pursuant to this Section 10.1. If the occurrence of the Default is so disputed by ADLC, AR and ADLC shall proceed with dispute resolution pursuant to Section 10.5 and Section 10.6.

Section 10.2 AR Default. In the event that AR materially fails to perform any duty or obligation required of AR under this Agreement, then ADLC may at any time provide AR with a written notice that identifies the material failure and requests that the material failure be corrected or cured. Upon receipt of a notice of default from ADLC, AR shall correct or cure the identified material failure within thirty (30) days, or such longer period reasonably required by AR and agreed to in writing by ADLC, which agreement shall not be unreasonably withheld. If AR does not correct the identified material failure within the time allowed under the preceding sentence, an AR Default shall occur and ADLC shall have the right to proceed in accordance the terms of Section 10.4. If AR disputes the occurrence of an alleged AR Default, AR shall provide written notice of the dispute to ADLC within fourteen (14) days of receipt of any written notice of material default from ADLC pursuant to this Section 10.2. If the occurrence of the Default is so disputed by AR, AR and ADLC shall proceed with dispute resolution pursuant to Section 10.5 and Section 10.6.

Section 10.3 AR Elections for ADLC Default. In the event an ADLC Default occurs and such ADLC Default is not timely disputed, corrected, or cured pursuant to Section 10.1, AR, at its election, may: (i) proceed with dispute resolution pursuant to Section 10.5 and Section 10.6, (ii) terminate this Agreement in part pursuant to Sections 10.7.1 or Section 10.7.2, as applicable, or (iii) terminate this Agreement in whole pursuant to Section 10.8.1. Before proceeding with any available remedy, AR shall provide ADLC with written notice identifying the remedy elected; *provided, however*, that tendering of such election notice shall not preclude or limit the subsequent election of any other available remedy by AR. The election notice shall, at a minimum, (i) refer to this Agreement, (ii) set forth a description of the ADLC Default, (iii) specify the remedy that AR has elected, (iv) include an effective date for any elected termination that is at least sixty (60) days after the election notice is transmitted, and (v) include such additional information as may be required pursuant to Sections 10.7.1, 10.7.2, or 10.8.1, as applicable.

Section 10.4 ADLC Elections for AR Default. In the event an AR Default occurs, and such AR Default is not timely disputed, corrected, or cured pursuant to Section 10.2, ADLC, at its election, may: (i) proceed with dispute resolution pursuant to Section 10.5 and Section 10.6, or (ii) terminate this Agreement in whole pursuant to Section 10.8.2. Before proceeding with any available remedy, ADLC shall provide AR with written notice identifying the remedy elected; *provided, however*, that tendering such notice shall not preclude or limit the subsequent election of any other available remedy by ADLC. The election notice shall, at a minimum, (i) refer to this Agreement, (ii) set forth a description of the AR Default, (iii) specify the remedy that ADLC has elected, (iv) include an effective date for any elected termination that is at least sixty (60) days after the election notice is transmitted, and (v) include such additional information as may be required pursuant to Section 10.8.2, as applicable.

Section 10.5 Mediation. If AR or ADLC elects to proceed with dispute resolution pursuant to this Agreement, or if dispute resolution is required pursuant to Section 10.3 or Section 10.4, then, within thirty (30) days after the effective date of any election notice or dispute notice, ADLC and AR shall each designate a senior-level representative, who shall collectively endeavor

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in good faith to resolve the Default or other dispute on a reasonable basis. Upon agreement of AR and ADLC, a mediator with expertise in the subject matter may be selected to assist in this process. The costs and fees of the mediator shall be shared equally by AR and ADLC. If a Default or other dispute is not resolved within sixty (60) days (or such longer time as may be agreed to by AR and ADLC) after the effective date of any election notice or dispute notice, AR and ADLC shall proceed with arbitration pursuant to Section 10.6. An election by AR or ADLC to proceed with dispute resolution shall not serve to delay or stay AR's or ADLC's timely performance of their respective duties and obligations under this Agreement. For any dispute involving a payment under this Agreement, AR shall pay the undisputed portion of the payment, if any, within the time period required and may withhold the disputed portion of the payment pending resolution of the dispute.

Section 10.6 Arbitration. Defaults and other disputes not resolved by AR and ADLC pursuant to the mediation provisions of Section 10.5 will be resolved by arbitration pursuant to the following terms:

10.6.1. The Party initiating the arbitration shall give written notice to the other Party ("Arbitration Notice").

10.6.2. The arbitration shall be conducted before a single arbitrator who shall possess substantial professional experience in the subject matter of the dispute and, unless otherwise agreed by AR and ADLC in writing, shall be a lawyer unaffiliated with either Party and licensed to practice in the State of Montana.

10.6.3. If AR and ADLC can agree on an arbitrator within twenty (20) days after the Arbitration Notice, the arbitrator shall be selected by the consent of AR and ADLC. If AR and ADLC cannot agree on an arbitrator within twenty (20) days after the Arbitration Notice, then, within thirty (30) days after the notice initiating the arbitration, AR and ADLC shall each nominate an individual who is qualified to serve as the arbitrator and the two individuals so nominated shall select a qualified individual to serve as the arbitrator.

10.6.4. AR and ADLC shall cooperate with the arbitrator to permit the scheduling of a hearing so as to complete the arbitration within one hundred twenty (120) days of commencement, unless the Parties' mutually agree to a longer period or the arbitrator determines for good cause that a longer period is required. AR and ADLC shall have no less than forty-five (45) days' notice prior to the commencement of any hearing.

10.6.5. No adjournment of any hearing shall exceed thirty (30) days in length, nor shall there be more than one (1) such adjournment without the written consent of AR and ADLC.

10.6.6. Except as otherwise provided in this Section 10.6, the arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. 1-16, to the exclusion of any provision of the law of the State of Montana inconsistent therewith, and judgment upon the award rendered by the single arbitrator may be entered by any court having jurisdiction thereof.

10.6.7. The arbitrator shall apply the substantive law of the State of Montana exclusive of its conflicts of law rule.

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10.6.8. Any award rendered by the single arbitrator shall contain specific findings of fact and conclusions of law on which the award is based, and AR and ADLC shall have the right to appeal all issues of law to any court having jurisdiction.

10.6.9. If the occurrence or continuation of a Default is disputed by AR or ADLC, the arbitrator is specifically authorized to resolve the dispute. Any decision of the arbitrator relating to the occurrence or non-occurrence of a Default shall contain specific findings of fact and conclusions of law on which the decision is based, and AR and ADLC shall have the right to appeal all issues of law to any court having jurisdiction. A Party electing to appeal the decision of the arbitrator must file a notice of appeal within twenty (20) days following the date of the arbitrator's decision. In the event of such an appeal, the decision of the arbitrator shall not be considered final for purposes of this Agreement until twenty (20) days after the court's decision or judgment is deemed to be final in accordance with the applicable rules of procedure.

10.6.10. The arbitrator is specifically authorized to grant appropriate relief as may be requested, including specific performance or orders to any Party to perform any obligation under this Agreement. AR and ADLC agree that the arbitrator may award specific performance of any kind or character notwithstanding the fact that damages may accord complete relief, and the arbitrator may award both specific performance and damages in order to provide a Party with complete relief.

10.6.11. The prevailing Party in any dispute resolved by arbitration shall be entitled to an award of its reasonable legal fees and expenses incurred in the arbitration, including attorneys' fees, expert fees, other professional fees, and fees of arbitration.

Section 10.7 Termination in Part upon ADLC Default.

10.7.1. Institutional Controls Obligations. In the event of an ADLC Default that relates to ADLC's institutional controls obligations under Articles III and V, AR may elect to terminate the Parties' respective rights and obligations under Articles III and corresponding provisions of Article V (while leaving the rest of the Agreement in full force and effect) by providing ADLC with the AR election of remedies notice required pursuant to Section 10.3. If the occurrence of the ADLC Default is disputed by ADLC pursuant to Section 10.3, the effective date for the partial termination shall be delayed unless and until the Parties resolve the dispute pursuant to Section 10.5 or a final decision by the arbitrator is issued pursuant to Section 10.6 that contains specific findings of fact confirming the occurrence of the ADLC Default. The Parties' respective rights and obligations under Articles III and corresponding provisions of Article V shall cease as of the effective date of a partial termination made effective pursuant to this Section 10.7.1, and all amounts then remaining in the Institutional Controls Funding Account which are not necessary to satisfy obligations properly incurred by ADLC prior to the final effective date of the partial termination, including all accrued interest and income earned thereon, shall be returned by ADLC to AR within thirty (30) days of the effective date of the termination. The Parties' respective rights and obligations under all other Articles, Sections, and provisions which are not terminated pursuant to the partial termination shall not be affected.

10.7.2. Residential Attic Remediation Obligations. In the event of an ADLC Default that relates to ADLC's residential attic remediation obligations under Articles IV and

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Article V, AR may elect to terminate the Parties' respective rights and obligations under Articles IV and corresponding provisions of V (while leaving the rest of the Agreement in full force and effect) by providing ADLC with the AR election of remedies notice required pursuant to Section 10.3. If the occurrence of the ADLC Default is disputed by ADLC pursuant to Section 10.3, the effective date for the partial termination shall be delayed unless and until the Parties resolve the dispute pursuant to Section 10.5 or a final decision by the arbitrator is issued pursuant to Section 10.6 that contains specific findings of fact confirming the occurrence of the ADLC Default. The Parties' respective rights and obligations under Articles IV and corresponding provisions of Article V shall cease as of the effective date of a partial termination made effective pursuant to this Section 10.7.2, and all amounts then remaining in the Residential Attic Remediation Funding Account which are not necessary to satisfy obligations properly incurred by ADLC prior to the final effective date of the partial termination, including all accrued interest and income earned thereon, shall be returned by ADLC to AR within thirty (30) days of the effective date of the termination. The Parties' respective rights and obligations under all other Articles, Sections, and provisions which are not terminated pursuant to the partial termination of this Agreement shall not be affected.

Section 10.8 Termination in Whole upon ADLC or AR Default.

10.8.1. ADLC Default. In the event of an ADLC Default other than one that relates to ADLC's residential attic remediation schedule requirements under Section 4.2, AR may elect to terminate this Agreement in whole by providing ADLC with the AR election of remedies notice required pursuant to Section 10.3. If the occurrence of the ADLC Default is disputed by ADLC pursuant to Section 10.3, the effective date for the termination shall be delayed unless and until the Parties resolve the dispute pursuant to Section 10.5 or a final decision by the arbitrator is issued pursuant to Section 10.6 that contains specific findings of fact confirming the occurrence of the ADLC Default. Except as provided in Section 8.3, Section 9.3, and Section 10.10, if this Agreement is terminated in whole by AR pursuant to this Section 10.8.1, all of the Parties' respective rights and obligations under this Agreement shall cease as of the effective date of termination, and all amounts then remaining in the Funding Accounts which are not necessary to satisfy obligations properly incurred by ADLC prior to the final effective date of the termination, including all accrued interest and income earned thereon, shall be returned by ADLC to AR within thirty (30) days of the effective date of the termination.

10.8.2. AR Default. In the event of an AR Default, ADLC may elect to terminate this Agreement in whole by providing AR with the election notice required pursuant to Section 10.4. If the occurrence of the AR Default is disputed by AR pursuant to Section 10.4, the effective date for the termination shall be delayed unless and until the Parties resolve the dispute pursuant to Section 10.5 or a final decision is issued by the arbitrator pursuant to Section 10.6 that contains specific findings of fact confirming the occurrence of the AR Default. Except as otherwise provided in Section 8.3, Section 9.3, and Section 10.10, if this Agreement is terminated in whole by ADLC pursuant to this Section 10.8.2, all of the Parties' respective rights and obligations under this Agreement shall cease as of the effective date of the termination, and all amounts then remaining in the Funding Accounts which are not necessary to satisfy obligations properly incurred by ADLC prior to the final effective date of the termination, including all accrued interest and income earned thereon, shall be returned by ADLC to AR within thirty (30) days of the effective date of the termination.

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Section 10.9 Termination in Part upon ADLC Election. At any time during the term of this Agreement, but not before December 31, 2070, ADLC may elect (without cause) to terminate the Parties' respective institutional controls rights and obligations under Articles III and corresponding provisions of Article V (while leaving the rest of the Agreement in full force and effect). At any time during the term of this Agreement, but not before December 31, 2023, ADLC may elect (without cause) to terminate the Parties' respective residential attic remediation rights and obligations under Articles IV and corresponding provisions of Article V (while leaving the rest of the Agreement in full force and effect). If ADLC elects to exercise its termination rights under this Section 10.9, ADLC shall provide AR with an election notice which shall, at a minimum, (i) refer to this Agreement, (ii) specify the applicable Article(s) being terminated, and (iii) specify an effective date for the partial termination that is at least one hundred twenty (120) days after the election notice is transmitted. On the effective date specified in the election notice, the Parties' respective rights and obligations under the applicable Articles shall cease, and all amounts then remaining in the Institutional Controls Funding Account and/or the Residential Attic Remediation Funding Account which are not necessary to satisfy obligations properly incurred by ADLC prior to the final effective date of the termination, as applicable, including all accrued interest and income earned thereon, shall be returned by ADLC to AR within thirty (30) days of the effective date of the partial termination. If the elected partial termination pertains to the Parties' respective residential attic remediation rights and obligations under Articles IV and corresponding provisions of Article V, ADLC shall, within the same thirty (30) day period, tender over to AR any remediation equipment and tools then in ADLC's possession that were purchased using the funds provided by AR pursuant to Section 5.2.3.

Section 10.10 AR Option to Complete Economic Development Payments upon Termination in Whole. In the event this Agreement is terminated by AR in whole pursuant to Section 10.8.1 before all payments into the Economic Development Funding Account required under Sections 5.2.8 and 5.2.9 have been made, AR, at its election, shall have the right and option at that time to continue making such payments in the amounts and according to the schedule established by Sections 5.2.8 and 5.2.9, notwithstanding the termination. If AR exercises such right and option, AR shall provide ADLC with an election notice within twenty (20) days of the effective date of the termination. The election notice shall, at a minimum, (i) refer to this Agreement, and (ii) specify that AR has elected to make the remaining Economic Development Funding Account payments to ADLC. So long as AR timely makes all Economic Development payments required under this Agreement, then notwithstanding any other term or provision of this Agreement: (i) ADLC shall retain the amounts in the Economic Development Funding Account as of the effective date of the termination, (ii) the terms of Section 5.10 governing authorized uses of Economic Development Funding Account funds (and all related terms of this Agreement) shall survive and remain in full force and effect, and (iii) the releases and covenants not to sue set forth in Section 9.1 and Section 9.2 and ADLC's obligations under Section 12.1 relating to support of remedies shall survive the termination of this Agreement in whole.

Section 10.11 Agreement to Pay Fees and Expenses. If a non-defaulting Party employs attorneys, experts, or other professionals, or incurs other expenses for the collection of moneys or the enforcement or performance of any obligation owed by the defaulting Party, the defaulting Party agrees that it will, on demand therefore, pay to the non-defaulting Party the reasonable fees of such attorneys, experts, or other professionals and such other costs and expenses reasonably so incurred by the non-defaulting Party as a result of a material default.

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Section 10.12 No Additional Waiver Implied by One Waiver. In the event any Default is waived, such waiver shall be limited to the particular Default so waived and shall not be deemed to waive any other Default hereunder.

Section 10.13 Force Majeure. The provisions of this Article X are subject to the following limitation: if by reason of Force Majeure a Party is unable in whole or in part to carry out its duties or obligations under this Agreement, such Party shall not be deemed in Default during the continuance of such Force Majeure event; *provided* that (i) such Party promptly notifies the other Party in writing that a Force Majeure event has occurred and such event is inhibiting the Party's ability to perform, (ii) such Party's inability to perform is of no greater scope and of no greater duration than is required by the Force Majeure, (iii) such Party uses its best efforts to remedy its inability to carry out all or any part of its obligations and keeps the other Party fully informed as to such efforts, and (iv) the Force Majeure was not caused or aggravated by any negligent or intentional acts, errors, or omissions of such Party or any failure by such Party to comply with any applicable law. If a Party disputes the occurrence of a Force Majeure, such Party shall provide written notice to the Party claiming a Force Majeure, as applicable, within ten (10) days of receipt of any notice of a Force Majeure pursuant to this Section 10.13. If a Force Majeure is so disputed, the parties shall proceed with dispute resolution pursuant to Section 10.5 and Section 10.6.

Section 10.14 Consequential Damages. In the event this Agreement is terminated, in whole or in part, pursuant to this Article X, AR and ADLC shall have no claim in law or equity for damages or compensation of any kind (including, without limitation, compensatory damages and punitive damages) for or based on such termination.

ARTICLE XI. TERM OF AGREEMENT

Section 11.1 General Term. Subject to the Parties' rights to terminate this Agreement in whole or in part pursuant to Article X, the term of this Agreement shall commence on the Effective Date and shall continue in effect until one hundred and twenty (120) days after ADLC provides AR with written notice of its election to terminate the institutional controls, pursuant to Section 10.9, which election shall not be made before December 31, 2070. If at any time EPA determines that the institutional controls and other contingencies described in the ICIAP are no longer required in order to comply with the requirements of any consent decree or any administrative order issued by EPA after the Effective Date to implement the remedies described in the RODs, the Parties' obligations under Article III shall terminate at such time without affecting the remainder of the Agreement.

Section 11.2 Residential Attic Remediation Term. Subject to the Parties' rights to terminate this Agreement in whole or in part pursuant to Article X, the Parties' respective rights and obligations under Article IV and corresponding provisions of Article V relating to residential attic remediation shall commence on the Effective Date and shall continue in effect until June 30, 2045, or such later date mutually agreed to in writing by the Parties.

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ARTICLE XII. MISCELLANEOUS PROVISIONS

Section 12.1 Support of Remedies. ADLC, including its Commission and Chief Executive Officer in their official, representative capacities for ADLC, shall support, and shall not interfere with the implementation of the remedies selected in the RODs for the Site, the Consent Decree, and future consent decrees or administrative orders that are consistent with the material terms and conditions of this Agreement and the selected remedies for the Site as of the Effective Date. The obligation of ADLC to support the selected remedies under this Section 12.1 shall survive the termination of this Agreement as long as AR has, as of the termination, either (i) made all payments into the Economic Development Funding Account required under Sections 5.2.8 and 5.2.9, or (ii) elected to continue making, and timely makes, all then remaining payments required under Sections 5.2.8 and 5.2.9 after an early termination of this Agreement pursuant to Section 10.10.

Section 12.2 Consent Decree. Following the Effective Date of this Agreement, AR and ADLC shall, in good faith, support the entry of the Consent Decree; provided, however, that nothing in this Agreement shall be deemed a waiver by AR of any rights or defenses available to AR or to require AR to accept any terms or obligations in the Consent Decree that AR, in its sole discretion, determines to be adverse to its interests. ADLC shall not interfere with AR's good faith efforts to negotiate and execute such Consent Decree.

Section 12.3 Notices and Submissions. Whenever, under the terms of this Agreement, written notice is required to be given, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the Parties in writing. All notices, submissions, requests, demands for payment, instructions, or other documents to be given hereunder shall be in writing and shall be given by delivery in person, by e-mail transmission, or other standard forms of written communications, by overnight courier, or by registered or certified mail, postage prepaid, and shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Agreement.

IF TO AR: Atlantic Richfield Company
317 Anaconda Road
Butte, Montana 59701
Attn: Loren Burmeister (or successor)
E-mail: Loren.Burmeister@bp.com

WITH A COPY TO: Atlantic Richfield Company Legal Dept.
Jean Martin, Esq. (or successor)
501 Westlake Park Blvd
Houston, Texas 77079
E-mail: Jean.Martin@bp.com

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and shall have no further force or effect, except that ADLC's indemnity obligations under paragraph 7 of the South Storm Drain System Funding Agreement shall survive such termination.

12.5.6. Old Works Golf Course Agreement. The Old Works Golf Course Agreement shall remain in full force and effect and shall not be deemed to be altered or amended in any way by this Agreement.

12.5.7. Access Agreement. The Access Agreement shall remain in full force and effect and shall not be deemed to be altered or amended in any way by this Agreement.

12.5.8. Deeds and Other Agreements and Instruments of Record. Except as otherwise provided in the real property agreements listed in Section 6.1, all deeds and other agreements and instruments between the Parties that are filed or recorded in the real property records of ADLC as of the Effective Date shall remain in full force and effect and shall not be deemed to be altered or amended in any way by this Agreement. The Parties acknowledge that certain of those deeds and other agreements and instruments contain commitments by ADLC to release and covenant not to sue AR. In the event of a conflict or inconsistency between the specific releases and covenants not to sue granted by ADLC in those deeds and other agreements and instruments and the releases and covenant not to sue set forth in Section 9.1, the releases and covenants not to sue set forth in Section 9.1 shall control where they are applicable.

Section 12.6 Record Keeping and Reporting Requirements. ADLC shall be solely responsible for all record keeping that may be required with respect to its obligations under this Agreement, including requirements imposed by the DPS Ordinance, the ICIAP, the CSOU RAWP, and the Residential Attic Abatement Implementation Plan; and ADLC shall provide such records to AR at times and in a manner as reasonably requested by AR that allows AR to comply with all applicable reporting and other requirements. At the time AR or ADLC provides or submits any correspondence, report, or other document relating to the DPS Ordinance, Institutional Controls Contractor Services, or the CSOU RAWP to EPA, a copy shall be concurrently provided to the other Party. Upon not less than ten (10) days' notice to ADLC, AR and EPA shall each have the right to inspect all records of ADLC relating to the DPS Ordinance and ADLC's sampling and remediation of eligible residential attics.

Section 12.7 Entire Agreement. Except as otherwise provided in Section 12.5, this Agreement and all exhibits hereto shall constitute the entire Agreement and understanding between and among the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter. The Parties expressly acknowledge and agree that, with regard to the subject matter of this Agreement and the transactions contemplated herein: (a) there are no oral agreements between the Parties, and (b) this Agreement, including the recitals and all exhibits attached hereto (i) embodies the final and complete agreement between the Parties, (ii) supersedes all prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, course of dealing, representations, statements, assurances and understandings, whether oral or written, and (iii) may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral agreement of the Parties.

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Section 12.8 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by the Parties, the Parties shall perform, execute, and/or deliver or cause to be performed, executed, and/or delivered any and all other acts or deeds necessary to complete the work and/or the transactions contemplated herein.

Section 12.9 Negation of Agency Relationship. This Agreement shall not be construed to create, either expressly or by implication, the relationship of agency or partnership between the Parties. Neither Party (including such Party's agents, employees, or contractors) is authorized to act on behalf of the other Party in any manner relating to the subject matter of this Agreement. Neither Party shall be liable for the acts, errors, or omissions of the officers, agents, employees, or contractors of the other Party entered into, committed, or performed with respect to or in the performance of this Agreement.

Section 12.10 Exhibits. All exhibits attached to this Agreement are hereby incorporated into and made part of this Agreement. If the description set forth in the body of this Agreement of the terms and conditions of any document conflicts with the provisions of the actual document attached as an exhibit, the provisions of this Agreement shall control.

Section 12.11 No Admission of Liability. The Parties do not admit any liability arising out of the transactions or occurrences, exhibits, index, or any other record documents attached hereto or incorporated by reference. The Parties do not admit, and retain the right to dispute and contest, any of the factual or legal statements made in any pleadings or other documents. This Agreement, any factual or legal statements made in this Agreement, and the resulting obligations of the Parties shall not be admissible in any judicial or administrative proceeding against any of the Parties, over their objection, as evidence of liability or as an admission of any factual or legal statements made herein, but shall be admissible in an action to enforce this Agreement.

Section 12.12 General Reservations. Nothing in this Agreement shall restrict or limit in any way any cause of action or other rights, whether contingent or absolute, matured or unmatured, determined or undetermined, or known or unknown as of the Effective Date of this Agreement, that any Party to this Agreement may have against any Person or Governmental Entity that is not a Party to this agreement, including, without limitation, any cause of action for contribution or indemnity against any non-Party for reimbursement of the considerations incurred or to be incurred by that Party pursuant to this Agreement.

Section 12.13 Binding Effect; Assignment. The rights and obligations set forth in this Agreement shall be binding on the Parties and their successors and assigns. AR and ADLC may, subject to the terms of this Section 12.13, each assign and/or delegate any of their rights and obligations under this Agreement at any time, excluding the rights and obligations set forth in Section 12.1 and Section 12.2. No assignment or delegation will release the assigning Party from any liability or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. No assignment or other transfer by either Party of its rights or obligations hereunder shall be effective unless and until: (i) written notice thereof has been given to the other Party, (ii) the transferee or assignee has executed and delivered a binding written agreement to perform all obligations assigned or transferred, and (iii) the non-assigning Party has agreed in its reasonable discretion and in writing to the assignment or other transfer of rights or obligations. For an assignment of ADLC's institutional controls obligations

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under Article III to be considered reasonable by AR under this Section 12.13, ADLC's proposed assignee must possess, including by legally valid delegation, the legal authority and jurisdiction to implement and enforce the DPS and must be acceptable in all respects to EPA and the State. Any attempted assignment or transfer of rights or obligations which fails to comply with the foregoing requirements will be ineffective and void.

Section 12.14 Modification. This Agreement, and the rights and the obligations of the Parties hereunder, may only be amended, altered, modified, or waived by a written agreement executed by the Parties.

Section 12.15 No Third-Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person or Governmental Entity (including any other potentially responsible party within the Site), other than the Parties, any rights (including without limitation any right of reimbursement or indemnification), benefits, or remedies of any nature whatsoever under or by reason of this Agreement.

Section 12.16 Governing Law. Except as specifically provided in Section 10.6.6, this Agreement shall be construed in accordance with and governed by the laws of Montana applicable to agreements made and to be performed wholly within such jurisdiction.

Section 12.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which together shall constitute the same instrument.

Section 12.18 Severability. If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions hereof, or of such provision in other respects, shall not be affected thereby.

Section 12.19 Integration of Recitals. All of the recitals to this Agreement are incorporated by this reference in their entirety as terms and conditions of this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the ____ day of _____, 20__.

ATLANTIC RICHFIELD COMPANY

By: _____
Its _____

Date: _____

ANACONDA-DEER LODGE COUNTY

By: _____
Chief Executive

Attest: _____
County Clerk and Recorder

Date: _____

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Exhibit 1

(Community Soils Operable Unit Remedial Action Work Plan/Final Design Report)

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**Exhibit 2
(Funding Spreadsheet)**

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Exhibit 3
(Anaconda Smelter NPL Site Institutional Controls Implementation and Assurance Plan)

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**Exhibit 4
(Institutional Controls Ancillary Costs Budget)**

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**Exhibit 5
(Institutional Controls Contractor Request for Proposal)**

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**Exhibit 6
(Map of Anaconda Smelter NPL Site)**

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Exhibit 7
(Parcel Reconfiguration and Modification of Restrictive Covenants Agreement—
Old Works Historic Trail Parcel)

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**Exhibit 8
(Parcel Reconfiguration and Modification of Restrictive Covenants Agreement—
Red Sands Parcel)**

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**Exhibit 9
(Modification of Restrictive Covenants Agreement—Drag Strip Parcel)**

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Exhibit 10
(Modification of Restrictive Covenants Agreement—East Anaconda Yards Parcel)

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**Exhibit 11
(Modification of Restrictive Covenants Agreement—Mill Creek Parcel)**

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**Exhibit 12
(Modification of Restrictive Covenants Agreement—Stucky Ridge Parcel)**

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Exhibit 13
(Termination Agreement—Conveyance Agreement and
Memorandum of Conveyance Agreement)

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Exhibit 14
(Map of ADLC and AR East Anaconda Yards Parcels)

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**Exhibit 15
(Quitclaim Deed—AR East Anaconda Yards Parcel)**

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**Exhibit 16
(Quitclaim Deed—ACC Golf Course Water Right)**

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Exhibit 17
(ADLC Certificate of Insurance)
(COI will be provided within 30 days of Effective Date)