

November 15, 2006 Draft

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**ALLOCATION AND SETTLEMENT AGREEMENT**  
**AND**  
**MUTUAL RELEASE OF CLAIMS**  
**BY AND BETWEEN**  
**THE CITY AND COUNTY OF BUTTE-SILVER BOW**  
**AND**  
**ATLANTIC RICHFIELD COMPANY**

Effective \_\_\_\_\_, 2006

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## **ALLOCATION AND SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS**

THIS ALLOCATION AND SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (as hereinafter defined, "Agreement"), is entered into by and between the City and County of Butte-Silver Bow (hereinafter defined, "BSB") and Atlantic Richfield Company (as hereinafter defined, "AR") as of the effective date (as hereinafter defined, the "Effective Date") to set forth agreements, allocations of responsibility, and releases relating to the Butte Priority Soils Operable Unit (as hereinafter defined, "BPSOU") of the Silver Bow Creek/Butte Area NPL Site (as hereinafter defined, the "Site").

### **W I T N E S S E I H:**

WHEREAS, the United States Environmental Protection Agency (as hereinafter defined, "EPA") and the State of Montana (as hereinafter defined, the "State") have initiated actions pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended (as hereinafter defined, "CERCLA"), to address contamination arising from historic mining and mineral processing activities within the Site; and

WHEREAS, a portion of the Site has been designated by EPA as the BPSOU; and

WHEREAS, AR and BSB have both been identified by EPA as potentially responsible parties under CERCLA for certain response actions and response costs arising in the BPSOU and the Parties anticipate that EPA will require financial assurance for the performance of the actions required pursuant to the Consent Decree for the BPSOU (as hereinafter defined, "Consent Decree"); and

WHEREAS, EPA issued a Record of Decision in September of 2006 selecting a remedy for the BPSOU, but important details regarding the components of the selected remedy are anticipated to be further refined in the Consent Decree and various work plans and other implementing documents;

WHEREAS, in order to allocate their potential responsibilities, expedite certain actions and thereby avoid the significant cost and expense associated with prolonged and complicated litigation over the same, AR and BSB desire to enter into this Agreement in order to provide a full statement of their respective rights and responsibilities; and

WHEREAS, in consideration of the funds to be provided by AR to BSB pursuant to the terms and conditions of this Agreement, BSB has, subject to the funding limitations set forth in Sections 18.1, 18.2 and 18.3 hereof, agreed to perform specified actions required by the ROD as described in this Agreement that would otherwise be the responsibility of AR or others;

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.

### EXHIBITS

**Section 1.1. Definitions.** Unless otherwise expressly provided 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. **"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.
2. **"Agreement"** shall mean this Allocation and Settlement Agreement and Mutual Release of Claims and all documents referenced herein and all Exhibits attached hereto.
3. **"Anaconda Sampling Works"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the as the "Anaconda Sampling Works."
4. **"Applicable Laws"** shall mean and include all Environmental Laws, and all other statutes, regulations, ordinances, decrees, orders, judgments, or rules of Governmental Entities, as the same may change from time to time.
5. **"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, AERL.
6. **"AR Kelley Mine Yard Properties"** shall mean the portions of the parcels of real property separately and particularly described in Exhibits "4.5.1", "4.5.2", "5.4.1" and "5.4.2" hereto that are depicted as the "Kelley Mine Yard Properties" on the map attached as Exhibit "29" hereto.
7. **"ARARs"** shall mean all Applicable and Relevant and Appropriate Requirements identified by EPA with respect to the BPSOU in accordance with Section 121 of CERCLA, 42 U.S.C. 9621.
8. **"Area One"** shall mean the area depicted on the map attached as Exhibit "1" hereto as "Area One."
9. **"Best Management Practices"** shall have the meaning ascribed to the term pursuant to the ROD.
10. **"BPSOU"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Butte Priority Soils Operable Unit" and any area added thereto by EPA.
11. **"BRES"** shall mean the Butte Reclamation Evaluation System.
12. **"BRW"** shall mean the portion of LAO depicted on the map attached as Exhibit "1" hereto as the "Butte Reduction Works."

13. **"BSB"** shall mean the local government of the City and County of Butte-Silver Bow, Montana, and any successors thereto, including all officers, employees, agents, representatives, boards, departments, commissions, programs and authorities thereof. The term shall also include any "governing authority" established by BSB to administer and oversee the performance of this Agreement and to guide the planning and use of the funds in the Redevelopment Trust Account, consistent with the purposes of this Agreement.

14. **"BSB Sewage Treatment Effluent Line Extension"** shall mean the sewage treatment effluent line extension depicted on the map attached as Exhibit "34" hereto.

15. **"BSB Groundwater Criteria"** shall mean the following criteria for BSB's evaluation of the acceptability of any groundwater treatment option:

1. Meet Montana Water Quality Bureau-Circular 7 standards, thus ensuring long-term protection of Silver Bow Creek and down stream water resources;
2. Provide aesthetics;
3. Allows maximum reuse of the LAO area, including a walking trail, wildlife viewing areas and interpretive displays;
4. Ensures a facility that is practical to maintain and operate; and
5. Includes a trust fund to operate/maintain/monitor/upgrade the facility.

16. **"BSB Memorandum of Coverage"** shall mean the Memorandum of Coverage attached as Exhibit "25" hereto and any such subsequent certificate of insurance of BSB.

17. **"BSB Kelley Mine Yard Properties"** shall mean the parcels and portions of the parcels of real property separately and particularly described in Exhibit "4.5.1", "4.5.2", "5.4.1" and "5.4.2" hereto that are depicted as the "Survey Area" on the map attached as Exhibit "29" hereto.

18. **"BSB Position Paper"** shall mean the Butte-Silver Bow Position Paper dated October 5, 2004 which is attached as Exhibit "27" hereto.

19. **"Capital Improvements Accounting Report"** shall mean an accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Capital Improvements Trust Account during the prior Fiscal Year.

20. **"Capital Improvements Trust Account"** shall mean a segregated and separate account of BSB, with a financial institution acceptable to BSB and AR, that is established pursuant to Section 13.7 hereof.

21. **"Capital Purchase, Repair and Replacement Accounting Report"** shall mean an accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Capital Purchase, Repair and Replacement Trust Account during the prior Fiscal Year. The term shall include a budget reconciliation report which, separately for each Task Account and each budget amount for each Task Account set forth in the Capital Purchase, Repair and Replacement Budget for the prior Fiscal Year, compares the total amount actually incurred by BSB with the total budgeted amount, and any amounts carried forward by BSB.

22. **"Capital Purchase, Repair and Replacement Budget"** shall mean a budget, in the form of the Initial Capital Purchase, Repair and Replacement Budget, which sets forth all anticipated uses of funds from the Capital Purchase, Repair and Replacement Trust Account by BSB during the next Fiscal Year for Capital Purchase, Repair and Replacement Costs, and which sets forth the amount BSB may request the trustee to pay to BSB from the Capital Purchase, Repair and Replacement Trust Account for each quarter of the next Fiscal Year for Capital Purchase, Repair and Replacement Costs for each Task Account in accordance with the terms and conditions of Section 14.5 hereof and the Capital Purchase, Repair and Replacement Trust Agreement.

23. **"Capital Purchase, Repair and Replacement Costs"** shall mean the charges, expenses, fees and other costs reasonably incurred by BSB to construct and design improvements to the Storm Water System pursuant to Section 5.3 hereof. The term shall also include the expenses incurred by BSB to purchase equipment and vehicles of the general type and at the frequency set forth in the spreadsheet attached as Exhibit "7" hereto.

24. **"Capital Purchase, Repair and Replacement Trust Account"** shall mean a segregated account with Trustee that is established pursuant to Section 14.1 hereof.

25. **"Capital Purchase, Repair and Replacement Trust Agreement"** shall mean the Trust Agreement between AR and BSB attached as Exhibit "12" hereto.

26. **"CECRA"** shall mean the Montana Comprehensive Environmental Cleanup and Responsibility Act, §75-10-701 et seq., MCA, and any amendments thereto.

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

28. **"Clark Tailings Waste Areas"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the Clark Tailings Waste Areas."

29. **"Colorado Smelter"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the Colorado Smelter."

30. **"Consent Decree"** shall mean the consent decree required under Section 21.2 hereof.

31. **"Controlled Groundwater Areas"** shall mean those areas within Butte-Silver Bow County that have been established as Controlled Groundwater Areas by MDNRC as of the Effective Date which include the Clark Tailings Controlled Groundwater Area and the Rocker Controlled Groundwater Area, and any amendments or additions thereto. The term shall also include all such additional areas within Butte-Silver Bow County which may be so established on or after the Effective Date pursuant to the terms and conditions of Section 4.6 hereof including, without limitation, the Butte Mine Flooding Controlled Groundwater Area, the BPSOU Alluvial Controlled Groundwater Area, the Montana Pole Plant Controlled Groundwater Area and the WSSOU Controlled Groundwater Area.

32. **"Controlled Groundwater Area Orders"** shall mean all final orders issued by the MDNRC with respect to the Controlled Groundwater Areas and any amendments thereto.

33. **“Controlled Groundwater Areas Submittal Schedule”** shall mean the Controlled Groundwater Areas Submittal Schedule attached as Exhibit “24” hereto.

34. **“Conventional Groundwater Treatment System”** shall mean a system required by the ROD, if any, for treating groundwater through lime precipitation whether separate from or in conjunction with the Expanded Lagoon Treatment System. If such a system is operated in conjunction with the Expanded Lagoon Treatment System, the term shall also include the Expanded Lagoon Treatment System.

35. **“Co-Pay Percentage”** shall mean the applicable co-pay percentage under the Insurance Policy or any renewal thereof secured pursuant to Section 17.6 hereof.

36. **“Cost Cap Coverage”** shall mean the coverage provided under Section I.G of the Insurance Policy.

37. **“Covenants”** shall have the meaning ascribed to the term in the Dedicated Use Properties Quitclaim Deeds and the Developable Properties Quitclaim Deeds.

38. **“Dedicated Use Properties”** shall mean the parcels of real property separately and particularly described in Exhibits “4.1.1” through “4.1.15”, Exhibits “4.2.1” and “4.2.2”, and Exhibits “4.3.1” through “4.3.6” hereto. The term shall also include the BSB Kelley Mine Yard Properties separately and particularly described in Exhibits “4.5.1” and “4.5.2” hereto. The term shall also include, as of the date of conveyance to BSB, all parcels of real property characterized as Dedicated Use Properties and conveyed to BSB as such pursuant to Sections 9.5 or 9.6 hereof.

39. **“Dedicated Use Properties Quitclaim Deeds”** shall mean the forms of quitclaim deeds attached as Exhibits “8.1.1” through “8.1.15”, Exhibits “8.2.1” and “8.2.2”, Exhibits “8.3.1” through “8.3.6” and Exhibits “8.4.1” and “8.4.2” hereto.

40. **“Developable Properties”** shall mean the parcels of real property separately and particularly described in Exhibits “5.1.1” through “5.1.6”, Exhibit “5.2.1”, and Exhibit “5.3.1” hereto. The term shall also include the BSB Kelley Mine Yard Properties separately and particularly described in Exhibits “5.4.1” and “5.4.2” hereto. The term shall also include, as of the date of conveyance to BSB, all parcels of real property characterized as Developable Properties and conveyed to BSB as such pursuant to Sections 9.5 or 9.6 hereof.

41. **“Developable Properties Quitclaim Deeds”** shall mean the forms of quitclaim deeds attached as Exhibits “9.1.1” through “9.1.6”, Exhibit “9.2.1”, Exhibit “9.3.1” Exhibit “9.4.1” and Exhibit “9.4.2” hereto.

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

43. **“Emergency Response Actions”** shall mean actions taken by AR and/or BSB to prevent, abate or minimize the actions or occurrences described in Section 20.8 hereof.

44. **“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.

45. **“Environmental Laws”** shall mean any past, present or future federal, state or local laws, regulations, ordinances, permits, approvals or authorizations pertaining to natural resources, Environmental Conditions, protection of human health, welfare or the environment or historic, archeological or cultural preservation, including, without limitation, CERCLA; the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.); the Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.); the National Historic Preservation Act (16 U.S.C. § 470); CECRA; the Montana Water Quality Act (M.C.A. §§ 75-5-101 et seq.); the Clean Air Act of Montana (M.C.A. §§ 75-2-101 et seq.); the Natural Streambed and Land Preservation Act (M.C.A. §§ 75-7-101 et seq.); the Montana Hard Rock Mining Act (M.C.A. §§ 82-4-300 et seq.); and the Montana Floodplain and Floodway Management Act (M.C.A. §§ 76-5-101 et seq.); all as amended and as may change from time to time; and any ARARS; and any provisions or theories of common law providing for any cause of action remedy or right of recovery with respect to, arising from or related to Environmental Conditions, as any such provisions or theories may change from time to time.

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

47. **“Expanded Lagoon Treatment System”** shall mean the groundwater collection, conveyance and treatment system at LAO described in the LAO Work Plan Addendum that AR constructed and is operating prior to and as of the Effective Date. The term shall include, without limitation all Expanded Lagoon Treatment System Upgrades designed and constructed by AR pursuant to Section 4.2 hereof. The term shall also include, without limitation all additional Response Actions designed and constructed by AR pursuant to section 4.2 hereof. The term shall also include all collection and conveyance structures and fixtures associated with the treatment of alluvial groundwater from the MSD, West Camp and LAO areas.

48. **“Expanded Lagoon Treatment System Upgrades”** shall mean each of the improvements and upgrades to the Expanded Lagoon Treatment System described in Exhibit “33” hereto. The term shall include, without limitation, all Expanded Lagoon Treatment System Upgrades designed and constructed by AR pursuant to Section 4.2 hereof.

49. **“Feasibility Study”** shall mean the EPA’s Feasibility Study for the BPSOU dated March 2004.

50. **“Fiscal Year”** means a year commencing on July 1 and ending on June 30.

51. **“Force Majeure”** shall mean any event arising from causes beyond the control of the Parties, of any entity controlled by the Parties, or of the Parties' contractors, that delays or prevents the performance of any obligation under this Agreement despite the Parties' best efforts to fulfill the obligation. The requirement that the Parties 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 (1) as it is occurring and (2) following 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, decree or directive issued in connection with Environmental Laws shall also constitute a Force

Majeure event for purposes of this Agreement, provided, however, that Force Majeure does not include a Party's financial inability to complete its obligations under this Agreement.

52. **"Funding Spreadsheet"** shall mean the spreadsheet attached as Exhibit "26" hereto with a budget projection prepared for illustrative purposes.

53. **"GIS"** shall mean BSB's Geographic Information System and other related computerized and hard copy data tracking and data management systems related to the BPSOU operated by BSB.

54. **"GMMIA"** shall mean the area depicted on the map attached as Exhibit "3" hereto as the "Granite Mountain Memorial Interpretive Area." The term shall include the Mountain Con, Moose Dumps, Wake up Jim and Green Mountain areas depicted on Exhibit "3" hereto.

55. **"GMMIA Reclamation Plan"** shall mean the plan attached to the Feasibility Study as Appendix E-4. The term shall include the historic mitigation and restoration activities identified in the GMMIA Reclamation Plan (i.e., completion of the memorial, work on the entryway road and interpretive signage and completion of activities at the Mountain Con .

56. **"Gold Smith Dumps"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the as the "Gold Smith Dumps."

57. **"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. For purposes of this Agreement, the term shall not include BSB.

58. **"Groundwater Treatment System"** shall mean the Expanded Lagoon Treatment System and/ or the Conventional Groundwater Treatment System.

59. **"Groundwater Treatment System Capital Repair and Replacement"** shall mean any repair or replacement of a capital component of the Groundwater Treatment System which is comparable in quality and specifications and necessary for the system to remain suitable and efficient for use in substantially the same manner and fashion as originally intended.

60. **"Groundwater Treatment System Capital Repair and Replacement Accounting Report"** shall mean an accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Groundwater Treatment System Capital Repair and Replacement Trust Account during the prior Fiscal Year. The term shall include a budget reconciliation report which, separately for each budget amount set forth in the Groundwater Treatment System Capital Repair and Replacement Budget for the prior Fiscal Year, compares the total amount actually incurred by BSB with the total budgeted amount, and any amounts re-deposited into the Groundwater Treatment System Capital Repair and Replacement Trust Account by BSB.

61. **"Groundwater Treatment System Capital Repair and Replacement Budget"** shall mean a budget, in a form acceptable to BSB and AR, which sets forth all anticipated uses of funds from the Groundwater Treatment System Capital Repair and Replacement Trust Account for Groundwater Treatment System Capital Repair and Replacement Costs.

62. **"Groundwater Treatment System Capital Repair and Replacement Costs"** shall mean the charges, expenses, fees and other costs reasonably incurred by BSB to make Groundwater Treatment System Capital Repair and Replacement pursuant to Section 4.2 and/or 4.3 hereof.

63. **"Groundwater Treatment System Capital Repair and Replacement Trust Account"** shall mean a segregated account with Trustee that is established pursuant to Section 14.1 hereof.

64. **"Groundwater Treatment System Capital Repair and Replacement Trust Agreement"** shall mean the Trust Agreement between AR and BSB attached as Exhibit "13" hereto.

65. **"Groundwater Treatment System Operation and Maintenance Plan"** shall mean the plan to be developed by AR pursuant to Section 4.4 hereof for EPA approval. Said plan shall be consistent with the outline for the Groundwater Treatment System Operation and Maintenance Plan that are set forth in Exhibit "28" hereto.

66. **"Growth Policy"** shall mean the BSB Growth Policy adopted by resolution of the BSB Council of Commissioners prior to the Effective Date and any amendments thereto.

67. **"Historic Mining Landscape Area"** shall mean the area depicted on the map attached as Exhibit "3" hereto as the "Historic Mining Landscape Area", and any area added thereto by EPA

68. **"Hook-up Ordinance"** shall mean the ordinance set forth at Section 13.20.210 of the Butte-Silver Bow Municipal Code and any amendments thereto adopted pursuant to Section 4.5 hereof.

69. **"Initial Capital Purchase, Repair and Replacement Budget"** shall mean the Capital Purchase, Repair and Replacement Budget attached as Exhibit "16" hereto.

70. **"Initial Multi-Pathway Program Budget"** shall mean the Multi-Pathway Program Budget attached as Exhibit "36" hereto.

71. **"Initial Superfund Management Budget"** shall mean the Superfund Management Budget attached as Exhibit "17" hereto.

72. **"Initial Superfund Programs Budget"** shall mean the Superfund Programs Budget attached as Exhibit "18" hereto.

73. **"Insurance Policy"** shall mean the Remediation Expense and Premises Pollution Liability Insurance Policy (Policy No. PRMG22086078 001) procured by AR from Illinois Union Insurance Company and all endorsements, attachments and amendments thereto.

74. **"Insurance Company"** shall mean Illinois Union Insurance Company and any successor insurance company thereto. The term shall also include any insurance company from whom BSB secures a renewal of the Insurance Policy pursuant to Section 17.6 hereof.

75. **"Jenny Dell"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Jenny Dell."

76. **"LAO"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Lower Area One."

77. **"LAO Surface Enhancement and Land Use Plan"** shall mean the LAO Surface Enhancement and Land Use Plan attached as Exhibit "19" hereto.

78. **"LAO Work Plan Addendum"** shall mean the Work Plan Addendum, Lower Area One/Colorado Tailings Treatment Lagoon Expansion and Modification for MSD Base Flow Addition dated July 2004.

79. **"MBMG"** shall mean the Montana Bureau of Mines and Geology and any successor agency thereto.

80. **"MDEQ"** shall mean the Montana Department of Environmental Quality and any successor agency thereto.

81. **"MDNRC"** shall mean the Montana Department of Natural Resources and Conservation and any successor agency thereto.

82. **"Mine Waste"** shall mean 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 structures and debris associated with such operations, including, without limitation, the following waste materials and their constituents resulting from or related to the extraction, beneficiation, or processing of ores and minerals: waste rock, overburden, tailings, slag, flue dust, metals, contaminated soils and other hazardous substances for which the Parties are required to take action pursuant to the ROD. The term shall include sludge from the Groundwater Treatment System.

83. **"Mine Waste Source Areas"** shall mean all parcels or portions of parcels of real property within the BPSOU at which Mine Wastes are located as of the Effective Date of this Agreement. The term shall include the GMMIA, the Syndicate Pit, the LAO, the Jenny Dell, the Gold Smith Dumps, the Anaconda Sampling Works, the Unnamed Dump Site, the Colorado Smelter and the Clark Tailings Waste Areas. The term shall also include, without limitation, the Storm Water Sites. The term shall not include the MSD Corridor or the Mine Waste Repository. The term shall not include the Rail Road Properties.

84. **"Mine Waste Repository"** shall mean the area of approximately ten (10) acres depicted on the map attached as Exhibit "3.1" hereto as the "Mine Waste Repository and any additions thereto or expansions thereof."

85. **"MOU 119"** shall mean that certain Memorandum of Understanding (MOU No. MT-119) between BSB and AR effective March 7, 1995, as amended by the change orders executed by the Parties and as further amended by the Scope of Work for MOU 119.

86. **"MOU 135"** shall mean that certain Memorandum of Understanding (MOU No. MT-135) between BSB and AR, as the assignee of AERL, effective April 1, 2001, as amended by the change orders executed by the Parties and as further amended by the Multi-Pathway Program Protocol.

87. **"MSD Corridor"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Metro Storm Drain Corridor."

88. **"MSD Work Plan"** shall mean the Final Horseshoe Bend Effluent Pipeline/Metro Storm Drain Design Report/Work Plan dated September 2003, as implemented prior to the Effective Date.

89. **"Multi-Pathway Program"** shall mean a programmatic approach administered by BSB to simultaneously investigate and abate residential exposure to Mine Waste and associated metals (lead, arsenic and mercury) within the BPSOU which exceed ROD action levels that: (1) includes, without limitation, the following program components: (i) interior living-area dust abatement; (ii) interior attic dust abatement; and (iii) exterior yard abatement; (iv) a metals education program; (v) clinical testing for metal exposure; and (vi) environmental testing for lead, arsenic and mercury; and (2) is consistent with the Multi-Pathway Program Protocol.

90. **"Multi-Pathway Program Accounting Report"** shall mean a quarterly accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Multi-Pathway Program Trust Account during the prior quarter of the Fiscal Year. The term shall include a budget reconciliation report which compares the total amount actually incurred by BSB with the total budgeted amount, and any amounts carried forward by BSB.

91. **"Multi-Pathway Program Budget"** shall mean a budget, in the form of the Initial Multi-Pathway Program Budget, which sets forth all anticipated uses of funds from the Multi-Pathway Program Trust Account by BSB during the next Fiscal Year for Multi-Pathway Program Costs, and which sets forth the amount BSB may request the trustee to pay to BSB from the Multi-Pathway Program Trust Account for each quarter of the next Fiscal Year for Multi-Pathway Program Costs in accordance with the terms and conditions of Section 11.7 and the Multi-Pathway Program Trust Agreement.

92. **"Multi-Pathway Program Costs"** shall mean the charges, expenses, fees and other costs reasonably incurred by BSB to perform its duties and obligations under Section 6.1 hereof.

93. **"Multi-Pathway Program Obligations"** shall mean the obligations that BSB is obligated to perform pursuant to Section 6.1 hereof.

94. **"Multi-Pathway Program Protocol"** shall mean the protocol for implementation of the Multi-Pathway Program attached as Exhibit "20" hereto, and such subsequent amendments as may from time to time be concurred in by both BSB and AR, which concurrence shall not be unreasonably withheld, and approved by EPA.

95. **"Multi-Pathway Program Trust Account"** shall mean a segregated account with Trustee that is established pursuant to Section 11.1 hereof.

96. **"Multi-Pathway Program Trust Agreement"** shall mean the Trust Agreement between AR and BSB attached as Exhibit "35" hereto.

97. **"Named Insured"** shall have the meaning ascribed to the term in the Insurance Policy.

98. **"NPL Sites"** shall mean the Site, the Montana Pole and Treating Plant NPL Site, the Anaconda Smelter NPL Site and the Milltown Reservoir/Clark Fork River NPL Site and any areas added thereto by EPA.

99. **"Obligations"** shall have the meaning ascribed to the term in the Dedicated Use Properties Quitclaim Deeds and the Developable Properties Quitclaim Deeds.

100. **"Operation and Maintenance Activities"** shall mean all activities of any kind or nature whatsoever which are required pursuant to the ROD: (i) to monitor Environmental Conditions and/or Response Actions; and (ii) to maintain, repair and/or replace any component of any Response Action. The term shall include, without limitation, all related sampling, inspection and reporting requirements. The term shall also include implementation of the Groundwater Treatment System Operation and Maintenance Plan. The term shall also include, without limitation, all activities necessary to maintain an effective vegetative cover and all activities necessary to control noxious weeds, erosion and unauthorized entries. The term shall also include, without limitation, the removal of garbage and debris. The term shall not include any Groundwater Treatment System Capital Repair and Replacement. Except as provided in Section 4.4 hereof with regard to specific monitoring activities associated with the Groundwater Treatment System and in Section 5.2 hereof with regard to periodic performance tests and other monitoring of Best Management Practices associated with the Superfund Storm Water Structures, the term shall also not include and BSB shall not be required to perform any other Silver Bow Creek surface water or alluvial groundwater monitoring generally within the BPSOU. AR anticipates that the USGS will perform such other Silver Bow Creek surface water quality monitoring pursuant to the terms of a separate agreement between AR and the USGS, and that the MBMG will perform such other alluvial groundwater quality monitoring pursuant to the terms of a separate agreement between AR and MBMG. Notwithstanding any other term or condition of this Agreement, BSB shall not be responsible for such other Silver Bow Creek surface water or alluvial ground water monitoring even if AR is not successful in negotiating such agreements with USGS or MBMG. The term shall also not include any Response Actions.

101. **"Oversight Costs"** shall mean those response costs incurred by EPA or MDEQ (either as the lead agency or support agency) in monitoring and supervising the performance of the work required by the ROD, including costs incurred in reviewing plans, reports and other documents. The term shall not include any costs of direct action by EPA and/or MDEQ at the BPSOU or indirect costs that EPA or MDEQ incurs as a result of: (i) a default by BSB in the performance of any of BSB's duties and obligations under this Agreement or (ii) a Work Takeover of any Superfund Programs Obligations.

102. **"Parties"** shall mean AR and BSB.

103. **"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.

104. **"Policy Limits"** shall mean the limits of liability set forth in Item 5 of the Declarations to the Insurance Policy or any renewal thereof secured pursuant to Section 17.6 hereof.

105. **"Policy Period"** shall mean the policy period set forth in Item 2 of the Declarations to the Insurance Policy or any renewal thereof secured pursuant to Section 17.6 hereof.

106. **"Prioritization Criteria"** shall mean the criteria for prioritizing the design and construction of storm water improvement projects as part of BSB's engineering evaluation, as described in the Storm Water Improvement Plan and Exhibit "21" hereto.

107. **"Priority Projects"** shall mean those storm water improvement projects that the Parties anticipate will be constructed within ten (10) years following the Effective Date to the extent practicable, as described in the Storm Water Improvement Plan and Exhibit "21" hereto.

108. **"Rail Road Properties"** shall mean the properties and rights-of-way depicted on the map attached as Exhibit "30" hereto.

109. **"Reclaimed Areas Guidebook Ordinance"** shall mean an ordinance which is consistent the principles set forth in Exhibit "22" hereto.

110. **"Redevelopment Accounting Report"** shall mean an accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Redevelopment Trust Account during the prior Fiscal Year.

111. **"Redevelopment Trust Account"** shall mean a segregated and separate account of BSB, with a financial institution acceptable to BSB and AR, that is established pursuant to Section 15.1 hereof.

112. **"Regional Historic Preservation Plan"** shall mean the Upper Clark Fork River Basin Regional Historic Preservation Plan and any amendment thereto.

113. **"Release"** shall mean any spilling, leaking, pumping, pouring, emitting, leaching, migration, emptying, discharging, injecting, escaping, dumping, burying, disposal or emanation whatsoever.

114. **"Remediation Plan Endorsement"** shall mean the Remediation Plan Endorsement to the Insurance Policy.

115. **"Response Action"** shall mean any response, removal, or remedial action, within the meaning of those terms under CERCLA and CECRA, regardless of whether such actions are undertaken pursuant to CERCLA or CECRA authority and any reclamation, restoration, or rehabilitation actions or any other actions of any kind or nature whatsoever required under any Applicable Laws to address Environmental Conditions. The term shall not include: (i) any actions taken principally to assess or restore the quality of any natural resources; or (ii) any Operation and Maintenance Activities. To the extent the definition of Response Action used in this Agreement is inconsistent with the definitions set forth in Sections 101(23), (24) and (25) of CERCLA and Section 75-10-701 (19) of CECRA the definition of Response Action in this Agreement shall control.

116. **"ROD"** shall mean the EPA's Record of Decision issued in September of 2006 that selected a final remedy for the BPSOU, together with all attachments or amendments thereto, all implementing documentation prepared pursuant to the ROD, all explanations of significant differences, and all changes thereto mandated by EPA and/or MDEQ.

117. **"Scope of Work for MOU 119"** shall mean the scope of work attached hereto as Exhibit 32.

118. **"Second Programmatic Agreement"** shall mean that certain Second Programmatic Agreement between BSB, AR, EPA, the Advisory Council on Historic Preservation, the Montana State Historic Preservation Office, Anaconda/Deer Lodge County, the town of Walkerville, and the Montana Department of Environmental Quality dated September 14, 1994.

119. **"SIR"** shall mean the applicable self-insured retention set forth in Item 6 to the Declarations of the Insurance Policy or any renewal thereof secured pursuant to Section 17.6 hereof.

120. **"Site"** shall mean the "Silver Bow Creek/Butte Area NPL Site and any area added thereto by EPA.

121. **"State"** shall mean the State of Montana, all agencies thereof, and any successors thereto.

122. **"Storm Water Management Ordinance"** shall mean an ordinance which is consistent the principles set forth in Exhibit "23" hereto.

123. **"Storm Water Sites"** shall mean the parcels of real property or portions of parcels of real property described in Exhibit "6" hereto.

124. **"Storm Water System"** shall mean all storm water conveyance structures owned or controlled by BSB as of the Effective Date and any such structures designed, procured, constructed or otherwise acquired by BSB after the Effective Date. The term shall include all repairs, replacements and improvements designed and constructed by BSB pursuant to the Storm Water System Improvement Plan. The term shall not include the Superfund Storm Water Structures.

125. **"Storm Water System Improvement Plan"** shall mean the plan to be developed by BSB pursuant to Section 5.3 hereof. Said plan shall be consistent with the schedule, priorities and objectives for the repair, replacement and improvement of components of the Storm Water System that are set forth in Exhibit "21" hereto.

126. **"Substantially Complied With Showing Reliable System Performance"** shall mean compliance with all of the performance criteria applicable to the Operation and Maintenance Activities contemplated under Sections 4.2 and/or 4.3 hereof, taking into account variances from discharge requirements allowed by EPA pursuant to the ROD during such Operation and Maintenance Activities.

127. **"Superfund Management Accounting Report"** shall mean an accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Superfund Management Trust Account during the prior Fiscal Year. The term shall include a budget reconciliation report which, separately for each Task Account and each budget amount for each Task Account set forth in the Superfund Management Budget for the prior Fiscal Year, compares the total amount actually incurred by BSB with the total budgeted amount, and any amounts carried forward by BSB.

128. **"Superfund Management Budget"** shall mean a budget, in the form of the Initial Superfund Management Budget, which sets forth all anticipated uses of funds from the

Superfund Management Trust Account by BSB during the next Fiscal Year for Superfund Management Costs, and which sets forth the amount BSB may request the trustee to pay to BSB from the Superfund Management Trust Account for each quarter of the next Fiscal Year for Superfund Management Costs for each Task Account in accordance with the terms and conditions of Section 12.5 and the Superfund Management Trust Agreement.

129. **"Superfund Management Costs"** shall mean the charges, expenses, fees and other costs reasonably incurred by BSB to perform its duties and obligations under Sections 4.5, 4.6, 4.7, 5.4, 6.2, 7.4, 8.1, 8.2, 8.3, 9.5, 9.6, 9.7, 9.8, 9.11, and 9.12 hereof.

130. **"Superfund Management Obligations"** shall mean the obligations that BSB is obligated to perform pursuant to Sections 4.5, 4.6, 4.7, 5.4, 6.2, 7.4, 8.1, 8.2, 8.3, 9.5, 9.6, 9.7, 9.8, 9.11, and 9.12 hereof.

131. **"Superfund Management Trust Account"** shall mean a segregated account with Trustee that is established pursuant to Section 12.1 hereof.

132. **"Superfund Management Trust Agreement"** shall mean the Trust Agreement between AR and BSB attached as Exhibit "14" hereto.

133. **"Superfund Programs Accounting Report"** shall mean a quarterly accounting report, in a form acceptable to BSB and AR, of all amounts withdrawn by BSB from the Superfund Programs Trust Account during the prior quarter of the Fiscal Year. The term shall include a budget reconciliation report which, separately for each Task Account and each budget amount for each Task Account set forth in the approved Superfund Programs Budget, compares the total amount actually incurred by BSB with the total budgeted amount, and any amounts carried forward by BSB.

134. **"Superfund Programs Budget"** shall mean a budget, in the form of the Initial Superfund Programs Budget, which sets forth all anticipated uses of funds from the Superfund Programs Trust Account by BSB during the next Fiscal Year for Superfund Programs Costs, and which sets forth the amount BSB may request the trustee to pay to BSB from the Superfund Programs Trust Account for each quarter of the next Fiscal Year for Superfund Programs Costs for each Task Account in accordance with the terms and conditions of Section 10.7 and the Superfund Programs Trust Agreement. From and after the date on which the duties and obligations to perform Operation and Maintenance Activities are transferred from AR to BSB pursuant to Sections 4.2 and/or 4.3 hereof, the budget shall include the amount BSB may request the trustee to pay to BSB from the Superfund Programs Trust Account for each quarter of the next Fiscal Year for the groundwater treatment Task Account identified in the Initial Superfund Programs Budget.

135. **"Superfund Programs Costs"** shall mean the charges, expenses, fees and other costs reasonably incurred by BSB to perform its duties and obligations under Sections 3.6, 3.7, 5.2, 7.1, and 7.3 hereof. From and after the date on which the duties and obligations to perform Operation and Maintenance Activities are transferred from AR to BSB pursuant to Sections 4.2, 4.3, and/or 7.2 hereof, the term shall also include the charges, expenses, fees and other costs reasonably incurred by BSB to perform the Operation and Maintenance Activities required of BSB pursuant to Sections 4.2, 4.3, and/or 7.2 hereof. The terms shall not include any charges, expenses, fees or other costs reasonably incurred by BSB to make any Groundwater Treatment System Capital Repair and Replacement pursuant to Sections 4.2 and/or 4.3 hereof unless the Groundwater Treatment System Capital Repair and Replacement

Account has been exhausted, in which case the term shall include such charges, expenses, fees and other costs reasonably incurred after such exhaustion.

136. **"Superfund Programs Obligations"** shall mean the obligations that BSB is obligated to perform pursuant to Sections 3.6, 3.7, 4.2, 4.3, 5.2, 7.1, 7.2 and 7.3 hereof. The term shall not include BSB's separate obligations to make any Groundwater Treatment System Capital Repair and Replacement pursuant to Sections 4.2 and/or 4.3 hereof, unless the Groundwater Treatment System Capital Repair and Replacement Account has been exhausted, in which case the term shall include those obligations..

137. **"Superfund Programs Trust Account"** shall mean a segregated account with Trustee that is established pursuant to Section 10.1 hereof.

138. **"Superfund Programs Trust Agreement"** shall mean the Trust Agreement between AR and BSB attached as Exhibit "15" hereto.

139. **"Superfund Storm Water Structures"** shall mean the storm water conveyance structures depicted on the map attached as Exhibit "2" hereto.

140. **"Superfund Storm Water Structures Quitclaim Deed"** shall mean the form of quitclaim deed attached hereto as Exhibit "10."

141. **"Syndicate Pit"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Syndicate Pit."

142. **"Syndicate Pit Reclamation Plan"** shall mean the plan attached to the Feasibility Study as Appendix E-2A. The term shall include the provision of appropriate means for the release of standing water from the detention basin located at the Syndicate Pit following an appropriate period for the settling of solids.

143. **"Task Account"** shall mean any of the categories of funding identified as a "task account" in the Funding Spreadsheet.

144. **"Third Party Quitclaim Deed"** shall mean the forms of quitclaim deeds attached hereto as Exhibit "11.1" through "11.25".

145. **"Trustee"** shall mean a financial institution mutually acceptable to the Parties.

146. **"Unnamed Dump Site"** shall mean the area depicted on the map attached as Exhibit "1" hereto as the "Unnamed Dump Site."

147. **"USGS"** shall mean the United States Geologic Survey and any successor agency thereto.

148. **"West Camp"** shall mean the Travona / West Camp System as described in the Record of Decision for the Mine Flooding Operable Unit issued by EPA (September 1994).

149. **"West Camp Operations and Maintenance Activities"** shall mean the activities set forth in the Groundwater Treatment System Operation and Maintenance Plan, and any EPA approved amendments thereto, which shall incorporate the EPA approved Operation and Maintenance Manual, West Camp Pumping System (December 2001).

150. **“Work Takeover”** shall mean the assumption of some or all of the Superfund Programs Obligations by EPA or MDEQ without AR’s written approval.

151. **“WSSOU”** shall mean the area within the Site hereafter delineated by EPA as the “West Side Soils Operable Unit” and any area added thereto by EPA.

152. **“Zoning Ordinance”** shall mean BSB’s Zoning Ordinance set forth at Title XVII of the Butte-Silver Bow Municipal Code and any amendments thereto.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of BSB.** BSB represents and covenants as follows:

1. This Agreement has been duly authorized, executed and delivered by BSB and, upon the valid execution and delivery hereof by AR, is a valid and binding obligation of BSB, enforceable in accordance with its terms.

2. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and the fulfillment of the terms hereof will not conflict with, or constitute on the part of BSB a breach of, or a default under, any (i) law, or (ii) the Charter of BSB or any provisions or any other legislative act or other proceeding establishing or relating to the establishment of BSB or its affairs or its ordinances and resolutions, or (iii) agreement, indenture, mortgage, lease or other instrument to which BSB is a party or by which it or its property is bound.

3. No officer of BSB 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.

4. Except for the ROD and Consent Decree as provided in Sections 20.11 and 21.2 hereof, to the best knowledge of the officers of BSB, there is no pending or threatened suit, action or proceeding against or affecting BSB before or by any court, arbitrator, administrative agency or other governmental authority which may materially and adversely affect the validity of this Agreement, any of BSB’s obligations under this Agreement, or any of the transactions contemplated hereby.

**Section 2.2. Representations and Covenants of AR.** AR represents and covenants as follows:

1. This Agreement has been duly authorized, executed and delivered by AR and, upon the valid execution and delivery hereof by BSB is a valid and binding obligation of AR, enforceable in accordance with its terms.

2. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and the fulfillment of the terms hereof will not conflict with, or constitute on the part of AR a breach of, or a default under its Articles of Incorporation, Bylaws

or any agreement, indenture, mortgage, lease or other instrument to which AR is a party or by which it or its property is bound.

3. No officer of AR 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.

4. Except for the ROD and Consent Decree as provided in Sections 20.11 and 21.2 hereof, to the best knowledge of the officers of AR, there is no pending or threatened suit, action or proceeding against or affecting AR before or by any court, arbitrator, administrative agency or other governmental authority which may materially and adversely affects the validity of this Agreement, any of AR's obligations under this Agreement, or any of the transactions contemplated hereby.

### **ARTICLE III.**

#### **MINE WASTE SOURCE AREAS**

**Section 3.1. Reclamation of the GMMIA.** The Parties anticipate that the Consent Decree will require reclamation of the GMMIA consistent with the GMMIA Reclamation Plan. AR shall perform all reclamation and other Response Actions which may be required pursuant to the GMMIA Reclamation Plan or the ROD for the GMMIA. The Parties anticipate that the Consent Decree will not require reclamation of the Historic Mining Landscape Area. All reclamation and other Response Actions required for the GMMIA pursuant to the GMMIA Reclamation Plan or the ROD, including the historic mitigation activities identified in the GMMIA Reclamation Plan, shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final EPA inspection of the GMMIA and BSB shall have the right to have its personnel attend the final EPA inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report for the GMMIA to EPA, with a copy to BSB. BSB's duties and obligations under Section 3.7 hereof shall commence upon EPA's concurrence that AR has corrected all deficiencies noted in the final EPA inspection. In the event and to the extent that Response Actions are required by EPA for the GMMIA following EPA's assessment of the construction completion report, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities performed by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 3.2. Reclamation of the Syndicate Pit.** The Parties anticipate that the Consent Decree will require reclamation of the Syndicate Pit consistent with the Syndicate Pit Reclamation Plan. AR shall perform all reclamation and other Response Actions which may be required pursuant to the Syndicate Pit Reclamation Plan or the ROD for the Syndicate Pit. All reclamation and other Response Actions required for the Syndicate Pit pursuant to the Syndicate Pit Reclamation Plan or the ROD shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final EPA inspection of the Syndicate Pit and BSB shall have the right to have its personnel attend the final inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report for the Syndicate Pit to EPA, with a copy to BSB. BSB's duties and obligations under Section 3.7 hereof shall commence upon EPA's concurrence that AR has corrected all deficiencies noted in the final EPA inspection. In the event and to the extent that Response Actions are required by EPA for the Syndicate Pit

following EPA's assessment of the construction completion report, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities performed by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 3.3. Reclamation of LAO and Implementation of the LAO Surface Enhancement and Land Use Plan by BSB.** The Parties anticipate that the Consent Decree will require reclamation of LAO consistent with the LAO Work Plan Addendum. AR shall perform all Response Actions which may be required pursuant to the LAO Work Plan Addendum or the ROD for LAO in accordance with the ROD and in accordance with schedules approved by EPA. The Parties further agree that BSB shall implement tasks assigned to BSB that are shown on the LAO Surface Enhancement and Land Use Plan within ten (10) years of the Effective Date. In the event any tasks assigned to BSB as shown on the LAO Surface Enhancement and Land Use Plan are required under the ROD, BSB shall perform such tasks in accordance with the LAO Surface Enhancement and Land Use Plan and the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final EPA inspection of LAO and BSB shall have the right to have its personnel attend the final inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report for LAO to EPA, with a copy to BSB. BSB's duties and obligations under Section 3.7 hereof shall commence upon EPA's concurrence that AR has corrected all deficiencies noted in the final EPA inspection. In the event and to the extent that Response Actions are required by EPA for LAO following EPA's assessment of the construction completion report, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities or deficient LAO Surface Enhancement and Land Use Plan activities performed by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 3.4. Reclamation of Other Mine Waste Source Areas by AR.** The Parties anticipate that the Consent Decree will require reclamation of the Mine Waste Source Areas known as the Anaconda Sampling Works, the Clark Tailings Waste Areas, the Gold Smith Dumps, the Jenny Dell, and the Unnamed Dump Site consistent with the standards and specifications for land reclamation in the BPSOU. The Parties do not anticipate that the Consent Decree will require additional Response Actions at the Mine Waste Source Area known as the Colorado Smelter. AR shall perform all reclamation and other Response Actions which may be required pursuant to the ROD for the Mine Waste Source Areas known as the Anaconda Sampling Works, the Clark Tailings Waste Areas, the Gold Smith Dumps, the Jenny Dell, the Unnamed Dump Site and the Colorado Smelter. All reclamation and other Response Actions required for the Mine Waste Source Areas reclaimed pursuant to this Section 3.4 shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final EPA inspection of each of the Mine Waste Source Areas reclaimed pursuant to this Section 3.4 and BSB shall have the right to have its personnel attend the final inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report to EPA for that Mine Waste Source Area, with a copy to BSB. BSB's duties and obligations under Section 3.7 hereof for each Mine Waste Source Area reclaimed pursuant to this Section 3.4 shall commence upon EPA's concurrence that AR has corrected all deficiencies noted in the final EPA inspection. In the event and to the extent that Response Actions are required by EPA for a Mine Waste Source Area reclaimed under this Section 3.4 following EPA's assessment of the construction completion report for that Mine Waste Source Area, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities performed

by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 3.5. Reclamation of the MSD.** AR opposes excavation and removal of any Mine Waste located within the MSD Corridor. BSB's position regarding excavation and removal of Mine Waste located within the MSD Corridor is set forth at page 26 of the BSB Position Paper. If excavation and removal of Mine Waste located within the MSD Corridor is not required, the Parties anticipate that the Consent Decree will require Response Actions that are consistent with the reclamation completed prior to the Effective Date pursuant to the MSD Work Plan. If excavation and removal of any Mine Waste located within the MSD Corridor is required by EPA pursuant to the ROD, AR shall have the right to terminate this Agreement pursuant to Section 20.11 hereof. Any other Response Actions within the MSD Corridor that are addressed pursuant to the LAO Surface Enhancement and Land Use Plan shall be the responsibility of BSB pursuant to Section 3.3 hereof.

**Section 3.6. Reclamation of Mine Waste Source Areas by BSB.** Except as expressly provided in Sections 3.1, 3.2, 3.3, and 3.4 hereof, BSB shall perform all reclamation and other Response Actions which may be required pursuant to the ROD for the Mine Waste Source Areas including, without limitation, all Mine Waste Source Areas first reclaimed prior to the Effective Date and all Storm Water Sites. All reclamation and other Response Actions required pursuant to this Section 3.6 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA. BSB shall provide AR with advance notice of the final inspection of each of the Mine Waste Source Areas reclaimed pursuant to this Section 3.6 and AR shall have the right to have its personnel attend the final inspection. BSB shall correct any deficiencies noted in EPA's inspection and submit a construction completion report to EPA for that Mine Waste Source Area, with a copy to AR. BSB's duties and obligations under Section 3.7 hereof for each Mine Waste Source Area reclaimed pursuant to this Section 3.6 shall commence upon EPA's concurrence that BSB has corrected all deficiencies noted in the final EPA inspection. In the event and to the extent that Response Actions are required by EPA for a Mine Waste Source Area reclaimed under this Section 3.6 following EPA's assessment of the construction completion report for that Mine Waste Source Area, such Response Actions shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 3.7. Operation and Maintenance Activities for Mine Waste Source Areas.** The Parties anticipate that the Consent Decree will require the performance of Operation and Maintenance Activities for all reclaimed Mine Waste Source Areas including, without limitation, all Mine Waste Source Areas first reclaimed prior to the Effective Date and all Mine Waste Source Areas reclaimed pursuant to Sections 3.1, 3.2, 3.3, 3.4 and 3.6 hereof. BSB shall perform all Operation and Maintenance Activities which may be required pursuant to the ROD for the Mine Waste Source Areas, including, without limitation, all Mine Waste Source Areas reclaimed prior to the Effective Date and all Mine Waste Source Areas reclaimed pursuant to Sections 3.1, 3.2, 3.3, 3.4 and 3.6 hereof. BSB shall also perform all Operation and Maintenance Activities that arise from BSB's implementation of the LAO Surface Enhancement and Land Use Plan. BSB's duties and obligations under this Section 3.7 for each Mine Waste Source Area reclaimed by AR pursuant to Sections 3.1, 3.2, 3.3 and 3.4 hereof shall commence upon EPA's concurrence that AR has corrected all deficiencies noted in the final EPA inspection for that Mine Waste Source Area. BSB's duties and obligations under this Section 3.7 for each Mine Waste Source Area reclaimed pursuant to Sections 3.6 hereof shall commence upon BSB's completion of any reclamation or other Response Action for which Operation and Maintenance Activities are required pursuant to the ROD. BSB's duties and obligations under

this Section 3.7 for all other Mine Waste Source Areas reclaimed prior to the Effective Date shall commence at such time(s) as any requirements to perform Operation and Maintenance Activities with respect to such Mine Waste Source Areas becomes effective pursuant to the ROD or BSB is otherwise obligated to perform such requirements pursuant to Section 10.3 hereof. All Operation and Maintenance Activities required pursuant to this Section 3.7 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA, except to the extent that the obligations relate to property owned by parties other than BSB or AR and BSB is denied access to such properties after making reasonably diligent efforts to procure access pursuant to the Consent Decree or other administrative orders. BSB's duties and obligations under this Section 3.7 shall not include the general surface water and groundwater monitoring excluded under Section 4.4 hereof.

**Section 3.8. Consideration for Implementation of the LAO Surface Enhancement and Land Use Plan.** AR shall provide funding to BSB for BSB's payment of charges, expenses, fees and other costs reasonably incurred by BSB in implementing the LAO Surface Enhancement and Land Use Plan pursuant to Section 3.3 hereof, for designing and constructing any necessary improvements to the BSB Sewage Treatment Effluent Line Extension, for the negotiation of a Consent Decree pursuant to Section 21.2 hereof, and for operator training, HAZWOPER training, consulting services, short-term irrigation of vegetation and purchase of service vehicles at LAO over multiple years in the total principal amount of Eight Hundred Fifty One Thousand Seven Hundred ninety-four and No/100ths Dollars (\$851,794.00) within sixty (60) days of the Effective Date.

## **ARTICLE IV.**

### **GROUNDWATER**

**Section 4.1. Groundwater Treatment Technology Options and Positions.** AR believes that collection, conveyance and treatment of alluvial groundwater from the MSD, West Camp and LAO areas through the Expanded Lagoon Treatment System will satisfy the requirements for groundwater treatment under the ROD. BSB has adopted the BSB Groundwater Criteria to assess any groundwater treatment technology for alluvial groundwater from the MSD and LAO areas. BSB acknowledges that the Expanded Lagoon Treatment System may satisfy the BSB Groundwater Criteria. If additional data collected by AR demonstrates that the Expanded Lagoon Treatment System meets the BSB Groundwater Criteria and the performance criteria in the ROD, the Expanded Lagoon Treatment System shall be acceptable to BSB as a permanent groundwater treatment technology for the BPSOU. Criteria 1 and 4 of the BSB Groundwater Criteria relating to water quality standards and operations and maintenance shall be deemed satisfied upon BSB's concurrence that criteria 1 and 4 of the BSB Groundwater Criteria and the applicable performance criteria required under the ROD have been Substantially Complied with Showing Reliable System Performance as contemplated under Section 4.2 hereof. AR's contribution towards satisfaction of Criteria 2 and 3 of the BSB Groundwater Criteria relating to aesthetics and land reuse shall be deemed satisfied by AR's payment of funds to BSB for BSB's implementation of the LAO Surface Enhancement and Land Use Plan as contemplated under Section 3.8 hereof. Criteria 5 of the BSB Groundwater Criteria relating to funding shall be deemed satisfied upon deposit of funds into the Superfund Programs Trust Account as contemplated under Section 10.2 hereof.

**Section 4.2. Construction of and Operation and Maintenance Activities for Expanded Lagoon Treatment System.** Following the Effective Date, AR shall design and construct each of the Expanded Lagoon Treatment System Upgrades. In the event that EPA requires any additional Response Actions for the Expanded Lagoon Treatment System pursuant to the ROD, AR shall also design and construct any such additional Response Actions in accordance with the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final EPA inspection of the Expanded Lagoon Treatment System and BSB shall have the right to have its personnel attend the final EPA inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report for the Expanded Lagoon Treatment System to EPA, with a copy to BSB. In the event and to the extent that Response Actions are required by EPA for the Expanded Lagoon Treatment System following EPA's assessment of the construction completion report, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities performed by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA. AR shall perform all Operation and Maintenance Activities for the Expanded Lagoon Treatment System which may be required pursuant to the LAO Work Plan Addendum and the ROD until responsibility for Operation and Maintenance Activities is transferred to BSB pursuant to this Section 4.2. The Operation and Maintenance Activities performed by AR shall include appropriate optimization testing and at least one occurrence of each of the Operation and Maintenance Activities for the Expanded Lagoon Treatment System, including one occurrence of the sludge management function and completion of one video inspection of the French drain in the MSD Corridor (utilizing BSB equipment made available to AR by BSB, at no charge to AR, if BSB's equipment is determined by AR to be useable for such purpose). In order to enable BSB's personnel to become familiar with the Operation and Maintenance Activities required for the Expanded Lagoon Treatment system prior to the date responsibility for the performance of such Operation and Maintenance Activities is transferred to BSB pursuant to this Section 4.2, BSB shall have the right to have its personnel witness and participate in all Operation and Maintenance Activities performed by AR. AR will keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts, in which complete and correct entries shall be made of all of the charges, expenses, fees and other costs incurred by AR to perform AR's duties and obligations under this Section 4.2 relating to Operation and Maintenance Activities for the Expanded Lagoon Treatment System. AR shall provide a copy of such books and records to BSB upon request. BSB shall assume and thereafter perform all Operation and Maintenance Activities for the Expanded Lagoon Treatment System within sixty (60) days following the completion of the shakedown required pursuant to the ROD or July 1, 2008, whichever occurs later, provided that EPA has concurred that AR has corrected all deficiencies noted in the final EPA inspection and the applicable performance criteria under the ROD for the Expanded Lagoon Treatment System have been Substantially Complied With Showing Reliable System Performance prior to that date. . In the event that BSB does not assume the duties and obligations to perform Operation and Maintenance Activities pursuant to this Section 4.2 for any reason by January 1, 2012 or five (5) years after issuance of the ROD, whichever occurs later, AR shall have the right to terminate this Agreement pursuant to Section 20.11 hereof. All Operation and Maintenance Activities required of BSB pursuant to this Section 4.2 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA. From and after BSB's assumption of its obligation to perform Operation and Maintenance Activities pursuant to this Section 4.2, BSB shall also be responsible for and shall make any necessary Groundwater Treatment System Capital Repair and Replacement,

**Section 4.3. Construction of and Operation and Maintenance Activities for Conventional Groundwater Treatment System.** In the event that EPA requires any conventional treatment of groundwater from the MSD, West Camp and/or LAO areas pursuant to the ROD, with or without the Expanded Lagoon Treatment System, AR shall design and construct any such Conventional Groundwater Treatment System in accordance with the ROD and in accordance with schedules approved by EPA. AR shall provide BSB with advance notice of the final inspection of the Conventional Groundwater Treatment System and BSB shall have the right to have its personnel attend the final EPA inspection. AR shall correct any deficiencies noted in EPA's inspection and submit a construction completion report for the Conventional Groundwater Treatment System to EPA, with a copy to BSB. In the event and to the extent that Response Actions are required by EPA for the Conventional Groundwater Treatment System following EPA's assessment of the construction completion report, such Response Actions (excluding Response Actions required to correct deficient Operation and Maintenance Activities performed by BSB) shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA. AR shall also perform all Operation and Maintenance Activities for the Conventional Groundwater Treatment System which may be required pursuant to the ROD until responsibility for such Operation and Maintenance Activities is transferred to BSB pursuant to this Section 4.3. The Operation and Maintenance Activities performed by AR shall include appropriate optimization testing and at least one occurrence of each of the Operation and Maintenance Activities for the Conventional Groundwater Treatment System, including one occurrence of the sludge management function if conventional ground water treatment is required with the Expanded Lagoon Treatment System and completion of one video inspection of the French drain in the MSD Corridor (utilizing BSB equipment made available to AR by BSB, at no charge to AR, if BSB's equipment is determined by AR to be useable for such purpose). In order to enable BSB's personnel to become familiar with the Operation and Maintenance Activities required for the Conventional Groundwater Treatment System prior to the date responsibility for the performance of such Operation and Maintenance Activities is transferred to BSB pursuant to this Section 4.3, BSB shall have the right to have its personnel witness and participate in all Operation and Maintenance Activities performed by AR. AR will keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts, in which complete and correct entries shall be made of all of the charges, expenses, fees and other costs incurred by AR to perform AR's duties and obligations under this Section 4.2 relating to Operation and Maintenance Activities for the Conventional Groundwater Treatment System. AR shall provide a copy of such books and records to BSB upon request. BSB shall assume and thereafter perform all Operation and Maintenance Activities for the Conventional Groundwater Treatment System within sixty (60) days following the completion of the shakedown required pursuant to the ROD provided that EPA has concurred that AR has corrected all deficiencies noted in the final EPA inspection and the applicable performance criteria under the ROD for the Conventional Groundwater Treatment System have been Substantially Complied With Showing Reliable System Performance prior to that date. In the event that BSB does not assume the duties and obligations to perform Operation and Maintenance Activities pursuant to this Section 4.3 for any reason by January 1, 2012 or five (5) years after issuance of the ROD, whichever occurs later, AR shall have the right to terminate this Agreement pursuant to Section 20.11 hereof. All Operation and Maintenance Activities required pursuant to this Section 4.3 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA. From and after BSB's assumption of its obligation to perform Operation and Maintenance Activities pursuant to this Section 4.3, BSB shall also be responsible for and shall make any necessary Groundwater Treatment System Capital Repair and Replacement.

**Section 4.4. Groundwater Treatment System Operation and Maintenance Plan/Scope of Operation and Maintenance Activities/West Camp Obligations.** No later than six (6) months following the Effective Date, AR shall prepare a draft Groundwater Treatment System Operation and Maintenance Plan that is consistent with the outline for the Groundwater Treatment System Operation and Maintenance Plan as set forth in Exhibit "28" hereto. AR shall provide the draft Groundwater Treatment System Operation and Maintenance Plan to BSB for its review and BSB may provide comments, if any, for AR's consideration. No later than twelve (12) months following the Effective Date, AR shall provide a final Plan to BSB for BSB's review and concurrence, which concurrence shall not be unreasonably withheld. The Groundwater Treatment System Operation and Maintenance Plan may be amended from time to time by AR with the concurrence of BSB, which concurrence shall not be unreasonably withheld. The Groundwater Treatment System Operation and Maintenance Plan and any amendments thereto shall be subject to EPA approval pursuant to the ROD. For purposes of Sections 4.2 and 4.3 hereof, the term Operation and Maintenance Activities shall include, without limitation, implementation of the Groundwater Treatment System Operation and Maintenance Plan and all activities which may be required pursuant to the ROD to monitor and adjust the quantity and quality of the influent and effluent waters flowing into, out of or within the Groundwater Treatment System to maximize system performance and meet the requirements of the ROD. Nothing in this Agreement requires BSB to take any actions for West Camp, other than those actions that are required to carry out the West Camp Operations and Maintenance Activities as a component of the Groundwater Treatment System Operation and Maintenance Plan. Failure to perform, or negligent performance of, such West Camp Operation and Maintenance Activities shall be subject to the remedies, rights and reservations provided under this Allocation Agreement. Performance of such West Camp Operation and Maintenance Activities as required by the Groundwater Treatment System Operation and Maintenance Plan shall not impose liability upon BSB for any Environmental Condition in the Butte Mine Flooding Operable Unit of the Site. BSB and AR shall cooperate and use their best efforts to obtain the approval of each Governmental Entity required to allow emergency treatment of groundwater from the Travona pump station at the BSB Municipal Treatment Plant when groundwater withdrawals and treatment of same in the Groundwater Treatment System can not be accomplished by operation of the West Camp System. In performing West Camp Operation and Maintenance Activities as part of the Groundwater Treatment System Operation and Maintenance Plan, BSB shall not be obligated to accept groundwater from the Travona pump station if acceptance of groundwater from the Travona pump station for treatment at the BSB Municipal Treatment Plant would cause a compliance violation of any applicable permit condition for discharges from the BSB Municipal Treatment Plant to Silver Bow Creek.

**Section 4.5. Enforcement of Hook-up Ordinance within Controlled Groundwater Areas.** The Parties anticipate that the Hook-up Ordinance as it applies to Controlled Groundwater Areas including, without limitation, any buffer zone identified in the Controlled Groundwater Area Orders, shall be part of institutional control plan prepared pursuant to the ROD. BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with and enforcement of the provisions of the Hook-up Ordinance within the Controlled Groundwater Areas including, without limitation, any buffer zone identified in the Controlled Groundwater Area Orders. BSB may propose amendments, as may be necessary from time to time, to the Hook-up Ordinance that are consistent with this Agreement and the ROD. BSB shall promptly provide AR, EPA and the State with a copy of all proposed amendments to the Hook-up Ordinance pertaining to the Controlled Groundwater Areas and shall provide AR, EPA and the State an opportunity to review and comment on all proposed amendments to the Hook-up Ordinance. BSB shall also promptly provide AR, EPA and the State with a copy of all adopted amendments to the Hook-up Ordinance.

**Section 4.6. Establishment of Controlled Groundwater Areas.** BSB shall take such actions as may be required pursuant to the ROD or any EPA decision document for the Site and as may be otherwise reasonably requested for the WSSOU by AR to establish Controlled Groundwater Areas within Silver Bow County. All actions required pursuant to this Section 4.6 shall be performed by BSB in accordance with the Controlled Groundwater Areas Submittal Schedule.

**Section 4.7. Controlled Groundwater Area Orders.** BSB shall comply with the provisions of all Controlled Groundwater Area Orders. BSB may petition for or otherwise seek amendments, as may be necessary from time to time, to any Controlled Groundwater Area Orders which are consistent with this Agreement, the ROD and any other EPA decision document for the NPL Sites. BSB shall promptly provide AR, EPA and the State with a copy of all proposed amendments to any Controlled Groundwater Area Orders and shall provide AR, EPA and the State an opportunity to review and comment on all proposed amendments to any Controlled Groundwater Area Orders. BSB shall also promptly provide AR, EPA and the State with a copy of all adopted amendments to any Controlled Groundwater Area Orders.

## **ARTICLE V.**

### **STORM WATER AND SURFACE WATER**

**Section 5.1. Reclamation of Silver Bow Creek.** The Parties anticipate that the Consent Decree may require reclamation of the bed and banks of Silver Bow Creek between Silver Bow Creek's confluence with the MSD and the previously reclaimed bed and banks of Silver Bow Creek at LAO. AR shall perform all reclamation and other Response Actions which may be required pursuant to the ROD for the bed and banks of Silver Bow Creek between Silver Bow Creek's confluence with the MSD and LAO. All reclamation and other Response Actions required pursuant to this Section 5.1 shall be performed by AR in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 5.2. Operation and Maintenance Activities for Superfund Storm Water Structures.** The Parties anticipate that the Consent Decree will not require any conventional treatment of storm water within the BPSOU. The Parties further anticipate that EPA will select a final remedy in the ROD that will require the use of Best Management Practices to manage storm water and other affected media within the BPSOU. BSB shall perform all Operation and Maintenance Activities which may be required pursuant to the ROD for the Superfund Storm Water Structures including, without limitation, the use, implementation, periodic performance testing and other monitoring of any Best Management Practices which may be required pursuant to the ROD for the Superfund Storm Water Structures. All Operation and Maintenance Activities required pursuant to this Section 5.2 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 5.3. Improvements to the Storm Water System.** No later than twelve (12) months following the Effective Date, BSB shall prepare a draft Storm Water System Improvement Plan that is consistent with the schedule, priorities and objectives for the Storm Water Improvement Plan as set forth in Exhibit "21". BSB shall provide the draft Storm Water System Improvement Plan to AR for its review and AR may provide comments, if any, for BSB's consideration. No later than eighteen (18) months following the Effective Date, BSB shall provide a final Plan to AR for AR's review and concurrence, which concurrence shall not be

unreasonably withheld. Prior to calendar year 2028, BSB shall design and construct improvements to the Storm Water System pursuant to the Storm Water System Improvement Plan to the extent funds are available to BSB from the Capital Purchase, Repair and Replacement Trust Account. All improvements to the Storm Water System shall be designed and constructed by BSB in accordance with the Storm Water System Improvement Plan and Applicable Laws. BSB with the concurrence of AR, which concurrence shall not be unreasonably withheld, may amend the Storm Water System Improvement Plan from time to time consistent with the schedule, priorities and objectives for the Storm Water Improvement Plan as set forth in Exhibit "21". Nothing in this Agreement shall be construed to require BSB to complete all of the improvements identified in the Storm Water System Improvement Plan if there are insufficient funds in the Capital Purchase, Repair and Replacement Account to do so.

**Section 5.4. Enforcement of Storm Water Management Ordinance.** The Parties anticipate that the Storm Water Management Ordinance shall be part of an institutional control plan prepared pursuant to the ROD. Within sixty (60) days of the effective date of the Consent Decree, BSB shall propose and support the adoption of the Storm Water Management Ordinance. BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with and enforcement of the provisions of the Storm Water Management Ordinance. BSB may propose amendments, as may be necessary from time to time, to the Storm Water Management Ordinance which are consistent with this Agreement and the ROD. BSB shall promptly provide AR, EPA and the State with a copy of all proposed amendments to the Storm Water Management Ordinance and shall provide AR, EPA and the State an opportunity to review and comment on all proposed amendments to the Storm Water Management Ordinance. BSB shall also promptly provide AR, EPA and the State with a copy of all adopted amendments to the Storm Water Management Ordinance.

## **ARTICLE VI.**

### **MULTI-PATHWAY PROGRAM**

**Section 6.1. Implementation of Multi-Pathway Program.** The EPA selected a form of a Multi-Pathway Program in the ROD as the component of the remedy for residential contamination by solid media. There are components in EPA's description of a Multi-Pathway Program in the ROD that the Parties believe need modification. BSB shall perform all actions which may be required to implement any Multi-Pathway program that is mutually agreed to by the Parties, which agreement shall not be unreasonably withheld. BSB's duties and obligations under this Section 6.1 shall commence at such time(s) as any requirements to implement the Multi-Pathway Program become effective pursuant to the ROD or BSB is otherwise obligated to perform such requirements pursuant to Section 11.3 hereof. All actions required of BSB pursuant to this Section 6.1 shall be performed by BSB in accordance with the ROD and the Multi-Pathway Program Protocol and in accordance with schedules approved by EPA. In the event that the Multi-Pathway Program described in the ROD is not modified in a manner that is mutually agreeable to the Parties, which agreement shall not be unreasonably withheld, BSB shall have the right to terminate this Agreement. In the event BSB elects to terminate, Section 20.13 (Return of Funds) shall then apply. In the event BSB does not exercise its right to terminate, all funds then remaining in the Multi-Pathway Program Trust Account, including all accrued interest and income earned thereon, shall be returned to AR or, at the option of AR, be available solely to AR or its designee to perform Response Actions and/or Operation and Maintenance Activities within the BPSOU, at the option of AR, and BSB will not be required to implement the Multi-Pathway Program pursuant to the ROD.

**Section 6.2. Conduct of Health Studies.** Within one (1) year of the Effective Date of this Agreement and every five years thereafter over a period of thirty (30) years, BSB shall conduct a health study and prepare a report that is consistent with the Multi-Pathway Program Protocol. BSB shall provide a copy of each health study report and all related data to AR, EPA and the State within thirty (30) days following the completion of each health study.

## **ARTICLE VII.**

### **MINE WASTE REPOSITORY**

**Section 7.1. Reclamation of Mine Waste Repository.** The Parties anticipate that the Consent Decree will require post-closure reclamation of the Mine Waste Repository. BSB shall perform all post-closure reclamation and other Response Actions which may be required pursuant to the ROD for the Mine Waste Repository. All reclamation and other Response Actions required pursuant to this Section 7.1 shall be performed by BSB in accordance with the ROD and other Applicable Laws and in accordance with an appropriate schedule approved by EPA.

**Section 7.2. Reclamation of Expanded Mine Waste Repository.** In the event and to the extent that the Mine Waste Repository (as defined for this Agreement) is expanded beyond the approximately ten (10) acres depicted on Exhibit "3.1" hereto, the Parties shall meet and confer. During such meeting and conference, the Parties shall attempt to reach agreement with respect to an amount of additional funding to be provided by AR to the Superfund Programs Trust Account for BSB's performance of post-closure reclamation and Operation and Maintenance Activities of any expansion of the Mine Waste Repository beyond the boundaries depicted on Exhibit "3.1". If the Parties reach agreement with respect to an amount of additional funding, BSB shall also perform all post-closure reclamation and Operation and Maintenance Activities which may be required pursuant to the ROD for the expansions of the Mine Waste Repository. All reclamation and Operation and Maintenance Activities required pursuant to this Section 7.2 shall be performed by BSB in accordance with the ROD and other Applicable Laws and in accordance with an appropriate schedule approved by EPA. If the Parties are unable to reach agreement with respect to an amount of additional funding, BSB shall not be required to perform any reclamation or Operation and Maintenance Activities with respect to any expansion of the Mine Waste Repository beyond the boundaries depicted on Exhibit "3.1". BSB shall not expand the boundaries of the Mine Waste Repository beyond the boundaries depicted on Exhibit "3.1" without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 7.3. Operation and Maintenance Activities for Mine Waste Repository.** The Parties anticipate that the Consent Decree will require the performance of pre- and post-closure Operation and Maintenance Activities for the Mine Waste Repository. BSB shall perform all pre- and post-closure Operation and Maintenance Activities which may be required pursuant to the ROD for the Mine Waste Repository. All Operation and Maintenance Activities required pursuant to this Section 7.3 shall be performed by BSB in accordance with the ROD and in accordance with schedules approved by EPA.

**Section 7.4. Authorized Disposal of Mine Waste.** Except as otherwise provided in Section 7.5 hereof, BSB shall accept for disposal all Mine Waste from within the BPSOU or the WSSOU delivered to BSB by AR or its designee, EPA or the State at the Mine Waste

Repository and BSB shall not charge AR or its designee, EPA or the State for any such deliveries. BSB's performance of its duties under this Article VII shall not impose on BSB any liability related to the WSSOU.

**Section 7.5. Unauthorized Disposal of Mine Waste.** BSB shall not accept any Mine Waste or other materials or debris for disposal at the Mine Waste Repository if the Mine Waste or other materials or debris was generated at locations outside the geographic boundaries of the Site or if the Mine Waste was generated after December 31, 1983 within the Site by a Person or Governmental Entity engaged in the exploration for or mining of minerals or if the Mine Waste was generated from a research, demonstration, treatability or education program which is not approved by AR, EPA and the State.

## **ARTICLE VIII.**

### **GIS**

**Section 8.1. Operation and Maintenance of GIS.** The Parties anticipate that the Consent Decree will require institutional controls for property management within the BPSOU. The Parties agree that such requirements shall be implemented through BSB's operation and maintenance of the GIS with enhancements to also include all documents which are filed in BSB's real property records that relate to the performance of Response Actions and Operation and Maintenance Activities within Butte-Silver Bow County. BSB shall operate and maintain the GIS and shall regularly update the following data and information in the GIS:

1. All data and other information obtained in connection with Response Actions and/or Operation and Maintenance Activities performed within the Site by AR or BSB or any other Person or Governmental Entity;
2. All data and other information obtained in connection with the implementation of the Multi-Pathway Program by AR or BSB;
3. All data and information relating to applicable requirements under the Growth Policy and/or Zoning Ordinance;
4. All data and information relating to Controlled Groundwater Areas;
5. All data and information relating to applicable real property use restrictions, covenants and obligations; and
6. All other data and information that BSB is required to maintain pursuant to the ROD.

**Section 8.2. Provision of GIS Services and Maps.** BSB shall provide available GIS services and maps to AR, EPA, and the State and their employees, agents, representatives and contractors upon request at no additional charge or expense; provided however, BSB may charge for GIS services and maps requested for any litigation purpose by any person or Governmental Entity that is not a Party, including their employees, attorneys, agents, representatives and contractors. BSB shall also provide readily available GIS information, including maps, to the City and County of Anaconda-Deer Lodge upon request at no additional charge or expense.

**Section 8.3. Reclamation Database and Data.** BSB hereby acknowledges that AR provided BSB with an up-to-date and functioning reclamation database prior to the Effective Date. Following the Effective Date, on an annual basis, AR shall provide BSB with information obtained by AR in connection with AR's performance of Response Actions and Operation and Maintenance Activities pursuant to this Agreement and BSB shall update the database to include such information in addition to the updates described in Section 8.1 hereof.

## **ARTICLE IX.**

### **DEVELOPABLE AND DEDICATED USE PROPERTIES**

**Section 9.1. Conveyance and Use of Developable Properties.** AR shall cause AERL to convey all of AERL's rights, title and interest in and to the Developable Properties to BSB in accordance with the following terms and conditions:

1. **General.** Within sixty (60) days of the effective date of the Consent Decree, AR shall cause AERL to convey all of AERL's rights, title and interests in and to the Developable Properties described in Exhibit "5.1.1" through "5.1.6" hereto to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.1.1, AERL and BSB shall each execute the Developable Properties Quitclaim Deeds attached as Exhibits "9.1.1" through "9.1.6" hereto and appropriate realty transfer certificates. BSB's use and development of the Developable Properties conveyed by AERL to BSB pursuant to this Section 9.1.1 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Developable Properties Quitclaim Deeds attached as Exhibits "9.1.1" through "9.1.6" hereto.

2. **Gold Smith Dumps.** Within sixty (60) days of the later of the date on which a construction completion reports is submitted to EPA pursuant to Sections 3.1 or 3.4 hereof or the effective date of the Consent Decree, AR shall cause AERL to convey all of AERL's rights, title and interests to BSB in and to the Developable Properties described in Exhibit "5.2.1" hereto to which the initial construction completion report relates. In order to effectuate the conveyance contemplated pursuant to this Section 9.1.2, AERL and BSB shall each execute the Developable Properties Quitclaim Deed attached as Exhibit "9.2.1" hereto and an appropriate realty transfer certificate. BSB's use and development of the Developable Properties conveyed by AERL to BSB pursuant to this Section 9.1.2 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Developable Properties Quitclaim Deed attached as Exhibit "9.2.1" hereto.

3. **LAO.** On or before the date on which the duties and obligations to perform Operation and Maintenance Activities are transferred from AR to BSB pursuant to Sections 4.2 and/or 4.3 hereof, AR shall cause AERL to convey all of AERL's rights, title and interests in and to the Developable Properties described in Exhibit "5.3.1" hereto to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.1.3, AERL and BSB shall each execute the Developable Properties Quitclaim Deeds attached as Exhibit "9.3.1" hereto and appropriate realty transfer certificates. BSB's use and development of the Developable Properties conveyed by AERL to BSB pursuant to this Section 9.1.3 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Developable Properties Quitclaim Deeds attached as Exhibit "9.3.1" hereto.

**Section 9.2. Conveyance and Use of Dedicated Use Properties.** AR shall cause AERL to convey all of AERL's rights, title and interest in and to the Dedicated Properties to BSB in accordance with the following terms and conditions:

1. General. Within sixty (60) days of the effective date of the Consent Decree, AR shall cause AERL to convey all of AERL's rights, title and interests in and to the Dedicated Use Properties described in Exhibits "4.1.1" through "4.1.15" hereto to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.2.1, AERL and BSB shall each execute the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.1.1" through "8.1.15" hereto and appropriate realty transfer certificates. BSB's use and development of the Dedicated Use Properties conveyed by AERL to BSB pursuant to this Section 9.2.1 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.1.1" through "8.1.15" hereto.

2. GMMIA. Within sixty (60) days of the later of the date on which a construction completion reports is submitted to EPA pursuant to Section 3.1 hereof or the effective date of the Consent Decree, AR shall cause AERL to convey all of AERL's rights, title and interests to BSB in and to the Dedicated Use Properties described in Exhibits "4.2.1" and "4.2.2" hereto to which the initial construction completion report relates. In order to effectuate the conveyance contemplated pursuant to this Section 9.2.2, AERL and BSB shall each execute the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.2.1" and "8.2.2" hereto and appropriate realty transfer certificates. BSB's use and development of the Dedicated Use Properties conveyed by AERL to BSB pursuant to this Section 9.2.2 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Dedicated Use Properties Quitclaim Deeds attached as Exhibit "8.2.1" and "8.2.2" hereto.

3. LAO. On or before the date on which the duties and obligations to perform Operation and Maintenance Activities are transferred from AR to BSB pursuant to Sections 4.2 and/or 4.3 hereof, AR shall cause AERL to convey all of AERL's rights, title and interests in and to the Dedicated Use Properties described in Exhibits "4.3.1" through "4.3.6" hereto to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.2.3, AERL and BSB shall each execute the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.3.1" through "8.3.6" hereto and appropriate realty transfer certificates. BSB's use and development of the Dedicated Use Properties conveyed by AERL to BSB pursuant to this Section 9.2.3 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.3.1" through "8.3.6" hereto.

4. Modification of Covenants. In the event BSB causes any survey to be prepared and recorded in the BSB real property records that serves to separate any of the portions of the parcels of the Dedicated Use Properties described in Exhibit "4.4.1" hereof from the remainder portion of any of those parcels of Dedicated Use Properties, AR and BSB shall execute and record in the BSB real property records an appropriate modification of covenants applicable to the portion of any parcel of the Dedicated Use Properties described in Exhibit "4.4.1" which is so surveyed and separated. The modification of covenants shall serve to substitute and replace the covenants applicable to properties characterized as Developable Properties pursuant to this Agreement for and in place of the covenants applicable to properties characterized as Dedicated Use Properties pursuant to this Agreement.

**Section 9.3. Survey and Conveyance of BSB Kelley Mine Yard Properties.** Within one (1) year of the Effective Date, AR shall cause AERL to prepare and record in the BSB real property records a survey of the AR Kelley Mine Yard Properties. Within sixty (60) days of the

later of the date on which such survey is recorded or the effective date of the Consent Decree, AR shall cause AERL to convey all of AERL's rights, title and interests in and to the BSB Kelley Mine Yard Properties to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.3, AERL and BSB shall each execute the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.4.1" and "8.4.2" hereto and the Developable Properties Quitclaim Deed attached as Exhibits "9.4.1" and "9.4.2" hereto and an appropriate realty transfer certificate. BSB's use and development of the BSB Kelley Mine Yard Properties conveyed by AERL to BSB pursuant to this Section 9.3 shall comply with the applicable Covenants and Obligations set forth and/or referenced in the Dedicated Use Properties Quitclaim Deeds attached as Exhibits "8.4.1" and "8.4.2" hereto and the Developable Properties Quitclaim Deed attached as Exhibit "9.4.1" and "9.4.2" hereto.

**Section 9.4. Conveyance of Superfund Storm Water Structures.** Within sixty (60) days of the effective date of the Consent Decree, AR Shall convey all of AR's rights, title and interests, and shall cause AERL to convey all of AERL's rights, title and interests, in and to the Superfund Storm Water Structures to BSB. In order to effectuate the conveyance contemplated pursuant to this Section 9.4, AR, AERL and BSB shall each execute the Superfund Storm Water Structures Quitclaim Deed attached as Exhibit 10 hereto.

**Section 9.5. Additional Conveyances of Developable and Dedicated Use Properties to BSB.** The Parties hereby acknowledge that they have attempted to identify and characterize, as Developable Properties or Dedicated Use Properties, all parcels of real property within the BPSOU, other than the AR Kelley Mine Yard Properties, with respect to which AR and/or AERL possess any rights, title or interests as of the Effective Date. The Parties further acknowledge that there may be parcels of real property within the BPSOU that were not identified or so characterized with respect to which AR and/or AERL possess rights, title or interests as of the Effective Date. If any such parcel or real property is identified by either Party following the Effective Date, the Party will notify the other Party and, within thirty (30) days of such notice, representatives of the Parties shall meet and, in good faith, determine whether the parcel of real property should be properly characterized as a Developable Property or a Dedicated Use Property. If any parcels of real property are characterized as Developable Properties pursuant to this Section 9.5, AR shall promptly convey and/or cause AERL to promptly convey, as the case may be, all of their rights, title and interests in and to such parcels of real property to BSB. In order to effectuate any conveyance of any parcels of real property characterized as Developable Properties pursuant to this Section 9.5, AR and/or AERL, as the case may be, and BSB shall each execute an appropriate Developable Properties Quitclaim Deed and an appropriate realty transfer certificate. If any parcels of real property are characterized as Dedicated Use Properties pursuant to this Section 9.5, AR shall promptly convey and/or cause AERL to promptly convey, as the case may be, all of their rights, title and interests in and to such parcels of real property to BSB. In order to effectuate any conveyance of any parcels of real property characterized as Dedicated Use Properties pursuant to this Section 9.5, AR and/or AERL, as the case may be, and BSB shall each execute an appropriate Dedicated Use Properties Quitclaim Deed and an appropriate realty transfer certificate.

**Section 9.6. Conveyances of After Acquired Properties to BSB.** The Parties hereby acknowledge that AR or AERL may acquire rights, title and interests in and to the parcels of real property within the BPSOU that are described in Exhibit "31" hereto following the Effective Date. If any such parcel or real property is acquired by AR or AERL following the Effective Date and AR desires to transfer any such parcel to BSB, AR will notify BSB and, within thirty (30) days of such notice, representatives of the Parties shall meet and, in good faith, determine whether the parcel of real property should be properly characterized as a

Developable Property or a Dedicated Use Property. If any parcels of real property are characterized as Developable Properties pursuant to this Section 9.6, AR shall promptly convey or cause AERL to promptly convey all rights, title and interests in and to such parcels of real property to BSB. In order to effectuate any conveyance of any parcels of real property characterized as Developable Properties pursuant to this Section 9.6, AR or AERL, as the case may be, and BSB shall each execute an appropriate Developable Properties Quitclaim Deed and an appropriate realty transfer certificate. If any parcels of real property are characterized as Dedicated Use Properties pursuant to this Section 9.6, AR shall promptly convey or cause AERL to promptly convey all rights, title and interests in and to such parcels of real property to BSB. In order to effectuate any conveyance of any parcels of real property characterized as Dedicated Use Properties pursuant to this Section 9.6, AR or AERL, as the case may be, and BSB shall each execute an appropriate Dedicated Use Properties Quitclaim Deed and an appropriate realty transfer certificate.

**Section 9.7. Conveyance of Developable and Dedicated Use Properties to Third Parties.** In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties or the Dedicated Use Properties to any Person or Governmental Entity, BSB shall comply with the following terms and conditions:

1. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibits 4.1.1, 4.2.1, 4.3.1, or 4.5.1 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.1 hereto.

2. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibits 4.1.2 or 4.2.2 hereto or any parcel or any portion of any parcel of real property described in Exhibit 30 hereto which is characterized as a Dedicated Use Property pursuant to Section 9.6 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.2 hereto.

3. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibits 4.1.3 or 4.5.2 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.3 hereto.

4. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibits 4.1.4 or 4.3.2 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.4 hereto.

5. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.5 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.5 hereto.

6. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.6 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.6 hereto.

7. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.7 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.7 hereto.

8. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.8 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.8 hereto.

9. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.9 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.9 hereto.

10. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.10 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.10 hereto.

11. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.11 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.11 hereto.

12. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.12 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.12 hereto.

13. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.13 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.13 hereto.

14. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.14 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.14 hereto.

15. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.1.15 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.15 hereto.

16. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.3.3 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.16 hereto.

17. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.3.4 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.17 hereto.

18. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.3.5 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.18 hereto.

19. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Dedicated Use Properties described in Exhibit 4.3.6 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.19 hereto.

20. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibits 5.1.1 or 5.4.1 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.20 hereto.

21. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibits 5.1.2 or 5.2.1 hereto or any parcel or any portion of any parcel of real property described in Exhibit 30 hereto which is characterized as a Developable Property pursuant to Section 9.6 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.21 hereto.

22. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibits 5.1.3 or 5.4.2 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.22 hereto.

23. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibits 5.1.4 or 5.3.1 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.23 hereto.

24. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibit 5.1.5 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.24 hereto.

25. In order to effectuate any conveyance or other disposition of any right, title or interest of BSB in and to any parcel or any portion of any parcel of the Developable Properties described in Exhibit 5.1.6 hereto, BSB shall use the Third Party Quitclaim Deed attached as Exhibit 11.25 hereto.

BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with and enforcement of the Covenants and Obligations referenced in the Third Party Quitclaim Deeds. BSB shall provide written notice to AR, EPA and the State within thirty (30) days following the execution of any Third Party Quitclaim Deed. The written

notice to AR, EPA and the State shall include the name and address of each grantee and the precise legal description of the real property or interest in real property being granted, sold, transferred, conveyed, exchanged or disposed of. BSB shall promptly record all Third Party Quitclaim Deeds in BSB's real property records and shall promptly provide AR, EPA and the State with a copy of the recorded Third Party Quitclaim Deed.

**Section 9.8. Restrictions in Easements, Leases, Licenses and Other Agreements Relating to Subject Properties.** BSB shall include all of the applicable Covenants and Obligations and the indemnity and release and covenant not to sue provisions set forth in the applicable Dedicated Use Properties Quitclaim Deed or Developable Properties Quitclaim Deed in any easement, lease or license of or any other agreement, instrument or document relating to any interest in any parcel of the Developable Properties and Dedicated Use Properties. BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with and enforcement of the Covenants and Obligations with respect to the Developable Properties and Dedicated Use Properties.

**Section 9.9. Effect of Conveyance or Lease of Developable or Dedicated Use Properties.** As between the Parties, BSB's grant, sale, transfer, conveyance, exchange, lease or other disposition of any rights, title or interest in any parcel or any portion of any parcel of the Developable Properties or the Dedicated Use Properties by deed, lease, easement, license or any other agreement, instrument or document shall not in any way alter or diminish BSB's duties and obligations under this Agreement with respect to any such parcel or portion of any parcel of the Developable Properties or the Dedicated Use Properties.

**Section 9.10. Access to Developable, Dedicated Use and Other Properties.** BSB shall provide AR, EPA and their respective agents, employees, representatives and contractors, at no additional charge or expense, access at all reasonable times to the Developable Properties, the Dedicated Use Properties and any other property of any kind or nature which is owned or controlled by BSB for the purposes of conducting any activity related directly or indirectly to this Agreement including, without limitation, the following:

1. Conducting investigations relating to Environmental Conditions;
2. Assessing the need for, planning, implementing, performing or monitoring any Response Actions or Operation and Maintenance Activities;
3. Verifying any data or information submitted to AR and/or EPA;
4. Obtaining samples;
5. Verifying any access or institutional control requirements pursuant to the ROD;
6. Verifying BSB's compliance with the terms and conditions of this Agreement;
7. Remedying any default by BSB pursuant to Section 20.7 hereof; and
8. Performing any Emergency Response Action pursuant to Section 20.8 hereof.

In exercising its rights under this Section 9.10, AR shall provide BSB and the occupant of the property with reasonable prior notice of its intent to access the property and AR shall make reasonable efforts to minimize any inconvenience to BSB and the occupant of the property while

conducting any such activity. AR shall promptly provide BSB with copies of any sampling results or other physical investigations on properties accessed pursuant to this Section 9.10.

**Section 9.11. Re-conveyance of Developable and Dedicated Use Properties.**

Except as otherwise provided in this Section 9.11 with respect to Dedicated Use Properties or Developable Properties which are physically improved by BSB, in the event this Agreement is terminated pursuant to Sections 20.11 or 20.12 hereof, BSB shall convey to AR or its designee and AR or its designee shall accept, by appropriate quitclaim deed, all of the Dedicated Use Properties or Developable Properties which are then owned by BSB within sixty (60) days of the termination of this Agreement pursuant to Sections 20.11 or 20.12. In the event BSB has physically improved any of the Dedicated Use Properties or Developable Properties that BSB is otherwise required to convey to AR pursuant to this Section 9.11, BSB may retain such Dedicated Use Properties or Developable Properties, or BSB may convey such dedicated Use Properties or Developable Properties to AR or its designee and AR or its designee shall accept, by appropriate quitclaim deed, such Dedicated Use Properties or Developable Properties. BSB shall continue to perform any Response Actions or other Obligations that BSB was obligated to perform under this Agreement with respect to any Dedicated Use Properties or Developable Properties BSB retains under this Section 9.11.

**Section 9.12. Enforcement of Reclaimed Areas Guidebook Ordinance.** The Parties anticipate that the Reclaimed Areas Guidebook Ordinance shall be part of an institutional control plan prepared pursuant to of the ROD. Within sixty (60) days of the effective date of the Consent Decree, BSB shall propose and support the adoption of the Reclaimed Areas Guidebook Ordinance. BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with and enforcement of the provisions of the Reclaimed Areas Guidebook Ordinance. BSB may propose amendments, as may be necessary from time to time, to the Reclaimed Areas Guidebook Ordinance which are consistent with this Agreement and the ROD. BSB shall promptly provide AR, EPA and the State with a copy of all proposed amendments to the Reclaimed Areas Guidebook Ordinance and shall provide AR, EPA and the State with an opportunity to review and comment on all proposed amendments to the Reclaimed Areas Guidebook Ordinance. BSB shall also promptly provide AR, EPA and the State with a copy of all adopted amendments to the Reclaimed Areas Guidebook Ordinance.

**Section 9.13. Enforcement of Zoning Ordinance and Compliance with Growth Policy.** The Parties anticipate that portions of the Growth Policy and Zoning Ordinance related to development associated with Mine Waste in the BPSOU and matters addressed by this Agreement shall be part of an institutional control plan prepared pursuant to of the ROD. BSB shall perform any duties under the ROD or any EPA decision document for the Site pertaining to compliance with compliance with the provisions of the Growth Policy and compliance with and enforcement of the provisions of the Zoning Ordinance related to development associated with Mine Waste in the BPSOU and matters addressed by this Agreement. BSB may propose modifications to the Growth Policy and amendments to the Zoning Ordinance, as may be necessary from time to time, which are consistent with this Agreement and the ROD. BSB shall promptly provide AR, EPA and the State with a copy of all proposed modifications to the provisions of the Growth Policy and all proposed amendments to the Zoning Ordinance associated with Mine Waste in the BPSOU and matters addressed by this Agreement and shall provide AR, EPA and the State with an opportunity to review and comment on all such proposed modifications to the Growth Policy and amendments to the Zoning Ordinance. BSB shall also promptly provide AR, EPA and the State with a copy of all adopted modifications to the Growth Policy and amendments to the Zoning Ordinance.

## ARTICLE X.

### SUPERFUND PROGRAMS TRUST ACCOUNT

**Section 10.1. Establishment of Superfund Programs Trust Account and Execution of Superfund Programs Trust Agreement.** Within thirty (30) days of the Effective Date, AR and BSB shall establish the Superfund Programs Trust Account with the Trustee and shall execute the Superfund Programs Trust Agreement.

**Section 10.2. Funding of Superfund Programs Trust Accounts.** Subject to the terms and conditions of this Section 10.2, as described in the Funding Spreadsheet, AR shall provide funding to the Superfund Programs Trust Account in the total principal amount of Ten Million Eight Hundred Ninety Thousand Three Hundred Seventy Three and No/100ths Dollars (\$10,890,373.00), as follows:

1. AR shall provide initial funding to the Superfund Programs Trust Account by depositing the amount of One Hundred Twenty Five Thousand and No/100ths Dollars (\$125,000.00) into the Superfund Programs Trust Account within sixty (60) days of the Effective Date.

2. AR shall provide additional minimum funding to the Superfund Programs Trust Account as follows:

(a) AR shall deposit the amount of Two Hundred Fifty Thousand and No/100ths Dollars (\$250,000.00) into the Superfund Programs Trust Account on or before July 1, 2007;

(b) AR shall deposit the amount of Four Hundred Fifty Thousand and No/100ths Dollars (\$450,000.00) into the Superfund Programs Trust Account on or before July 1, 2008; and

(c) AR shall deposit the amount of Six Hundred Fifty Thousand and No/100ths Dollars (\$650,000.00) into the Superfund Programs Trust Account on or before July 1, 2009.

The remaining principal balance of the funds consisting of Nine Million Four Hundred Fifteen Thousand Three Hundred Seventy Three and No/100ths Dollars (\$9,415,373.00), together with accrued interest thereon, shall be deposited by AR into the Superfund Programs Trust Account between the Effective Date and July 1, 2010. The funds to be deposited into the Superfund Programs Trust Account pursuant to this Section 10.2.2 shall accrue interest at the rate of 7% per annum from the Effective Date until paid. All interest under this Section 10.2.2 shall be calculated on the basis of a year of 365 days. Notwithstanding any other term or condition of this Section 10.2, the funds to be deposited into the Superfund Programs Trust Account pursuant to this Section 10.2.2 may at any time be prepaid by AR at AR's election by deposit to said account, either in whole or in part, without premium or penalty, at any time prior to July 1, 2010 on the condition that AR shall pay all accrued interest calculated from the date of the last deposit to the Superfund Programs Trust Account through and including the date of any prepayment on the amount of the remaining principal balance of the funds outstanding at the

time of each prepayment. AR's payment of interest so calculated shall be in addition to any prepayment of principal made by AR.

3. BSB's failure to perform any of BSB's duties or obligations because of AR's failure to deposit funds as required by this Section 10.2, or because the Superfund Programs Trust Account has not yet been fully funded pursuant to Section 10.2 and the amount then on deposit does not provide sufficient funds, shall not be a default by BSB under this Agreement.

4. Within seven (7) days of any deposit of funds into the Superfund Programs Trust Account pursuant to this Section 10.2, AR shall notify BSB of the date and the amount of the deposit.

5. The total principal amount of the funding to be provided to the Superfund Programs Trust Account pursuant to this Section 10.2, the amounts of the additional minimum funding required under Sections 10.2.2(b) and 10.2.2(c) and the amount of the remaining principal balance were all calculated using the assumptions reflected in the Funding Spreadsheet which included the assumption that BSB would assume the duties and obligations to perform Operation and Maintenance Activities pursuant to Sections 4.2 and/or 4.3 hereof on July 1, 2008. In the event that BSB does not assume the duties and obligations to perform Operation and Maintenance Activities pursuant to Sections 4.2 and/or 4.3 hereof until after July 1, 2008 for any reason, the total principal amount of the funding to be provided to the Superfund Programs Trust Account pursuant to this Section 10.2, the amounts of the additional minimum funding required under Sections 10.2.2(b) and 10.2.2(c) and the amount of the remaining principal balance shall be recalculated using the actual date that BSB will assume such duties and obligations and all other assumptions reflected in the Funding Spreadsheet remaining the same. Following such recalculation, the total principal amount of the funding to be provided to the Superfund Programs Trust Account pursuant to this Section 10.2, the amounts of the additional minimum funding required under Sections 10.2.2(b) and 10.2.2(c) and the amount of the remaining principal balance shall be deemed reduced to the recalculated amounts. In the event BSB's assumption of its duties and obligations occurs at any time between July 1, 2008 and June 30, 2009, the amount of the minimum funding to be provided to BSB for the groundwater treatment Task Account that Fiscal year shall be prorated to the date on which BSB assumes its duties and obligations and said amount shall be deposited into the Superfund Programs Trust Account by AR within sixty (60) days of BSB's assumption of its duties and obligations. In the event BSB's assumption of its duties and obligations occurs at any time between July 1, 2009 and June 30, 2010, the amount of the minimum funding to be provided to BSB for the groundwater treatment Task Account that Fiscal year shall be prorated to the date on which BSB assumes its duties and obligations and said amount shall be deposited into the Superfund Programs Trust Account by AR within sixty (60) days of BSB's assumption of its duties and obligations. Nothing contained in this Section 10.2.5 shall cause the amount of the initial funding required under Section 10.2.1 or the amount of the additional minimal funding required under Section 10.2.2(a) to be reduced.

**Section 10.3. Coordination with MOU 119.** BSB has performed certain duties and obligations under MOU 119 from July 1, 2006 through the Effective Date. Following the Effective Date, BSB shall continue to perform each of its duties and obligations under MOU 119 until such time as such duties and obligations are superseded by the requirements of the ROD. In order to secure funding for the performance of BSB's duties and obligations under MOU 119 from and after July 1, 2006, BSB may, as appropriate, draw upon funds deposited in the Superfund Programs Trust Account in accordance with the terms and conditions of this Agreement and the Superfund Programs Trust Agreement. BSB may, as appropriate, also draw

upon funds deposited in the Superfund Management Trust Account in accordance with the terms and conditions of this Agreement and the Superfund Management Trust Agreement and in the Capital Purchase, Repair and Replacement Trust Account in accordance with the terms and conditions of this Agreement and the Capital Purchase, Repair and Replacement Trust Agreement. Section 21.14 hereof sets forth the terms of this Agreement that shall apply retroactively to all work that BSB performs under MOU 119 pursuant to this Section 10.3, and to any payment for that work out of the Superfund Programs Trust Account, Superfund Management Trust Account and/or the Capital Purchase Repair and Replacement Trust Account. If and to the extent that any terms and conditions of MOU 119 conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

**Section 10.4. Authorized Uses of Superfund Programs Trust Funds by AR.** The funding provided by AR to the Superfund Programs Trust Account pursuant to Section 10.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by AR in accordance with Sections 20.7 and 20.8 of this Agreement and the Superfund Programs Trust Agreement.

**Section 10.5. Authorized Uses of Superfund Programs Trust Funds by BSB.** The funding provided by AR to the Superfund Programs Trust Account pursuant to Section 10.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by BSB in accordance with this Agreement and the Superfund Programs Trust Agreement to pay Superfund Programs Costs and BSB's costs for Emergency Response Actions.

**Section 10.6. Books and Accounts; Financial Statements; Inspection and Audit.** The Parties will each keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts, in which complete and correct entries shall be made of their respective transactions relating to the Superfund Programs Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit, at the expense of the Party seeking the inspection or audit.

**Section 10.7. Superfund Programs Budgets.** On or before May 1 of each Fiscal Year for so long as this Agreement is in effect, BSB shall prepare and provide a Superfund Programs Budget to AR. Each Superfund Programs Budget shall specify the dollar amount for each quarterly distribution to be made by the Trustee to BSB during that Fiscal Year. The Initial Superfund Programs Budget, including all Task Accounts and the approved budget amount for each Task Account, is hereby concurred in by BSB and AR. In order to account for inflation, BSB may increase the approved annual budget amount set forth in the Initial Superfund Programs Budget for each Task Account by 2% or less annually without the concurrence of AR, as illustrated in the Initial Superfund Programs Budget. All other proposed increases to the Initial Superfund Programs Budget shall be concurred in by AR, which concurrence shall not be unreasonably withheld, and shall be accompanied by a narrative explanation of the reasons for each such proposed increase. Except for costs incurred for Emergency Response Actions, BSB shall not incur any charges, expenses, fees or other costs during a Fiscal Year in excess of or in addition to the total budget amount for a Task Account set forth in the Superfund Programs Budget then in effect without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 10.8. Superfund Programs Accounting Reports.** Within forty five (45) days of the end of each quarter of each year for so long as this Agreement is in effect, BSB shall prepare and provide a Superfund Programs Accounting Report to AR. All funds received by BSB during a Fiscal Year from the Superfund Programs Trust Account which are not expended

by BSB during that Fiscal Year for the payment of Superfund Programs Costs shall be carried over and expended by BSB to pay Superfund Programs Costs during such next Fiscal Year in accordance with the terms and conditions of this Agreement and the Superfund Programs Trust Agreement.

**Section 10.9. Financial Assurances.** It is understood that the funds in the Superfund Programs Trust Account, plus all accrued interest and income earned thereon, may be pledged to satisfy financial assurance requirements pursuant to the Consent Decree or any administrative order issued by EPA for the BPSOU. AR shall provide BSB with advance notice of meetings with EPA and copies of draft documents for submittal to EPA that are related to pledging the funds in the Superfund Programs Trust Account pursuant to the Consent Decree. BSB shall have the right to have its personnel attend such meetings.

## **ARTICLE XI.**

### **MULTI-PATHWAY PROGRAM TRUST ACCOUNT**

**Section 11.1. Establishment of Multi-Pathway Program Trust Account and Execution of Multi-Pathway Program Trust Agreement.** Within thirty (30) days of the Effective Date, AR and BSB shall establish the Multi-Pathway Program Trust Account with the Trustee and shall execute the Multi-Pathway Program Trust Agreement.

**Section 11.2. Funding of Multi-Pathway Program Trust Accounts.** Subject to the terms and conditions of Sections 6.1 and this Section 10.2, as described in the Funding Spreadsheet, AR shall provide funding to the Multi-Pathway Program Trust Account in the total principal amount of Six Million Eight Hundred Eighty Thousand Five Hundred Two and No/100ths Dollars (\$6,880,502.00), as follows:

2. AR shall provide initial funding to the Multi-Pathway Program Trust Account by depositing the amount of Two Hundred Twenty Thousand and No/100ths Dollars (\$220,000.00) into the Multi-Pathway Program Trust Account within sixty (60) days of the Effective Date.

2. AR shall provide additional minimum funding to the Multi-Pathway Program Trust Account as follows:

(a) AR shall deposit the amount of Four Hundred Fifty One Thousand and No/100ths Dollars (\$451,000.00) into the Multi-Pathway Program Trust Account on or before July 1, 2007;

(b) AR shall deposit the amount of Five Hundred Five Thousand and No/100ths Dollars (\$505,000.00) into the Multi-Pathway Program Trust Account on or before July 1, 2008; and

(c) AR shall deposit the amount of Five Hundred Fifteen Thousand and No/100ths Dollars (\$515,000.00) into the Multi-Pathway Program Trust Account on or before July 1, 2009.

The remaining principal balance of the funds consisting of Five Million One Hundred Eighty Nine Thousand Five Hundred Two and No/100ths Dollars (\$5,189,502.00), together with accrued interest thereon, shall be deposited by AR into the Multi-Pathway Program Trust Account

between the Effective Date and July 1, 2010. The funds to be deposited into the Multi-Pathway Program Trust Account pursuant to this Section 11.2.2 shall accrue interest at the rate of 7% per annum from the Effective Date until paid. All interest under this Section 11.2.2 shall be calculated on the basis of a year of 365 days. Notwithstanding any other term or condition of this Section 11.2, the funds to be deposited into the Multi-Pathway Program Trust Account pursuant to this Section 11.2.2 may at any time be prepaid by AR at AR's election by deposit to said account, either in whole or in part, without premium or penalty, at any time prior to July 1, 2010 on the condition that AR shall pay all accrued interest calculated from the date of the last deposit to the Multi-Pathway Program Trust Account through and including the date of any prepayment on the amount of the remaining principal balance of the funds outstanding at the time of each prepayment. AR's payment of interest so calculated shall be in addition to any prepayment of principal made by AR.

3. BSB's failure to perform any of BSB's duties or obligations because of AR's failure to deposit funds as required by this Section 11.2, or because the Multi-Pathway Program Trust Account has not yet been fully funded pursuant to Section 11.2 and the amount then on deposit does not provide sufficient funds, shall not be a default by BSB under this Agreement.

4. Within seven (7) days of any deposit of funds into the Multi-Pathway Program Trust Account pursuant to this Section 11.2, AR shall notify BSB of the date and the amount of the deposit.

**Section 11.3. Coordination with MOU 135.** BSB has performed certain duties and obligations under MOU 135 from July 1, 2006 through the Effective Date. Following the Effective Date, BSB shall continue to perform each of its duties and obligations under MOU 135 until such time as such duties and obligations are superseded by the requirements of the ROD. In order to secure funding for the performance of BSB's duties and obligations under MOU 135 from and after July 1, 2006, BSB may, as appropriate, draw upon funds deposited in the Multi-Pathway Program Trust Account in accordance with the terms and conditions of this Agreement and the Multi-Pathway Program Trust Agreement. BSB may, as appropriate, also draw upon funds deposited in the Capital Purchase, Repair and Replacement Trust Account in accordance with the terms and conditions of this Agreement and the Capital Purchase, Repair and Replacement Trust Agreement. Section 21.14 hereof sets forth the terms of this Agreement that shall apply retroactively to all work that BSB performs under MOU 135 pursuant to this Section 11.3, and to any payment for that work out of the Multi-Pathway Program Trust Account and/or the Capital Purchase Repair and Replacement Trust Account. If and to the extent that any terms and conditions of MOU 135 conflict with the provisions of this Agreement, the provisions of this Agreement shall control.

**Section 11.4. Authorized Uses of Multi-Pathway Program Trust Funds by AR.** The funding provided by AR to the Multi-Pathway Program Trust Account pursuant to Section 11.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by AR in accordance with Sections 20.7 and 20.8 of this Agreement and the Multi-Pathway Program Trust Agreement.

**Section 11.5. Authorized Uses of Multi-Pathway Program Trust Funds by BSB.** The funding provided by AR to the Multi-Pathway Program Trust Account pursuant to Section 11.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by BSB in accordance with this Agreement and the Multi-Pathway Program Trust Agreement to pay Multi-Pathway Program Costs and BSB's costs for Emergency Response Actions.

**Section 11.6. Books and Accounts; Financial Statements; Inspection and Audit.**

The Parties will each keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts, in which complete and correct entries shall be made of their respective transactions relating to the Multi-Pathway Program Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit, at the expense of the Party seeking the inspection or audit.

**Section 11.7. Multi-Pathway Program Budgets.** On or before May 1 of each Fiscal Year for so long as this Agreement is in effect, BSB shall prepare and provide a Multi-Pathway Program Budget to AR. Each Multi-Pathway Program Budget shall specify the dollar amount for each quarterly distribution to be made by the Trustee to BSB during that Fiscal Year. The Initial Multi-Pathway Program Budget is hereby concurred in by BSB and AR. In order to account for inflation, BSB may increase the approved annual budget amount set forth in the Initial Multi-Pathway Program Budget for each Task Account by 2% or less annually without the concurrence of AR, as illustrated in the Initial Multi-Pathway Program Budget. All other proposed increases to the Initial Multi-Pathway Program Budget shall be concurred in by AR, which concurrence shall not be unreasonably withheld, and shall be accompanied by a narrative explanation of the reasons for each such proposed increase. Except for costs incurred for Emergency Response Actions, BSB shall not incur any charges, expenses, fees or other costs during a Fiscal Year in excess of or in addition to the total budget amount set forth in the Multi-Pathway Program Budget then in effect without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 11.8. Multi Pathway Program Accounting Reports.** Within forty five (45) days of the end of each quarter of each year for so long as this Agreement is in effect, BSB shall prepare and provide a Multi-Pathway Program Accounting Report to AR. All funds received by BSB during a Fiscal Year from the Multi-Pathway Program Trust Account which are not expended by BSB during that Fiscal Year for the payment of Multi-Pathway Program Costs shall be carried over and expended by BSB to pay Multi-Pathway Program Costs during such next Fiscal Year in accordance with the terms and conditions of this Agreement and the Multi-Pathway Program Trust Agreement.

**Section 11.9. Financial Assurances.** It is understood that the funds in the Multi-Pathway Program Trust Account, plus all accrued interest and income earned thereon, may be pledged to satisfy financial assurance requirements pursuant to the Consent Decree or any administrative order issued by EPA for the BPSOU. AR shall provide BSB with advance notice of meetings with EPA and copies of draft documents for submittal to EPA that are related to pledging the funds in the Multi-Pathway Program Trust Account pursuant to the Consent Decree. BSB shall have the right to have its personnel attend such meetings.

## **ARTICLE XII.**

### **SUPERFUND MANAGEMENT TRUST ACCOUNT**

**Section 12.1. Establishment of Superfund Management Trust Account and Execution of Superfund Management Trust Agreement.** Within thirty (30) days of the Effective Date, AR and BSB shall establish with Trustee the Superfund Management Trust Account and shall execute the Superfund Management Trust Agreement.

**Section 12.2. Funding of Superfund Management Trust Account.** Subject to the terms and conditions of this Section 12.2, as described in the Funding Spreadsheet, AR shall provide funding to the Superfund Management Trust Account in the total principal amount of Three Million Four Hundred Ninety Four Thousand Seven Hundred Seven and No/100ths Dollars (\$3,494,707.00), as follows:

1. AR shall provide initial funding to the Superfund Management Trust Account by depositing the amount of One Hundred Forty Seven Thousand Five Hundred and No/100ths Dollars (\$147,500.00) into the Superfund Management Trust Account within sixty (60) days of the Effective Date.

2. AR shall provide additional minimum funding to the Superfund Management Trust Account as follows:

(a) AR shall deposit the amount of One Hundred Seventy Five Thousand and No/100ths Dollars (\$175,000.00) into the Superfund Management Trust Account on or before July 1, 2007;

(b) AR shall deposit the amount of One Hundred Eighty Thousand and No/100ths Dollars (\$180,000.00) into the Superfund Management Trust Account on or before July 1, 2008; and

(c) AR shall deposit the amount of One Hundred Eighty Five Thousand and No/100ths Dollars (\$185,000.00) into the Superfund Management Trust Account on or before July 1, 2009.

The remaining principal balance of the funds consisting of Two Million Eight Hundred Seven Thousand Two Hundred Seven and No/100ths Dollars (\$2,807,207.00), together with accrued interest thereon, shall be deposited by AR into the Superfund Management Trust Account between the Effective Date and July 1, 2010. The funds to be deposited into the Superfund Management Trust Account pursuant to this Section 12.2.2 shall accrue interest at the rate of 7% per annum from the Effective Date until paid. All interest under this Section 12.2.2 shall be calculated on the basis of a year of 365 days. Notwithstanding any other term or condition of this Section 12.2, the funds to be deposited into the Superfund Management Trust Account pursuant to this Section 12.2.2 may at any time be prepaid by AR at AR's election by deposit to said account, either in whole or in part, without premium or penalty, at any time prior to July 1, 2010 on the condition that AR shall pay all accrued interest calculated from the date of the last deposit to the Superfund Management Trust Account through and including the date of any prepayment on the amount of the remaining principal balance of the funds outstanding at the time of each prepayment. AR's payment of interest so calculated shall be in addition to any prepayment of principal made by AR.

3. BSB's failure to perform any of BSB's duties or obligations because of AR's failure to deposit funds as required by this Section 12.2, or because the Superfund Management Trust Account has not yet been fully funded pursuant to Section 12.2 and the amount then on deposit does not provide sufficient funds, shall not be a default by BSB under this Agreement.

4. Within seven (7) days of any deposit of funds into the Superfund Management Trust Account pursuant to this Section 12.2, AR shall notify BSB of the date and the amount of the deposit.

**Section 12.3. Authorized Uses of Superfund Management Trust Funds.** The funding provided by AR to the Superfund Management Trust Account pursuant to Section 12.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by BSB in accordance with this Agreement and the Superfund Management Trust Agreement to pay Superfund Management Costs.

**Section 12.4. Books and Accounts; Financial Statements; Inspection and Audit.** BSB will keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts of BSB, in which complete and correct entries shall be made of all of BSB's transactions relating to the Superfund Management Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit of AR, at its expense.

**Section 12.5. Superfund Management Budgets.** On or before May 1 of each Fiscal Year for so long as this Agreement is in effect, BSB shall prepare and provide a Superfund Management Budget to AR. Each Superfund Management Budget shall specify the dollar amount for each quarterly distribution to be made by the Trustee to BSB during that Fiscal Year. The Initial Superfund Management Budget, including all Task Accounts and the approved budget amount for each Task Account, is hereby concurred in by AR. In order to account for inflation, BSB may increase the approved budget amount set forth in the Initial Superfund Management Budget for each Task Account by 2% or less annually without the concurrence of AR, as illustrated in the Initial Superfund Management Budget. All other proposed increases to the Initial Superfund Management Budget shall be concurred in by AR, which concurrence shall not be unreasonably withheld, and shall be accompanied by a narrative explanation of the reasons for each proposed increase. BSB shall not incur any charges, expenses, fees or other costs during a Fiscal Year in excess of or in addition to the total budget amount for a Task Account set forth in the Superfund Management Budget then in effect without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 12.6. Superfund Management Accounting Reports.** Within forty five (45) days of the end of each quarter of each year for so long as this Agreement is in effect, BSB shall prepare and provide a Superfund Management Accounting Report to AR. All funds received by BSB during a Fiscal Year from the Superfund Management Trust Account which are not expended by BSB during that Fiscal Year for the payment of Superfund Management Costs shall be carried over and expended by BSB to pay Superfund Management Costs during such next Fiscal Year in accordance with the terms and conditions of this Agreement and the Superfund Management Trust Agreement.

**Section 12.7. Financial Assurances.** It is understood that the funds in the Superfund Management Trust Account pursuant to Section 12.2 hereof, plus all accrued interest and income earned thereon, may be pledged to satisfy financial assurance requirements pursuant to the Consent Decree or any administrative order issued by EPA for the BPSOU. AR shall provide BSB with advance notice of meetings with EPA and copies of draft documents for submittal to EPA that are related to pledging the funds in the Superfund Management Trust Account pursuant to the Consent Decree. BSB shall have the right to have its personnel attend such meetings.

## ARTICLE XIII.

### **CAPITAL PURCHASE, REPAIR AND REPLACEMENT TRUST ACCOUNT AND CAPITAL IMPROVEMENTS TRUST ACCOUNT**

**Section 13.1. Establishment of Capital Purchase, Repair and Replacement Trust Account and Execution of Capital Purchase, Repair and Replacement Trust Agreement.** Within thirty (30) days of the Effective Date, AR and BSB shall establish with Trustee the Capital Purchase, Repair and Replacement Trust Account and shall execute the Capital Purchase, Repair and Replacement Trust Agreement.

**Section 13.2. Funding of Capital Purchase, Repair and Replacement Trust Account.** Subject to the terms and conditions of this Section 13.2, as described in the Funding Spreadsheet, AR shall provide funding to the Capital Purchase, Repair and Replacement Trust Account in the total principal amount of Ten Million Five Hundred Fifty Eight Thousand Three Hundred Ninety Four and No/100ths Dollars (\$10,558,394.00), as follows:

1. AR shall provide initial funding to the Capital Purchase, Repair and Replacement Trust Account by depositing the amount of Five Hundred Twenty Thousand and No/100ths Dollars (\$520,000.00) into the Capital Purchase, Repair and Replacement Trust Account within sixty (60) days of the Effective Date.

2. AR shall provide additional minimum funding to the Capital Purchase, Repair and Replacement Trust Account as follows:

(a) AR shall deposit the amount of One Hundred Fifty Four Thousand Five Hundred Twenty Two and No/100ths Dollars (\$154,522.00) into the Capital Purchase, Repair and Replacement Trust Account on or before July 1, 2007;

(b) AR shall deposit the amount of Eight Hundred Ten Thousand and No/100ths Dollars (\$810,000.00) into the Capital Purchase, Repair and Replacement Trust Account on or before July 1, 2008; and

(c) AR shall deposit the amount of Eight Hundred Twenty Thousand Four Hundred Seventy Five and No/100ths Dollars (\$820,475.00) into the Capital Purchase, Repair and Replacement Trust Account on or before July 1, 2009.

The remaining principal balance of the funds consisting of Eight Million Two Hundred Fifty Three Thousand Three Hundred Ninety Seven Dollars (\$8,253,397.00), together with accrued interest thereon, shall be deposited by AR into the Capital Purchase, Repair and Replacement Trust Account between the Effective Date and July 1, 2010. The funds to be deposited into the Capital Purchase, Repair and Replacement Trust Account pursuant to this Section 13.2.2 shall accrue interest at the rate of 7% per annum from the Effective Date until paid. All interest under this Section 13.2.2 shall be calculated on the basis of a year of 365 days. Notwithstanding any other term or condition of this Section 13.2, the funds to be deposited into the Capital Purchase, Repair and Replacement Trust Account pursuant to this Section 13.2.2 may at any time be prepaid by AR at AR's election by deposit to said account, either in whole or in part, without premium or penalty, at any time prior to July 1, 2010 on the condition that AR shall pay all accrued interest calculated from the date of the last deposit to the Capital Purchase Repair and Replacement Trust Account through and including the date of any prepayment on the amount of the remaining principal balance of the funds outstanding at the time of each prepayment. AR's

payment of interest so calculated shall be in addition to any prepayment of principal made by AR.

3. BSB's failure to perform any of BSB's duties or obligations because of AR's failure to deposit funds as required by this Section 13.2, or because the Capital Purchase, Repair and Replacement Trust Account has not yet been fully funded pursuant to Section 13.2 and the amount then on deposit does not provide sufficient funds, shall not be a default by BSB under this Agreement.

4. Within seven (7) days of any deposit of funds into the Capital Purchase, Repair and Replacement Trust Account pursuant to this Section 13.2, AR shall notify BSB of the date and the amount of the deposit.

**Section 13.3. Authorized Uses of Capital Purchase, Repair and Replacement Trust Funds.** The funding provided by AR to the Capital Purchase, Repair and Replacement Trust Account pursuant to Section 13.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by BSB in accordance with this Agreement and the Capital Purchase, Repair and Replacement Trust Agreement to pay Capital Purchase, Repair and Replacement Costs.

**Section 13.4. Books and Accounts; Financial Statements; Inspection and Audit.** BSB will keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts of BSB, in which complete and correct entries shall be made of all of BSB's transactions relating to the Capital Purchase, Repair and Replacement Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit of AR, at its expense.

**Section 13.5. Capital Purchase, Repair and Replacement Budgets.** On or before May 1 of each Fiscal Year for so long as this Agreement is in effect and there are funds remaining in the Capital Purchase, Repair and Replace Trust Account, BSB shall prepare and provide a Capital Purchase, Repair and Replacement Budget to AR for AR's concurrence, which concurrence shall not be unreasonably withheld. All Capital Purchase, Repair and Replacement Budgets submitted to AR by BSB pursuant to this Section 13.5 shall be consistent with the terms and conditions of the Storm Water System Improvement Plan and this Agreement. Each Capital Purchase, Repair and Replacement Budget shall specify the dollar amount for each quarterly distribution to be made by the Trustee to BSB during that Fiscal Year. The Initial Capital Purchase, Repair and Replacement Budget, including all Task Accounts and the approved budget amount for each Task Account, is hereby concurred in by AR. BSB shall not incur any charges, expenses, fees or other costs during a Fiscal Year in excess of or in addition to the total budget amount for a Task Account set forth in the Capital Purchase, Repair and Replacement Budget then in effect without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 13.6. Capital Purchase, Repair and Replacement Accounting Reports.** On or before September 1 of each year for so long as this Agreement is in effect, BSB shall prepare and provide a Capital Purchase, Repair and Replacement Accounting Report to AR. All funds received by BSB during a Fiscal Year from the Capital Purchase, Repair and Replacement Trust Account which are not expended by BSB during that Fiscal Year for the payment of Capital Purchase, Repair and Replacement Costs shall be carried over and expended by BSB to pay Capital Purchase, Repair and Replacement Costs during such next Fiscal Year in

accordance with the terms and conditions of this Agreement and the Capital Purchase, Repair and Replacement Trust Agreement.

**Section 13.7 Establishment of Capital Improvements Trust Account.** Upon completion of the Priority Projects identified by the Parties pursuant to the Prioritization Criteria identified in the Storm Water System Improvement Plan, the funds then remaining in the Capital Purchase, Repair and Replacement Trust Account shall, upon the written direction of the Parties to Trustee, be transferred to the Capital Improvements Trust Account established by BSB, as provided in the Capital Purchase, Repair and Replacement Trust Agreement.

**Section 13.8. Authorized Uses of Capital Improvements Trust Funds.** All funds deposited to the Capital Improvements Trust Account pursuant to Section 13.7 hereof, together with accrued interest and earnings thereon, shall be held in trust by BSB and may be drawn upon by BSB (without any requirement thereafter to provide budgets to or obtain pre-approval from AR pursuant to Section 13.5 hereof) for payment of Capital Purchase, Repair and Replacement Costs.

**Section 13.9. Capital Improvements Accounting Reports.** BSB's obligation to provide annual accounting reports to AR pursuant to Section 13.6 hereof shall survive the transfer of funds to the Capital Improvements Trust Account pursuant to Section 13.7. On or before September 1 of each year following the transfer of funds to the Capital Improvements Trust Account pursuant to Section 13.7, BSB shall prepare and provide a Capital Improvements Accounting Report to AR.

#### ARTICLE XIV.

##### GROUNDWATER TREATMENT SYSTEM CAPITAL REPAIR AND REPLACEMENT TRUST ACCOUNT

**Section 14.1. Establishment of Groundwater Treatment System Capital Repair and Replacement Trust Account and Execution of Groundwater Treatment System Capital Repair and Replacement Trust Agreement.** Within thirty (30) days of the Effective Date, AR and BSB shall establish with Trustee the Groundwater Treatment System Capital Repair and Replacement Trust Account and shall execute the Groundwater Treatment System Capital Repair and Replacement Trust Agreement.

**Section 14.2. Funding of Groundwater Treatment System Capital Repair and Replacement Trust Account.** As described in the Funding Spreadsheet, AR shall provide funding to the Groundwater Treatment System Capital Repair and Replacement Trust Account in the total principal amount of One Million Three Hundred Eighty Three Thousand Four Hundred Forty Nine and No/100ths Dollars (\$1,383,449.00) by depositing said amount into the Groundwater Treatment System Capital Repair and Replacement Trust Account within sixty (60) days of the Effective Date.

**Section 14.3. Authorized Uses of Groundwater Treatment System Capital Repair and Replacement Trust Funds.** The funding provided by AR to the Groundwater Treatment System Capital Repair and Replacement Trust Account pursuant to Section 14.2 hereof, plus all accrued interest and income earned thereon, may be drawn upon by BSB in accordance with this Agreement and the Groundwater Treatment System Capital Repair and

Replacement Trust Agreement to pay Groundwater Treatment System Capital Repair and Replacement Costs.

**Section 14.4. Books and Accounts; Financial Statements; Inspection and Audit.** BSB will keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts of BSB, in which complete and correct entries shall be made of all of BSB's transactions relating to the Groundwater Treatment System Capital Repair and Replacement Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit of AR, at its expense.

**Section 14.5. Groundwater Treatment System Capital Repair and Replacement Budgets.** In the event BSB determines that any Groundwater Treatment System Capital Repair and Replacement are necessary, BSB shall prepare and provide a Groundwater Treatment System Capital Repair and Replacement Budget to AR for AR's concurrence, which concurrence shall not be unreasonably withheld. All Groundwater Treatment System Capital Repair and Replacement Budgets submitted to AR by BSB pursuant to this Section 14.5 shall be consistent with the terms and conditions of this Agreement. Each Groundwater Treatment System Capital Repair and Replacement Budget shall specify the dollar amount for each quarterly distribution to be made by the Trustee to BSB during that Fiscal Year. BSB shall not incur any charges, expenses, fees or other costs in excess of or in addition to the total budget amount for any Groundwater Treatment System Capital Repair and Replacement set forth in an approved Groundwater Treatment System Capital Repair and Replacement Budget without the concurrence of AR, which concurrence shall not be unreasonably withheld.

**Section 14.6. Groundwater Treatment System Capital Repair and Replacement Accounting Reports.** On or before September 1 of each year following any Fiscal Year in which BSB draws upon funds in the Groundwater Treatment System Capital Repair and Replacement Trust Account, BSB shall prepare and provide an Groundwater Treatment System Capital Repair and Replacement Accounting Report to AR. All funds received by BSB from the Groundwater Treatment System Capital Repair and Replacement Trust Account which are not expended by BSB to make necessary Groundwater Treatment System Capital Repair and Replacement shall be promptly re-deposited into the Groundwater Treatment System Capital Repair and Replacement Trust Account by BSB.

**Section 14.7. Financial Assurances.** It is understood that the funds in the Groundwater Treatment System Capital Repair and Replacement Trust Account pursuant to Section 14.2 hereof, plus all accrued interest and income earned thereon, may be pledged to satisfy financial assurance requirements pursuant to the Consent Decree or any administrative order issued by EPA for the BPSOU. AR shall provide BSB with advance notice of meetings with EPA and copies of draft documents for submittal to EPA that are related to pledging the funds in the Groundwater Treatment System Capital Repair and Replacement Trust Account to the Consent Decree. BSB shall have the right to have its personnel attend such meetings.

## **ARTICLE XV.**

### **REDEVELOPMENT TRUST ACCOUNT**

**Section 15.1. Establishment of Redevelopment Trust Account.** Within thirty (30) days of the Effective Date, BSB shall establish the Redevelopment Trust Account.

**Section 15.2. Funding of Redevelopment Trust Accounts.** Subject to the terms and conditions of this Section 15.2, as described in the Funding Spreadsheet, AR shall provide funding to BSB for deposit to the Redevelopment Trust Account in the total principal amount of Fifteen Million and No/100ths Dollars (\$15,000,000.00). The total principal amount shall be provided as follows:

1. AR shall provide initial funding to BSB for deposit into the Redevelopment Trust Account in the amount of Two Million Five Hundred Thousand and No/100ths Dollars (\$2,500,000.00) within sixty (60) days of the Effective Date.

2. AR shall provide additional funding to BSB for deposit into the Redevelopment Trust Account in the amount of Two Million Five Hundred Thousand and No/100ths Dollars (\$2,500,000.00) within sixty (60) days following issuance of the ROD or within sixty (60) days of the Effective Date, whichever occurs later.

3. The remaining principal balance of the funds consisting of Ten Million and No/100ths Dollars (\$10,000,000.00), together with accrued interest thereon, shall be deposited by AR into the Redevelopment Trust Account on July 1, 2010 or within sixty (60) days following the date on which the Consent Decree is effective as a final court order, whichever occurs later. The funds to be deposited into the Redevelopment Trust Account pursuant to this Section 15.2.3 shall accrue interest at the rate of 7% per annum from the Effective Date until paid. All interest under this Section 15.2.3 shall be calculated on the basis of a year of 365 days. Notwithstanding any other term or condition of this Section 15.2, in the event the Consent Decree is effective as a final court order prior to July 1, 2010, the funds to be deposited into the Redevelopment Trust Account pursuant to this Section 15.2.3 may, at any time prior to July 1, 2010, be prepaid by AR at AR's election by deposit to said account, either in whole or in part, without premium or penalty, on the condition that AR shall pay all accrued interest calculated from the date of the last deposit to the Redevelopment Trust Account through and including the date of any prepayment on the amount of the remaining principal balance of the funds outstanding at the time of each prepayment. AR's payment of interest so calculated shall be in addition to any prepayment of principal made by AR.

4. BSB's failure to perform any of BSB's duties or obligations because of AR's failure to deposit funds as required by this Section 15.2 shall not be a default by BSB under this Agreement.

5. Within forty eight (48) hours of any deposit of funds into the Redevelopment Trust Account pursuant to this Section 15.2, AR shall notify BSB of the date and the amount of the deposit.

**Section 15.3. Authorized Uses of Redevelopment Trust Funds.** Subject to the terms and conditions of Section 17.6 hereof, all funds deposited into the Redevelopment Trust Account, together with accrued interest and income earned thereon, shall be held in trust by BSB and may be drawn upon by BSB (without any requirement to obtain pre-approval from AR) only for the following purposes:

1. The funding of improvements associated with the Regional Historic Preservation Plan, including, without limitation, the restoration of buildings and other historic structures in the Butte Hill area and recreational and historical interpretive features at LAO and the GMMIA.

2. The funding of economic development within the BPSOU including, without limitation, the provision of financial assistance to support development of any Mine Waste Source Areas.

3. The establishment and funding of a “governing authority” to administer and oversee BSB’s performance of this Agreement and to guide the planning and use of the funds in the Redevelopment Trust Account, consistent with the purposes of this Agreement and as described in Section III.B of the BSB Position Paper.

4. The payment of any applicable SIR and/or Co-Pay Percentage for the Cost Cap Coverage under the Insurance Policy or any renewal of the Insurance Policy purchased pursuant to Section 17.6 hereof.

Subject to the mediation and arbitration provisions of Sections 20.9 and 20.10 hereof, in the event of BSB’s default upon its obligations, AR shall have the right to draw upon any funds in the Redevelopment Trust Account to pay for any SIR and/or Co-Pay Percentage for the Cost Cap Coverage under the Insurance Policy.

**Section 15.4. Books and Accounts; Financial Statements; Inspection and Audit.** BSB shall keep, or cause to be kept, proper books of record and accounts separate from all other records and accounts of BSB, in which complete and correct entries shall be made of all transactions relating to the Redevelopment Trust Account. Such books of record and accounts shall be at all times during business hours subject to the inspection and audit of AR, at its expense.

**Section 15.5. Accounting Reports.** On or before September 1 of each year for so long as this Agreement is in effect, BSB shall prepare and provide a Redevelopment Accounting Report to AR.

## ARTICLE XVI.

### OVERSIGHT COSTS

**Section 16.1. Responsibility for Oversight Costs.** Subject to the reservation of rights set forth in Section 16.2 hereof, as between the Parties, AR shall be responsible for and shall indemnify, defend and hold BSB harmless from and against any and all claims or demands by EPA or the State for the payment of Oversight Costs.

**Section 16.2. AR’s Reservation of Rights for Oversight Costs.** Notwithstanding any other term or condition of this Agreement, AR hereby reserves the right to dispute and contest any and all Oversight Costs claimed by EPA or the State in accordance with Applicable Laws.

## ARTICLE XVII.

### INSURANCE

**Section 17.1. Insurance Policy and Remediation Plan Endorsement.** Prior to the Effective Date, AR purchased the Insurance Policy which provides insurance coverage related

to performance of certain work tasks to be performed by AR and BSB under this Agreement. The Remedial Plan Endorsement to the Insurance Policy identifies the following tasks, hereafter referred to as "Tasks":

1. Multi-Pathway Sampling and Yard Abatement Program.
2. Multi-Pathway Sampling and Attic Dust Abatement Program.
3. Storm Water Operation and Maintenance / Best Management Practices.
4. Reclaimed Source Area Operation and Maintenance.
5. Alluvial Groundwater Collection and Treatment.
6. Other Items of Work required by USEPA within the "Covered Location"; provided said items become part of the "Remediation Plan"

**Section 17.2. Duties of BSB as Named Insured under Insurance Policy.** As set forth in the Insurance Policy, BSB is a Named Insured beginning on the Effective Date of this Agreement for all coverage(s) provided under Sections I. A through F of the Insurance Policy. Except as otherwise provided in Sections 17.3 and 17.4 hereof, BSB is a Named Insured and an "Approved Contractor" for Tasks 1 – 5 of the Remedial Plan Endorsement for the Cost Cap Coverage beginning on the Effective Date of this Agreement. As a Named Insured, BSB shall have all the rights, benefits and responsibilities of a Named Insured for all coverage(s) under Sections I.A through F of the Insurance Policy, and subject to the other provisions of this Article XVII, all of the rights, benefits and responsibilities of a Named Insured for Tasks 1 – 5 for the Cost Cap Coverage. Said responsibilities include, without limitation, all reporting and cooperation obligations under Section VI and the Remediation Project Updates Endorsement of the Insurance Policy, and the payment of any SIR and/or Co-Pay Percentage for the Superfund Program Obligations.

**Section 17.3. Cost Cap Insurance Coverage for Alluvial Groundwater Collection and Treatment.** At such time as BSB becomes obligated to perform the Operation and Maintenance Activities for the Groundwater Treatment System pursuant to Sections 4.2 and/or 4.3 hereof, BSB shall assume the rights, benefits and responsibilities of a "Named Insured" under the Cost Cap Coverage of the Insurance Policy for Task 5 of the Remedial Plan Endorsement including, without limitation, all reporting and cooperation obligations under Section VI and the Remediation Project Updates Endorsement of the Insurance Policy, and, subject to Section 17.9 hereof, the payment of any SIR and/or Co-Pay Percentage applicable to Task 5.

**Section 17.4. Cost Cap Insurance Coverage for Multi-Pathway Program.** In the event that the Multi-Pathway Program described in the ROD is not modified in a manner that is mutually agreeable to the Parties and BSB does not exercise its right to terminate this Agreement pursuant to Section 6.1 hereof, AR shall thereafter have the rights, benefits and responsibilities of a "Named Insured" under the Cost Cap Coverage of the Insurance Policy for Tasks 1 and 2 of the Remedial Plan Endorsement.

**Section 17.5. Limitation on Cost Cap Coverage.** It is the intent of the Parties that at least Five Million and No/100ths Dollars (\$5,000,000.00) of the Policy Limits under the Cost Cap Coverage of the Insurance Policy be available to BSB for those obligations BSB is required to

perform under this Agreement for which Cost Cap Coverage may exist under the Insurance Policy. Notwithstanding any term or provision of the Insurance Policy to the contrary, in order to achieve such intent, AR hereby agrees that AR shall not attempt to recover and shall not be entitled to receive more than Ten Million and No/100ths Dollars (\$10,000,000) from the Policy Limits set forth in item 5.c.(1) of the Declarations to the Insurance Policy for claims arising from obligations AR is required to perform under the this Agreement for which Cost Cap Coverage may exist.

**Section 17.6. Renewal of Insurance Policy.** BSB shall be obligated to use up to Three Million One Hundred Thousand and No/100ths Dollars (\$3,100,000.00) of the funds in the Redevelopment Trust Account as a premium payment to secure a ten (10) year renewal of the Insurance Policy if such renewal is then available to BSB on commercially reasonable terms. BSB and AR shall both be a Named Insured for all coverage(s) under any renewal policy. BSB shall provide copies of all drafts of any renewal policies to AR for review and comment. BSB shall also confer with AR with regard to the commercial reasonableness of the terms of the renewal policy. If such a renewal is available for a premium greater than the amount which BSB is obligated to use from the Redevelopment Trust Account, the Parties shall meet and confer.

**Section 17.7. Other Insurance.** Commencing on the effective date of the Consent Decree and continuing for so long as this Agreement is in effect, BSB shall provide and continuously maintain in effect the types and amounts of insurance set forth in the BSB Memorandum of Coverage. The amounts of insurance required under this Section 17.7 shall be increased, as appropriate, in the event and to the extent that the limitations on BSB's liability for damages in tort, as currently set forth in Mont. Code Ann. § 2-9-108, are increased. Updated certificates of such insurance shall be provided by BSB to AR for so long as this Agreement is in effect to evidence continued coverage by BSB as required hereunder. Each certificate shall provide that a minimum of thirty (30) days prior written notice shall be given to AR in the event of cancellation or material change in the policies. AR shall not be responsible for payment of BSB's insurance premiums. Upon request, AR may examine true copies of the policies. Any coverage provided by BSB's insurance under this Section 17.7 is primary insurance and shall not be considered to be contributory insurance with any coverage provided by the Insurance Policy or any other any insurance policies of AR. Any deductibles in BSB's insurance shall be assumed by Butte-Silver Bow.

**Section 17.8. Communications Regarding Insurance.** AR and BSB agree to communicate and cooperate with each other to the fullest extent reasonably necessary with respect to issues related to the Insurance Policy or the renewal thereof. This cooperation and communication shall include, without limitation:

1. The Parties shall provide each other with thirty (30) days prior written notice of any claim under the Insurance Policy. The Parties shall discuss the scope, content and purpose of the claim and shall negotiate in good faith to resolve any dispute between the Parties regarding the claim; provided, however, neither of the Party may assert that the filing of a claim by the other Party for coverage under the Insurance Policy is a "default" or "event of default" for purposes of this Agreement and the remedies available under Article XX.

2. The Parties shall provide each other with prior notice of and an opportunity to comment on any written communication to be submitted by the other Party to the Insurance Company. The Parties, individually and with the cooperation of the other, shall timely comply with all obligations of a Named Insured under the Insurance Policy, including without limitation,

the submittal of all budget reports, Remediation Project Updates and other information required by Section VI (Reporting and Cooperation) of the Insurance Policy.

3. The Parties shall each have the right to attend and participate in any meetings or communication with the Insurance Company with respect to any claim.

4. The Parties shall cooperate to provide any relevant information requested by the other Party in order to prepare or support a claim and to provide any relevant information requested by the Insurance Company during its evaluation of a claim.

5. The Parties shall each comply with and perform their respective obligations under the Insurance Policy and shall not take any actions or omit to take any actions that will result in the cancellation, invalidation, suspension, or impairment of coverage or the barring of a claim under the Insurance Policy, including, without limitation, instituting litigation against third parties which litigation could result in triggering further claims under the Insurance Policy, except for cross claims, counterclaims, and third party claims in response to litigation initiated by a third party. Except as permitted under the Insurance Policy, neither Party shall cause any modification or change to be made in the Insurance Policy without the written consent of the other. Neither Party shall cancel the Insurance Policy without the written consent of the other Party.

**Section 17.9. Payment of SIR or Co-Pay Percentage.** To the extent funds are available in the Superfund Programs Account to pay for the SIR or Co-Pay Percentage for the Superfund Programs Obligations, BSB shall pay those amounts from the Superfund Programs Account. To the extent such funds are not available, then either AR shall pay the additional amounts for the SIR and Co-Pay Percentage necessary to ensure that insurance proceeds are made available, or the limitation on obligations set forth in Section 18.1 shall be triggered without the requirements of first paying the applicable SIR and Co-Pay Percentage or spending funds made available through the Insurance Policy.

## **ARTICLE XVIII.**

### **LIMITATION ON OBLIGATIONS**

**Section 18.1. Limitation on Superfund Programs Obligations.** If the combined amount of the funds deposited into the Superfund Programs Trust Account pursuant to Section 10.2 hereof, plus all accrued interest and income earned thereon, plus any additional funds made available to BSB through the Insurance Policy after payment of any applicable SIR or Co-Pay Percentage pursuant to Section 17.9 hereof, are not sufficient to pay Superfund Programs Costs, then BSB's responsibility for performance of Superfund Programs Obligations under this Agreement shall cease provided that BSB performed the obligation or obligations which lead to the depletion of the funds with due care and in accordance with the material terms and conditions of this Agreement. If BSB fails to exercise due care or fails to comply with the material terms of this Agreement in the performance of any Superfund Programs Obligations and such failure results in increased costs for the performance of any such obligation, BSB shall expend for any such obligation, from sources separate and independent of funds provided by AR to BSB pursuant this Agreement, an amount equal to the increased costs associated with any such failure, and BSB's responsibility for performance of Superfund Programs Obligations under this Agreement would thereafter cease. BSB's satisfaction of BSB's financial obligation to

pay such increased costs shall not limit any remedy that is otherwise available to AR pursuant to Article XX hereof.

**Section 18.2. Limitation on Multi-Pathway Programs Obligations.** If the amount of the funds deposited into the Multi-Pathway Program Trust Account, plus all accrued interest and income earned thereon, are not sufficient to pay Multi Pathway Program Costs, then BSB's responsibility for performance of Multi-Pathway Program Obligations under this Agreement shall cease provided that BSB performed the obligation or obligations which lead to the depletion of the funds with due care and in accordance with the material terms and conditions of this Agreement. If BSB fails to exercise due care or fails to comply with the material terms of this Agreement in the performance of any Multi-Pathway Obligations and such failure results in increased costs for the performance of any such obligation, BSB shall expend for any such obligation, from sources separate and independent of funds provided by AR to BSB pursuant this Agreement, an amount equal to the increased costs associated with any such failure, and BSB's responsibility for performance of Multi-Pathway Obligations under this Agreement would thereafter cease. BSB's satisfaction of BSB's financial obligation to pay such increased costs shall not limit any remedy that is otherwise available to AR pursuant to Article XX hereof.

**Section 18.3. Limitation on Superfund Management Obligations.** If the five percent (5%) net discount rate used to calculate the total principal amount of the funds to be deposited into the Superfund Management Trust Account, as described in Section 18.4 hereof, proves to be inaccurate due to (i) the failure of the funds to accrue interest at the average rate of seven percent (7%) per annum over a period of 100 years, and/or (ii) an inflation rate that exceeds an average rate of two percent (2%) per annum over a period of 100 years, and, as a result, the amount of the funds deposited into the Superfund Management Account pursuant to Section 12.2 hereof, plus all accrued interest and income earned thereon, is not sufficient to pay Superfund Management Costs, then BSB's responsibility for performance of Superfund Management Obligations under this Agreement shall cease provided that BSB performed the obligation or obligations which lead to the depletion of the funds with due care and in accordance with the material terms and conditions of this Agreement. If BSB fails to exercise due care or fails to comply with the material terms of this Agreement in the performance of any Superfund Management Obligations and such failure results in increased costs for the performance of any such obligation, BSB shall expend for any such obligation, from sources separate and independent of funds provided by AR to BSB pursuant this Agreement, an amount equal to the increased costs associated with any such failure, and BSB's responsibility for performance of Superfund Management Obligations under this Agreement would thereafter cease. BSB's satisfaction of BSB's financial obligation to pay such increased costs shall not limit any remedy that is otherwise available to AR pursuant to Article XX hereof.

**Section 18.4. Exercise of Due Care.** The total principal amounts of the funds to be deposited into the Superfund Programs Trust Account, the Multi-Pathway Program Account and Superfund Management Account were calculated using a net discount rate of five percent (5%) per annum. The net discount rate of five percent (5%) was based on the following assumptions: (i) such funds will earn interest at the average rate of seven percent (7%) per annum over a period of 100 years, and (ii) such funds will be subject to inflation at the average rate of two percent (2%) per annum over a period of 100 years. Neither (i) the failure of the funds to accrue interest at the average rate of seven percent (7%) per annum over a period of 100 years, or (ii) an inflation rate that exceeds an average rate of two percent (2%) per annum over a period of 100 years shall constitute a failure by BSB to exercise due care or failure to comply with the material terms of this Agreement pursuant to Sections 18.1, 18.2 or 18.3 hereof.

**Section 18.5. Failure to Exercise Due Care.** In the event that AR asserts a claim that BSB has failed to exercise due care in performing any of its obligations or to comply with the material terms of this Agreement pursuant to Sections 18.1, 18.2 or 18.3 hereof, BSB shall have the right to invoke mediation and if necessary, arbitration pursuant to Sections 20.9 and 20.10 hereof.

**Section 18.6. Limitation of Assertion of Failure to Exercise Due Care.** AR shall not assert any claim that BSB failed to exercise due care in performing its obligations or to comply with the material terms of this Agreement pursuant to Sections 18.1, 18.2 or 18.3 hereof more than two (2) years following AR's discovery of the event giving rise to the alleged failure to exercise due care. For purposes of this Section 18.6, the term "discovery" shall mean the date on which AR knew or through the exercise of reasonable diligence should have known of the event.

**Section 18.7. Coordination of Obligations.** In the event the Parties determine that BSB may be released from the Superfund Programs Obligations pursuant to Section 18.1 hereof, the Parties shall promptly meet and confer to determine if AR will provide additional funds to the Superfund Programs Trust Account. If AR elects not to provide additional funds to the Superfund Programs Trust Account, the Parties shall establish schedules for the transition of the Superfund Programs Obligations from BSB to AR and shall confer with respect to all such other matters and issues which may be appropriate under the circumstance. If AR elects not to provide additional funds to the Superfund Programs Trust Account, all funds remaining in the Superfund Programs Trust Account and in the Groundwater Treatment System Capital Repair and Replacement Account, including all accrued interest and income earned thereon, following the transition of the Superfund Programs Obligations from BSB to AR shall be returned to AR or, at the option of AR, be available solely to AR or its designee to perform Response Actions and/or Operation and Maintenance Activities within the BPSOU, at the option of AR. In the event the Parties determine that BSB may be released from the Multi-Pathway Program Obligations pursuant to Section 18.2 hereof, the Parties shall promptly meet and confer to determine if AR will provide additional funds to the Multi-Pathway Program Trust Account. If AR elects not to provide additional funds to the Multi-Pathway Program Trust Account, the Parties shall establish schedules for the transition of the Multi-Pathway Program Obligations from BSB to AR and shall confer with respect to all such other matters and issues which may be appropriate under the circumstance. If AR elects not to provide additional funds to the Multi-Pathway Program Trust Account, all funds remaining in the Multi-Pathway Program Trust Account, including all accrued interest and income earned thereon, following the transition of the Multi-Pathway Program Obligations from BSB to AR shall be returned to AR or, at the option of AR, be available solely to AR or its designee to perform Response Actions and/or Operation and Maintenance Activities within the BPSOU, at the option of AR. In the event the Parties determine that BSB may be released from the Superfund Management Obligations pursuant to Section 18.3 hereof, the Parties shall promptly meet and confer to determine if AR will provide additional funds to the Superfund Management Trust Account. If AR elects not to provide additional funds to the Superfund Management Trust Account, the Parties shall establish procedures for the transition of responsibilities for Superfund Management Obligations as appropriate under the terms of the Consent Decree.

**Section 18.8. General Limitation on Obligations.** Except as specifically provided in Sections 4.5, 4.6, 4.7, 5.4, 7.3 and 8.2, nothing in this Agreement shall be construed to obligate BSB to perform any actions outside of the BPSOU or to otherwise assume any responsibilities for wastes or properties located outside the BPSOU.

## ARTICLE XIX.

### RELEASES AND COVENANTS NOT TO SUE AND DISCHARGE OF HISTORIC PRESERVATION OBLIGATIONS

**Section 19.1. Release and Covenant Not to Sue of BSB.** Subject to BSB's rights and remedies and to otherwise proceed in accordance with Article XX hereof and BSB's reservation of rights set forth in this Section 19.1, for and in consideration of the mutual covenants and promises contained herein, BSB 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 (including, without limitation, compensatory damages, attorneys' fees, costs and punitive damages) and any and all actions and rights of action of any kind or nature arising out of or relating to: (i) Environmental Conditions within the BPSOU as of the Effective Date; and (ii) all matters addressed in this Agreement. Nothing in this Section 19.1 shall release, or discharge AR or its contractors, from any claims, demands, losses, damages (including, without limitation, compensatory damages, attorneys' fees, costs and punitive damages) or any actions or rights of action of any kind or nature which may arise after the Effective Date as a result of (i) the negligent performance by AR or its contractors of any of AR's duties or obligations under this Agreement; (ii) any exacerbation of any Environmental Conditions within the BPSOU by AR or its contractors; (iii) any act or omission by AR or its contractors which destroys, damages, or impairs any final remedy selected by EPA for the BPSOU; or (iv) costs associated with the treatment of storm water within the BPSOU or, except as otherwise expressly provided in Section 5.2 hereof with respect to the Superfund Storm Water Structures, or costs associated with the implementation of Best Management Practices within the BPSOU.

**Section 19.2. Release and Covenant Not to Sue of AR.** Subject to AR's rights and remedies and to otherwise proceed in accordance with Article XX hereof and AR's reservation of rights set forth in this Section 19.2, for and in consideration of the mutual covenants and promises contained herein, AR agrees to unconditionally, fully and forever release and discharge, and covenant not to sue BSB from and for any and all known or unknown, present and future, claims, demands, losses, damages (including, without limitation, compensatory damages, attorneys' fees, costs and punitive damages) and any and all actions and rights of action of any kind or nature arising out of or relating to: (i) Environmental Conditions within the BPSOU as of the Effective Date; and (ii) all matters addressed in this Agreement. Nothing in this Section 19.2 shall release, or discharge BSB or its contractors, from any claims, demands, losses, damages (including, without limitation, compensatory damages, attorneys' fees, costs and punitive damages) or any actions or rights of action of any kind or nature which may arise after the Effective Date as a result of (i) the negligent performance by BSB or its contractors of any of BSB's duties or obligations under this Agreement; (ii) any exacerbation of any Environmental Conditions within the BPSOU by BSB or its contractors; (iii) any act or omission by BSB or its contractors which destroys, damages, or impairs any final remedy selected by EPA for the BPSOU; or (iv) costs associated with the treatment of storm water within the BPSOU or, except as otherwise expressly provided in Section 5.2 hereof with respect to the Superfund Storm Water Structures, or costs associated with the implementation of Best Management Practices within the BPSOU.

**Section 19.3. Discharge of AR's Historic Preservation Obligations.** BSB hereby acknowledges and agrees that, subject only to AR's performance of its duties and obligations under Sections 3.1, 3.2 and 4.1 hereof, AR will have completed all on-site mitigation, off-site mitigation and other obligations of AR to BSB for the NPL Sites that may arise under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470(f), the Upper Clark Fork River Basin Historic Preservation Plan and the Second Programmatic Agreement and BSB will, by written instrument, fully and forever discharge and release AR from any past, present and future claims for such obligations. Following AR's performance of its duties and obligations under Sections 3.1, 3.2 and 4.1 hereof, the Parties shall jointly and promptly seek written acknowledgement and concurrence from the other signatories to the Second Programmatic Agreement that the obligations referenced in this Section 19.3 have been fully and forever discharged and satisfied. Such written acknowledgement and concurrence shall be obtained through execution of an appropriate amendment to the Second Programmatic Agreement executed by all of the signatories to the Second Programmatic Agreement.

## **ARTICLE XX.**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 20.1. Events of Default Defined.** The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

1. Failure by AR to perform any material duty or obligation under this Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to AR by BSB, unless BSB shall agree in writing to an extension of time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, such cure period shall be extended if corrective action is instituted by AR within the thirty (30) day period and diligently pursued until the default is corrected.

2. Failure by BSB to perform any material duty or obligation under this Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to BSB by AR, unless AR shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, such cure period shall be extended if corrective action is instituted by BSB within the thirty (30) day period and diligently pursued until the default is corrected.

3. The provisions of this Article 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 material duties or obligations under this Agreement, such Party shall not be deemed in default during the continuance of such inability; provided that (i) such Party's inability to perform is of no greater scope and of no greater duration than is required by the Force Majeure, (ii) 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 (iii) 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 Laws.

**Section 20.2. BSB Remedies on Default.** Whenever BSB provides notice under Section 20.1.1 hereof that any default or event of default has happened, BSB, at its election, shall have the right to proceed with mediation and, if necessary, arbitration in accordance with Sections 20.9 and 20.10 hereof. BSB shall provide AR with written notice of any election made by BSB pursuant to this Section 20.2.

**Section 20.3. AR Remedies on Default.** Whenever AR provides notice under Section 20.1.2 hereof that any default or event of default has happened, AR, at its election, shall have the right to remedy the default in accordance with Section 20.7 hereof or the right to proceed with mediation and, if necessary, arbitration in accordance with Sections 20.9 and 20.10 hereof. AR shall provide BSB with written notice of any election made by AR pursuant to this Section 20.3.

**Section 20.4. Delay; Notice.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle any Party to exercise any remedy reserved to it in this Agreement it shall not be necessary to give any notice, other than such notice as may be required in this Agreement or by law.

**Section 20.5. Agreement To Pay Fees and Expenses.** In the event either Party to this Agreement should default under any of the provisions hereof and the non-defaulting Party should employ attorneys, experts, or other professionals or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting Party herein contained, the defaulting Party agrees that it will on demand therefore pay, after the Parties have exercised their dispute resolution options under this Article XX, 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. Except as otherwise provided in Section 20.7 hereof, the Parties may not draw upon any of the trust accounts established pursuant to this Agreement to pay any such fees of such attorneys, experts, or other professionals or any such other costs and expenses.

**Section 20.6. No Additional Waiver Implied by One Waiver.** In the event any default is waived by a Party, such waiver shall be limited to the particular default so waived and shall not be deemed to waive any other default hereunder.

**Section 20.7. AR Option to Remedy Default.** In the event of a default by BSB under Section 20.1.2 hereof, AR shall have the right, but not the obligation, to take such actions and incur such costs, expenses and fees (including attorneys' fees, expert fees and other professional fees) as may be necessary to remedy such default. In the event AR exercises its right to remedy a default pursuant to this Section 20.7, AR shall submit a demand to BSB for reimbursement of the full amount of all charges, expenses, fees (including attorneys' fees, expert fees and other professional fees) and other costs incurred by AR in remedying the default. The charges, expenses, fees and other costs reasonably incurred by AR to remedy a default shall accrue interest at the rate of 7% per annum from the date the charges, expenses, fees and other costs were incurred until paid. Within thirty (30) days of BSB's receipt of a demand pursuant to this Section 20.7, BSB shall either (i) pay AR the full amount of the demand, together with interest at the rate of 7% per annum from the date of AR's incurrence of such charges, expenses, fees and other costs or (ii) notify AR that BSB disputes the demand and wishes to submit the dispute to mediation and, if necessary, arbitration in accordance with the terms and conditions of Sections 20.9 and 20.10 hereof. If and to the extent that AR is the

prevailing party in any arbitration commenced pursuant to this Section 20.7, BSB shall be obligated to repay AR the total amount awarded by the arbitrator, on demand, together with interest at the rate of 7% per annum from the date of AR's incurrence of the charges, expenses, fees and other costs awarded. In the event BSB fails to repay AR, on demand, AR shall have the right to withdraw the full amount owed by BSB from the Superfund Programs Trust Account to the extent the actions relate to duties and obligations that are funded by the Superfund Programs Account. AR's right to take actions and secure repayment pursuant to this Section 20.7 shall be in addition to, and not in any way in lieu of, any other right of AR under this Agreement, including AR's right to terminate this Agreement in accordance with Section 20.11 hereof and AR's right to proceed with mediation and, if necessary, arbitration in accordance with Sections 20.9 and 20.10 hereof.

**Section 20.8. Emergency Response Actions.** In the event any action or occurrence related to or arising out of any Superfund Programs Obligations causes or threatens to cause a Release of Mine Waste that may result in a violation of the Consent Decree, AR and/or BSB shall immediately take appropriate Emergency Response Actions and shall use its best efforts to provide twenty four (24) hours advance notice of such actions to the other Party and to EPA and the State, as may be required under the Consent Decree. Either Party may respond and perform Emergency Response Actions for any action or occurrence under this Section 20.8 whether or not such action or occurrence arises from an obligation for which that Party is responsible under this Agreement. The charges, expenses, fees and other costs reasonably incurred by a Party to perform Emergency Response Actions shall be recoverable by the Party from the Superfund Programs Trust Account in accordance with the Superfund Programs Trust Agreement and this Section 20.8.

**Section 20.9. Mediation.** In the event either Party elects to proceed with mediation and, if necessary, arbitration pursuant to Sections 20.2 or 19.3 hereof, or in the event BSB elects to proceed with mediation and, if necessary, arbitration pursuant to Section 20.7 hereof, then, within thirty (30) days of the effective date of any notice provided pursuant to Sections 20.2, 20.3 or 20.7 hereof, each of the Parties shall designate a senior-level representative, who shall collectively endeavor in good faith to resolve the default on a reasonable basis. Upon agreement of the Parties, a mediator with expertise in the matter in default may be selected to assist in this process. The costs and fees of the mediator shall be shared equally by the Parties. In the event a default is not resolved within sixty (60) days (or such longer time as may be agreed to by the Parties) after the effective date of any notice provided pursuant to Sections 20.2 or 20.3 hereof, or in the event a dispute is not resolved within sixty (60) days (or such longer time as may be agreed to by the Parties) after the effective date of any notice of intent to proceed with mediation and, if necessary, arbitration provided pursuant to Sections 20.7 hereof, the Parties shall have the exclusive right to proceed with arbitration pursuant to Section 20.10 hereof.

**Section 20.10. Arbitration Procedures and Choice of Law.** Defaults not resolved by the Parties in accordance with the mediation provisions of Section 20.9 hereof will be finally resolved by arbitration pursuant to the following terms:

1. The Party initiating the arbitration shall give written notice to the other Party.
2. The arbitration shall be conducted before a single arbitrator who shall be an individual possessing substantial professional experience in the subject matter of the dispute and, unless otherwise agreed by the Parties, shall be a lawyer licensed to practice in the State of Montana.

3. If the Parties can agree, the arbitrator shall be selected by the consent of the Parties. If the Parties cannot agree, then, within thirty (30) days after the notice initiating the arbitration, the Parties 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.

4. The Parties shall cooperate with the arbitrator to permit the scheduling of a hearing so as to complete any such arbitration within One hundred twenty (120) days of commencement, except if the arbitrator determines for good cause that a longer period is required. The Parties shall have no less than thirty (30) days' notice prior to the commencement of any hearing.

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 the Parties.

6. Except as otherwise provided in this Section 20.10, the arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. 1-16, to the exclusion of any provision of State law inconsistent therewith, and judgment upon the award rendered by the single arbitrator may be entered by any court having jurisdiction thereof.

7. The arbitrator shall apply the substantive law of the State of Montana exclusive of its conflict of law rules.

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 the Parties shall have the right to appeal all issues of law to any court having jurisdiction.

9. In the event the occurrence or continuation of a default or event of default is disputed by a Party, the arbitrator is specifically authorized to resolve the dispute. Any decision of the arbitrator relating to the occurrence or non-occurrence of a default or event of default shall contain specific findings of fact and conclusions of law on which the decision is based and the Parties shall have the right to appeal all issues of law to any court having jurisdiction.

10. The arbitrator is specifically authorized to grant appropriate relief as may be requested, explicitly including specific performance or orders to any Party to perform the Agreement. The Parties explicitly 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.

11. The Parties agree that the prevailing Party in any dispute finally 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 20.11. Termination of Agreement by AR.** Notwithstanding any other term or condition of this Agreement, AR, at its election, shall have the right to terminate this Agreement if: (i) the excavation or removal of any Mine Waste from within the MSD Corridor is required pursuant to the ROD; (ii) EPA or the State fail to incorporate the material terms and conditions of this Agreement into a Consent Decree as contemplated by Section 21.2 hereof; (iii) BSB does not assume the duties and obligations to perform Operation and Maintenance

Activities pursuant to Sections 4.2 and/or 4.3 hereof for any reason by January 1, 2012 or five years after issuance of the ROD, whichever occurs later; or (iv) a Work Takeover occurs. AR shall provide BSB with written notice of any election made pursuant to this Section 20.11. Prior to AR's exercise of its rights pursuant to this Section 20.11, AR and BSB shall meet and confer. It is understood that during such meeting and conference, AR, in its sole discretion, may make proposals for the modification of this Agreement in lieu of the termination of this Agreement and that such proposals may include, without limitation, a proposal to reduce the amount of the funding provided by AR to BSB pursuant to Article XV hereof. In the event AR elects to terminate this Agreement following the meeting and conference, AR shall promptly notify BSB in writing. For purposes of this Section 20.11, EPA and the State shall be deemed to have failed to incorporate the material terms and conditions of this Agreement into a Consent Decree in the event that EPA or the State issue an unilateral administrative order relating to the BPSOU to AR and/or BSB. AR's written notice of termination because EPA or the State fails to incorporate the material terms of this Agreement into a Consent Decree shall be provided by AR to BSB within a reasonable time following either the termination of Consent Decree negotiations or the lodging of a Consent Decree, whichever occurs first.

**Section 20.12. Termination of Agreement by Non-Defaulting Party.** Subject to the terms and conditions set forth in this Section 20.12, if a default or event of default referred to in Sections 20.1.1 or 20.1.2 hereof shall have happened, the non-defaulting Party, at its election, shall have the right to terminate this Agreement. The non-defaulting Party shall provide the defaulting Party with written notice of any election made pursuant to this Section 20.12. In the event the occurrence of a default or event of default is disputed, the right of the non-defaulting Party to terminate this Agreement may be exercised only after a final decision of the arbitrator that contains specific findings of fact which confirm the occurrence of the default or event of default.

**Section 20.13. Return of Trust Funds.** If this Agreement is terminated by BSB pursuant to Sections 6.1 or 20.12 hereof or by AR pursuant to Sections 20.11 or 20.12 hereof, then, on the date of termination, all funds remaining in the Superfund Programs Trust Account, the Multi-Pathway Program Trust Account, the Superfund Management Trust Account, the Capital Purchase, Repair and Replacement Account, the Groundwater Treatment System Capital Repair and Replacement Account and the Capital Improvements Trust Account (if funded pursuant to Section 13.7 hereof), including all accrued interest and income earned thereon, and all funds deposited in the Redevelopment Trust Account pursuant to Section 15.2.3 hereof, including all accrued interest and income earned thereon, and all funds paid to BSB pursuant to Section 3.8 hereof shall be returned to AR or, at the option of AR, be available solely to AR or its designee to perform Response Actions and/or Operation and Maintenance Activities within the BPSOU, at the option of AR.

**Section 20.14. Failure to Reach Concurrence.** In the event the Parties are unable to reach concurrence with respect to any matter with respect to which concurrence of the Parties is required pursuant to this Agreement, the matter shall be submitted to mediation and, if necessary, arbitration in accordance with the terms and conditions of Sections 20.9 and 20.10 hereof.

## **ARTICLE XXI.**

### **MISCELLANEOUS PROVISIONS**

**Section 21.1. Support of Anticipated Remedy.** No representative of BSB or AR will, on behalf of BSB or AR respectively, either support or advocate to the EPA or State any position that is materially different than the Parties' respective positions set forth in this Agreement, consistent with the following:

1. Where this Agreement states that the Parties anticipate that specified requirements will be required by EPA or required pursuant to the ROD or the Consent Decree, the Parties agree that those requirements are appropriate and agree to mutually advocate the adoption of those requirements in the ROD and the Consent Decree.

2. With regard to the remedy for the MSD Corridor and the remedy for treatment of groundwater from the MSD and LAO areas, each Party shall respect the other Party's right to advocate their respective positions as set forth in Sections 3.5 and 4.1 hereof.

**Section 21.2. Incorporation of Agreement into Consent Decree.** Following execution of this Agreement and issuance of the ROD, the Parties shall seek to negotiate and each execute a judicially enforceable Consent Decree with EPA and the State which incorporates the material terms and conditions of this Agreement.

**Section 21.3. Submittals to EPA, other Governmental Entities and Insurance Company.** At the time either Party provides or submits any correspondence, report or other document relating to the Party's obligations under this Agreement to EPA, any other Governmental Entity or the Insurance Company, the Party shall provide a copy to the other Party at the addresses set forth in Section 21.5 hereof for the giving of written notice to AR.

**Section 21.4. Natural Resources Damages Settlement.** In the event AR enters into a settlement agreement with the State with respect to the State's pending claims against AR for alleged natural resources damages for Area One, AR shall use its best efforts to have the majority of any settlement funds paid by AR to the State earmarked for use in Butte-Silver Bow County. Nothing contained in this Section 21.4 shall obligate AR to enter into any settlement agreement with the State or, if any such settlement agreement is entered into, to pay any funds to the State as a term thereof.

**Section 21.5. Notices and Submissions.** Whenever, under the terms of this Agreement, written notice is required to be given or a report or other document is required to be sent by one Party to another or to EPA, 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 electronic facsimile 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:

Gavin Scally  
Atlantic Richfield Company  
317 Anaconda Road  
Butte, Montana 59701

WITH A COPY TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF TO BSB:

The City and County of  
Butte-Silver Bow  
155 West Granite  
Butte, Montana 59701  
Attn: Chief Executive

WITH A COPY TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IF TO EPA:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

IF TO THE STATE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

**Section 21.6. Captions.** The titles or captions of the provisions of this Agreement are merely for convenience or reference and are not representations of matters included or excluded from such provisions.

**Section 21.7. Entire Agreement.** Except as otherwise provided in this Section 21.7 and this Agreement, 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. The Parties further expressly acknowledge and agree that the following agreements do not

relate to the subject matter of this Agreement, are not superseded by this Agreement and remain in full force and effect:

1. That certain Water Service Agreement between BSB and AR dated as of November 26, 1996, as amended by the Parties;

2. That certain Horseshoe Bend Pipeline Easement Agreement dated as of June 10, 2005 between BSB, AR and Montana Resources, a Montana limited liability partnership;

3. That certain MSD Improvements Agreement dated as of June 10, 2005 between BSB and AR (provided, however, the obligations to perform monitoring, operation, maintenance, repair, replacement and supplementation of the MSD Improvements pursuant to the MSD Improvements Agreement shall be superseded by the obligations to perform Response Actions and Operation and Maintenance Activities pursuant to Article IV of this Agreement); and

4. That certain Agreement dated as of August 30, 1999 between BSB and AERL, as amended by the Parties ("Copper Mountain Sports Complex Agreement").

**Section 21.8. 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 21.9. 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 21.10. 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 21.11. No Admission of Liability.** The Parties that have entered into this Agreement do not admit any liability arising out of the transactions or occurrences, or any Environmental Conditions whatsoever, relating to the Site or as set forth in this Agreement, exhibits, index or any other record documents attached hereto or incorporated by reference; nor do the Parties acknowledge that the Release or threatened Release of Hazardous Materials at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. 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 prepared or filed in connection with the NPL Sites including, without limitation, the ROD. 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 it shall be admissible in an action to enforce this Agreement. This Agreement shall not be admissible in any judicial or administrative proceeding brought by or on

behalf of any natural resource trustee or any Party to this Agreement for natural resource damages as evidence of liability or as an admission of any factual or legal statements or determinations made herein.

**Section 21.12. 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 un-matured, determined or undetermined or known or unknown as of the Effective Date of this Agreement, that either of the Parties may have against any Person or Governmental Entity including, without limitation, any cause of action for contribution or indemnity against any Person or Government Entity for reimbursement of the considerations incurred or to be incurred by AR pursuant to this Agreement.

**Section 21.13. Binding Effect; Assignment.** The rights and obligations set forth in this Agreement shall be binding on the Parties hereto and their successors and assigns. No assignment or delegation of any right or obligation hereunder, whether accruing prior to or after such assignment or delegation, will release the assigning or delegating 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 any Party of its rights or obligations hereunder shall be effective unless and until (i) written notice thereof has been given to each other Party hereto, (ii) the transferee or assignee has executed and delivered to each other Party hereto a binding assumption in writing of all obligations of the transferor or assignor hereunder and an agreement to perform such obligations, and (iii) the Parties have each agreed in their sole discretion and in writing to the assignment or other transfer of rights or obligations. Any attempted assignment or transfer of rights or obligations by any Party which fails to comply with the foregoing requirements will be ineffective and void. Except as otherwise provided in Sections 20.11 and 21.2 hereof, this Agreement is not contingent on the entry or issuance of any consent decree, order or directive of any Governmental Entity.

**Section 21.14. Retroactive Application For Limited Purposes.** The Parties agree that the following provisions of this Agreement ,together with applicable definitions and exhibits, shall apply retroactively to all work that BSB performs under MOU 119 and MOU 135 pursuant to Sections 10.3 and 11.3 hereof, to funds drawn upon for that work from the Superfund Programs Trust Account, the Multi-Pathway Program Trust Account, the Superfund Management Trust Account or the Capital Purchase Repair and Replacement Trust Account; and to any disputes that arise from that work or with respect to amounts drawn from those trust accounts:

1. Sections 10.6, 11.6, 12.4 and 13.4 (record-keeping);
2. Sections 10.7, 11.7, 12.5 and 13.5 (budgeting);
3. Sections 10.8, 11.8, 12.6 and 13.6 (accounting, reporting);
4. Sections 18.1 through 18.5 (limitation on obligations); and
5. Article XX (dispute resolution).

**Section 21.15. Modification.** This Agreement, and the rights and the obligations of the Parties hereunder, may not be amended, altered or modified, and no rights of any Party

hereunder shall be waived, unless such amendment, alteration, modification or waiver is evidenced by a written instrument executed by the Parties hereto.

**Section 21.16. 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 at BPSOU) 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 21.17. Governing Law.** 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 21.18. Counterparts.** This Agreement may be executed in one or more counterpart, each of which shall for all purposes be deemed to be an original and all of which together shall constitute the same instrument.

**Section 21.19. 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 21.20. 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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2006.

ATLANTIC RICHFIELD COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_  
Its \_\_\_\_\_

THE CITY AND COUNTY OF  
BUTTE-SILVER BOW

By \_\_\_\_\_  
Chief Executive

Attest: \_\_\_\_\_  
County Clerk and Recorder

- Exhibit “1”**  
**(Map of BPSOU)**
- Exhibit “2”**  
**(Map of Superfund Storm Water Structures)**
- Exhibit 2.1**  
**(List of Superfund Storm Water Structures)**
- Exhibit “3”**  
**(Map of GMMIA and Historic Mining Landscape Area)**
- Exhibit 3.1**  
**(Map of Mine Waste Repository)**
- Exhibit “4”**  
**(Legal Description of Dedicated Use Properties)**
- Exhibit “5”**  
**(Legal Description of Developable Properties)**
- Exhibit “6”**  
**(Description of Storm Water Sites)**
- Exhibit “7”**  
**(Description of Capital Equipment Purchases)**
- Exhibit “8”**  
**(Dedicated Use Properties Quitclaim Deeds)**
- Exhibit “9”**  
**(Developable Properties Quitclaim Deeds)**
- Exhibit “10”**  
**(Superfund Storm Water Structures Quitclaim Deed)**
- Exhibit “11”**  
**(Third Party Quitclaim Deeds)**
- Exhibit “12”**  
**(Capital Purchase Repair and Replacement Trust Agreement)**
- Exhibit “13”**  
**(Groundwater Treatment System Capital Repair and Replacement Trust Agreement)**
- Exhibit “14”**  
**(Superfund Management Trust Agreement)**
- Exhibit “15”**  
**(Superfund Programs Trust Agreement)**
- Exhibit “16”**  
**(Initial Capital Purchase, Repair and Replacement Budget)**
- Exhibit “17”**  
**(Initial Superfund Management Budget)**
- Exhibit “18”**  
**(Initial Superfund Programs Budget)**
- Exhibit “19”**  
**(LAO Surface Enhancement and Land Use Plan)**
- Exhibit “20”**  
**(Multi-Pathway Program Protocol)**
- Exhibit “21”**

- (Schedule, Priorities and Objectives for Storm Water System improvement Plan)**
  - Exhibit “22”**
- (Criteria for Reclaimed Areas Guidebook Ordinance)**
  - Exhibit “23”**
- (Criteria for Storm Water Management Ordinance)**
  - Exhibit “24”**
- (Controlled Groundwater Areas Submittal Schedule)**
  - Exhibit “25”**
- (BSB Memorandum of Coverage)**
  - Exhibit “26”**
- (Funding Spreadsheet)**
  - Exhibit “27”**
- (BSB Position Paper)**
  - Exhibit “28”**
- (Outline for Groundwater Treatment System Operation and Maintenance Plan)**
  - Exhibit “29”**
- (Map of AR and BSB Kelley Mine Yard Properties)**
  - Exhibit “30”**
- (Map of Active Rail Road Properties and Rights-of Way)**
  - Exhibit “31”**
- (Potential After Acquired Properties Legal Description)**
  - Exhibit “32”**
- (MOU 119 Scope of Work)**
  - Exhibit “33”**
- (List of Expanded Lagoon Treatment System Upgrades)**
  - Exhibit 34**
- (Map of BSB Sewage Treatment Effluent Line Extension)**
  - Exhibit 35**
- (Multi-Pathway Program Trust Agreement)**
  - Exhibit 36**
- (Initial Multi-Pathway Program Budget)**