UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENTAL PROTECTION AGENCY, REGION VIII,
AND THE STATE OF MONTANA

IN THE MATTER OF: Anaconda Smelter Superfund Site, UNDER THE AUTHORITY OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601, et seq., as amended.	EPA Docket No.: CERCLA 94-12 **AMENDMENT OF AGREEMENT AND COVENANT NOT TO SUE**

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I. INTRODUCTION

1. On April 29, 1994, the United States Environmental Protection Agency ("EPA"); the State of Montana ("State"); Anaconda-Deer Lodge County ("ADLC"), a consolidated governmental entity organized under the Constitution and laws of Montana; and the Old Works Golf Course, Inc. (the "Authority"), a nonprofit corporation organized under the Constitution and laws of Montana; entered into an Agreement and Covenant Not to Sue, EPA Docket No. CERCLA 94-12 ("Agreement") at certain Properties, as defined in Section III, below, of the Anaconda Smelter Superfund Site ("Site").

2. EPA entered into the Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq* ("CERCLA"). The State entered into the Agreement pursuant to the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. 75-10-701, *et seq* ("CECRA").

3. This Amendment of the Agreement ("Amendment") is entered into voluntarily by and between the United States on behalf of EPA, the State by and through the Montana Department of Environmental Quality ("MDEQ"), ADLC, and the Authority.

4. This Amendment is entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States, consistent with CERCLA, 42 U.S.C. §§ 9601-9675. EPA is proceeding under the CERCLA authority vested in the President of the United States and delegated to the Administrator of EPA and further delegated to the undersigned Regional official. MDEQ on behalf of the State enters this Amendment under CECRA, Mont. Code Ann. 75-10-701, *et seq*.

5. As further detailed below, since 1994, additional Records of Decision ("RODs") and ROD amendments have modified remedial requirements, including institutional controls, and operations and maintenance with respect to the Site.

6. On or about December 13, 2019, ADLC, the Authority and AR entered into the Old Works Golf Course Agreement ("Golf Course Agreement"). In addition, on or about June 12, 2020, ADLC and AR entered into the Remedy Coordination, Funding, and Settlement Agreement ("Funding Agreement").

7. On June 12, 2020, EPA approved the Institutional Controls Implementation and Assurance Plan ("ICIAP"), incorporated herein.

8. Further, many of the properties for which ADLC and the Authority sought CERCLA and CECRA liability protections have since been reconfigured.

9. Given these changes in the circumstances relevant to the Agreement, the United States, the State, ADLC, and the Authority (collectively, the "Parties") agree that certain provisions of the Agreement and associated documents require extensive revision. Therefore, the Agreement and its obligations are being incorporated in their entirety into this Amendment and the Parties intend for this Amendment and the exhibits and documents incorporated herein to replace the Agreement and its exhibits. The scope of the Parties' respective covenants not to sue remain the same.

II. BACKGROUND

10. When executed, the Agreement contemplated that AR would transfer to ADLC certain properties in and near the town of Anaconda, Montana, located within the Site. Those properties were transferred on May 5, 1994.

11. The Agreement also contemplated that AR would construct a golf course on certain property transferred to ADLC. The Old Works Golf Course was constructed in 1997.

12. The Agreement provided that in return for covenants not to sue, ADLC and the Authority (collectively, "Settling Respondents") would implement and administer certain Institutional Controls to restrict the use and development of the Properties as defined in Section III, and perform certain operations and maintenance obligations regarding them. Settling Respondents have been fulfilling these obligations since executing the Agreement in 1994.

13. After the Parties entered into the Agreement, EPA issued RODs for the Community Soils ("CS") and the Anaconda Regional Water Waste and Soils ("ARWWS") Operable Units ("OUs") in 1996 and 1998, respectively. EPA also amended these RODs as more fully explained in Paragraphs 22 through 28.

14. Subject to all terms and conditions of this Amendment, including without limitation, the reservations and limitations contained in Sections XIII (Certification), XIV (Covenants Not to Sue), and XV (Reservation of Rights), the purposes of this Amendment are to:

a. Settle and resolve the potential liability of the Settling Respondents for the Existing Contamination at the Properties which may otherwise result from Settling Respondents' status as the owners of any part or portion of the Properties and all other activities undertaken on the Site to implement or fulfill the Settling Respondents' obligations as set forth in Section V of this Amendment;

b. Ensure that ADLC implements and enforces certain agreed upon Institutional Controls relating to the Properties, as well as to the Site as a whole, including the Development Permit System ("DPS") and restrictive covenants placed on the Properties pursuant to the terms

and conditions set forth in this Amendment, which may from time to time be amended by the Parties;

c. Provide for performance by ADLC and the Authority of certain operation and maintenance obligations on the Golf Course Parcel on the Properties and other obligations;

d. Establish the conditions of and restrictive covenants for any potential future development which may occur on the Properties;

e. Ensure access to and use of the Properties for purposes of implementation, operation and maintenance of the Remedy, and any other Response Action, as defined below; and

f. Ensure that ADLC and the Authority not take any action, directly or indirectly, which interferes with, is inconsistent with, hinders, delays, diminishes, or frustrates the effectiveness, purposes, or integrity of the Remedy or any Response Action.

15. The Settling Respondents agree to undertake all actions required by the terms and conditions of this Amendment and further agree that they will not contest the basis or validity of this Amendment or its terms, or the United States' right to enforce this Amendment. The Parties recognize that this Amendment has been negotiated in good faith and that the actions undertaken by Settling Respondents in accordance with this Amendment do not constitute an admission of any liability. The resolution of the potential liability of the Settling Respondents, in exchange for provision by the Settling Respondents to EPA and the State of benefits that would otherwise not be available to EPA and the State, is in the public interest.

III. DEFINITIONS

16. Unless otherwise expressly provided herein, terms used in this Amendment which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

"ADLC" shall mean Anaconda-Deer Lodge County, its officials and representatives.

"Administrative Order," "Unilateral Administrative Order" or "AO" shall mean any of the following:

AO Docket No. CERCLA-08-91-26, September 20, 1991, directing AR to implement the time critical removal action for the Teresa Ann Terrace Elkhorn Apartments and Cedar Park Homes;

AO Docket No. CERCLA VIII 94-08, issued by EPA on April 7, 1994, directing AR to implement the remedy outlined in the ROD for the OW/EADA OU;

AO Docket No. CERCLA-08-2001-01, December 11, 2000, requiring AR to perform remedial action at Remedial Design Unit (RDU) 4, Anaconda Ponds, of the ARWWS OU;

AO Docket No. CERCLA-08-2002-07, June 7, 2002, requiring AR to perform remedial action at the Triangle Waste Area of the Opportunity Ponds RDU, RDU 8, ARWWS OU;

AO Docket No. CERCLA-08-2002-09, September 9, 2002, requiring AR to perform remedial action at the Aspen Hill Loop Track Area of the Smelter Hill Uplands and Smelter Hill Facilities RDUs, RDUs 3 and 14, ARWWS OU;

AO Docket No. CERCLA-08-2002-08, September 14, 2002, directing AR to implement the remedy outlined in the ROD for the CS OU;

AO Docket No. CERCLA-08-2002-10, September 23, 2002, requiring AR to perform remedial action at RDU 1, Portion of Area 4 of Stucky Ridge, ARWWS OU;

AO Docket No. CERCLA-08-2003-0017, October 13, 2003, requiring AR to perform remedial action at the Slag Remedial Design Unit, RDU 12, ARWWS OU;

AO Docket No. CERCLA-08-2003-0018, November 3, 2003, requiring AR to perform remedial action at the West Portion of the Active Railroad Bed RDU, RDU 5, ARWWS OU;

AO Docket No. CERCLA-08-2004-0001, October 20, 2003, requiring AR to perform remedial action at the Cashman Concentrate RDU, RDU 11, ARWWS OU;

AO Docket No. CERCLA-08-2005-0007, August 5, 2005, requiring AR to perform remedial action at the West Galen Expansion Area of the North Opportunity RDU, RDU 7, ARWWS OU;

AO Docket No. CERCLA-08-2007-0008, June 5, 2007, requiring AR to perform remedial action at the South Opportunity Uplands RDU, RDU 6, ARWWS OU;

AO Docket No. CERCLA-08-2008-0009, September 22, 2008, requiring AR to perform remedial action at the North Opportunity Uplands, RDU 7, ARWWS OU;

AO Docket No. CERCLA-08-2010-0004, September 9, 2010, requiring AR to perform remedial action at the Fluvial Tailings RDU, RDU 9, ARWWS OU;

AO Docket No. CERCLA-08-2010-0005, September 9, 2010, requiring AR to perform remedial action at the East Portion of the Active Rail Bed/Blue Lagoon RDU, RDU 5, ARWWS OU;

AO Docket No. CERCLA-08-2011-0009, issued by EPA on June 2, 2011, requiring AR to perform remedial action at the Smelter Hill RDU, RDU 14, ARWWS OU;

AO Docket No. CERCLA-08-2015-0010, September 24, 2015, requiring remedial action at the Warm Springs Creek RDU, RDU 10, ARWWS OU;

AO Docket No. CERCLA-08-2015-0011, September 24, 2015, directing AR to implement the remedy outlined in the ROD and ROD amendment for the CS OU; and

AO Docket No. CERCLA-08-2016-0005, June 17, 2016, requiring remedial action at the Smelter Hill Uplands RDU, RDU 3, ARWWS OU.

"Agreement" shall mean the Agreement and Covenant Not to Sue, EPA Docket No. CERCLA 94-12, that was entered on April 29, 1994.

"Amendment" shall mean this Amendment of Agreement and Covenant Not to Sue and all documents and workplans incorporated herein (listed in Section XXIV (Exhibits and Documents Incorporated by Reference)). In the event of conflict between this Amendment and any document incorporated herein, this Amendment controls.

"Effective Date" shall mean the effective date of this Amendment as provided in Section XXI (Effective Date).

"ARWWS OU" shall mean the Anaconda Regional Water, Waste, and Soils Operable Unit of the Anaconda Smelter Superfund Site.

"AR" shall mean the Atlantic Richfield Company.

"Authority" shall mean the Old Works Golf Course, Inc., its officers and representatives.

"CECRA" shall mean the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. 75-10-701, *et seq*.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 100 Stat. 9613.

"CS OU" shall mean the Community Soils Operable Unit of the Anaconda Smelter Site.

"Consent Decree" shall mean the Consent Decree for the Anaconda Smelter NPL Site negotiated by the United States, the State, and AR. It is anticipated that the Consent Decree will be lodged and entered in *United States of America and the State of Montana v. Atlantic Richfield Company*, Civil Action No. CV89-039-BU-SEH, in the second half of 2022.

"Dedicated Developments" shall mean properties located within the Site which are restricted under the Remedy to a certain use and may be developed only in accordance with that use, such as the Old Works Golf Course.

"Development Permit System" or "DPS" shall mean Articles II, XXX, XXXI, and XXXIV of Chapter 24 of the Anaconda-Deer Lodge County Code as it may from time to time be properly

amended by the Anaconda-Deer Lodge Board of Commissioners. The DPS is attached as Appendix A to the ICIAP.

"Effective Date" shall mean the written notice date specified in Paragraph 80.

"EPA" shall mean the United States Environmental Protection Agency and any successor agency or department.

"Existing Contamination" means:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Properties prior to or as of the Effective Date;

b. any hazardous substances, pollutants or contaminants that migrated from the Properties prior to the Effective Date; and

c. any hazardous substances, pollutants or contaminants present or existing at the Site as of the Effective Date that migrate onto or under or from the Properties after the Effective Date.

"Explanation of Significant Differences" or "ESD" shall have the meaning set forth in Section 117(c) of CERCLA, 42 U.S.C. § 9617(c).

"Final Old Works Golf Course Operations and Maintenance Plan" shall mean the Old Works Golf Course Operations and Maintenance (O&M) Plan, September 26, 2019, which is incorporated herein as Exhibit A.

"Funding Agreement" shall mean the Remedy Coordination, Funding, and Settlement Agreement dated and effective as of June 12, 2020, by, between and among AR and ADLC, as such agreement may from time to time be properly amended. Among other things, the Funding

Agreement provides for funding for operations and maintenance on various parcels of the Properties and implementation of ICs at the Site by ADLC.

"Golf Course Agreement" shall mean the Old Works Golf Course Agreement dated and effective as of the 13th day of December, 2019, entered into by, between and among AR, ADLC, and the Authority, as such agreement may from time to time be properly amended.

"ICIAP" shall mean the Institutional Controls Implementation and Assurance Plan approved by EPA on June 12, 2020.

"Institutional Controls" shall mean rules, regulations, laws, ordinances, dedicated developments, restrictive covenants, easements, historic preservation and groundwater controls/restrictions that address land use and access for a particular area. Such controls may take the form of covenants, licenses, access agreements, deed restrictions, zoning controls (such as the DPS), and other use or access restrictions. Since June 12, 2020, "Institutional Controls" shall mean the governmental controls, proprietary controls, and informational devices and other program services described in the ICIAP.

"MDEQ" shall mean the Montana Department of Environmental Quality.

"Mill Creek OU" shall mean the Mill Creek Operable Unit of the Anaconda Site.

"OW/EADA OU" shall mean the Old Works/East Anaconda Development Area Operable Unit of the Anaconda Site.

"Parties" shall mean the United States, the State, ADLC, and the Authority.

"Properties" shall mean the six properties listed below, as well as the three properties listed under "Reconfigured Parcels," all of which ADLC acquired from AR under the May 5, 1994 Real Property Conveyance/Transfer Agreement between AR, ADLC, and the Authority.

East Anaconda Yards Parcel

Drag Strip Parcel

Mill Creek Parcel

Stucky Ridge Parcel

Ballfields/Industrial Park Parcel

Lumber Yard Parcel

"Reconfigured Parcels" shall mean the following three properties originally conveyed by ARCO to ADLC under the May 5, 1994 Real Property Conveyance/Transfer Agreement, whose boundaries have since been reconfigured, as shown in the corrected deeds recorded by AR and ADLC in 2019 and 2020 and incorporated herein:

Golf Course Parcel

Old Works Trail System Parcel

Red Sands/Arbiter Parcel

"Release" shall mean the past, present, or future migration of hazardous substances from the Properties or Site which constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

"Remedy" shall mean the Remedy outlined in the ROD and ROD amendments for the ARWWS OU, executed by EPA on September 29, 1998, September 29, 2011, and June 12, 2020, respectively; the ROD and ROD amendment for the CS OU, executed by EPA on September 30, 1996 and September 30, 2013, respectively; the CS OU Explanations of Significant Differences ("ESDs") issued on June 19, 2017 and June 12, 2020; the ROD for the OW/EADA OU, executed by EPA on March 8, 1994; and the OW/EADA OU ESDs issued on November 6, 1995 and June 12, 2020, all with concurrence by the State. "Remedy" shall also include any amendments to these decision documents.

"Response Action" shall have the meaning provided for at CERCLA Section 101(25), 42 U.S.C. § 9601(25), which meaning, for the purpose of this Amendment only, shall also include restoration or other activity resulting from the State's natural resources damages claims under CERCLA Section 107(a) and (f), 42 U.S.C. § 9607(a) and (f).

"RI/FS" or "remedial investigation / feasibility study" shall have the meaning provided for at 40 C.F.R. § 300.5.

"Settling Respondents" shall mean Anaconda-Deer Lodge County and the Old Works Golf Course Authority. Settling Respondents are "person[s]" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and Settling Respondents, their officers, directors, employees, and agents, are owners of a facility within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

"Site" shall mean the Anaconda Smelter Superfund Site, placed on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40,658.

"State" shall mean the State of Montana and each department, agency, and instrumentality of the State.

"Successor in Interest and Assigns" shall mean any "person" as defined in CERCLA Section 101(21), 42 U.S.C. § 9601(21), who is granted, acquires or receives any right, title, or interest, including through sale, lease, sublease, or other disposition, to (i) any of the Properties subsequent to the Effective Date of this Amendment, or (ii) any of the rights, duties, and obligations arising under this Amendment subsequent to the Effective Date of this Amendment.

"United States" means the United States of America and each department, agency, and instrumentality of the United States.

"Work" shall mean those activities Settling Respondents agree to perform that are set forth in Sections V (Consideration), VI (Access/Notice to Successors in Interest), VII (Information Exchange and Evaluations), IX (Performance), and X (Due Care).

IV. SITE HISTORY

17. Commencing in 1982, EPA initiated certain actions pursuant to Section 104 of CERCLA to address contamination in Anaconda-Deer Lodge County and neighboring areas associated with historic mining and smelting activities.

18. EPA designated the contaminated areas of Anaconda-Deer Lodge County as the Anaconda Smelter Superfund Site and listed the Site on the National Priorities List in 1983.

19. AR is the primary potentially responsible party under CERCLA with respect to the Site and has conducted all response actions at the Site as outlined below.

20. Under EPA oversight, with EPA approval, and before execution of the Agreement, AR conducted Response Actions within the boundaries of the OW/EADA and Mill Creek OUs. These

included: the Mill Creek Response Action conducted pursuant to Mill Creek Partial Consent Decree, *United States of America and the State of Montana v. Atlantic Richfield Company*, Civil Action No. 88-32, United States Court for the District of Montana, September 19, 1988; the Old Works Removal Action, conducted pursuant to Administrative Order on Consent, Docket No. CERCLA VIII-92-11, April 2, 1992; and the Accelerated Removals Expedited Response Action, conducted pursuant to Administrative Order on Consent, Docket No. CERCLA VIII-92-12, July 8, 1992; and additional remedial actions.

21. OW/EADA OU - AR conducted an RI/FS at the OW/EADA OU, and submitted an OW/EADA RI/FS report to EPA pursuant to Administrative Order on Consent, Docket No. CERCLA VIII-88-16, Amendment No. 6, which AR and EPA entered into on September 28, 1992. The OW/EADA RI/FS report evaluated the nature and extent of contamination at the OW/EADA OU and identified and evaluated remedial alternatives to address such contamination.

22. In September 1993 EPA issued a proposed plan for the OW/EADA OU and on March 8, 1994 EPA, with the State's concurrence, executed a ROD, which sets forth the Remedy to be implemented under CERCLA at the OW/EADA OU. EPA issued an Explanation of Significant Differences for the OW/EADA OU on November 6, 1995. The Remedy includes, inter alia: construction of engineered covers over waste materials in recreational and potential commercial/industrial areas exceeding arsenic levels of 1,000 parts per million ("ppm"); treatment of soils exceeding arsenic levels of 1,000 ppm in recreational and potential commercial/industrial areas using innovative revegetation treatment techniques; covering or treatment of soils exceeding arsenic levels of 500 ppm in current commercial/industrial areas; arranging for future remediation of potential residential or commercial/industrial areas, at the time of development, to the action levels set through the RODs; implementation of Institutional Controls to protect the above engineering controls and manage future land and water use; preservation of historic features in the Old Works Historic District, to the extent

practicable; and establishment of Dedicated Developments, as defined in the OW/EADA ROD. This Remedy, which AR chose to implement in part through construction of the Old Works Golf Course, was implemented as required in an Administrative Order ("AO") issued by EPA to AR in 1994 and the Consent Decree, and AR has now completed the Remedial Action for the Old Works Golf Course. Certain components of the Institutional Controls required pursuant to the OW/EADA Remedy have been implemented by ADLC as provided by the Agreement.

23. AR has conducted and will continue to conduct Response Actions in connection with the Remedy selected in the OW/EADA ROD on certain of the Properties it conveyed to ADLC.

24. In 2022 EPA issued a Ready for Reuse determination to document that all Properties subject to the OW/EADA ROD can support commercial/industrial use and will remain protective of human health and the environment, as long as all required response conditions and use limitations identified in the Site's response decision documents and land title documents continue to be met.

25. CS OU - AR conducted an RI/FS at the CS OU and submitted a CS OU RI/FS report to EPA pursuant to Administrative Order on Consent, Docket No. CERCLA VIII-88-16, Amendments No. 7 and 8, which AR, the State, and EPA entered into on September 30, 1994 and November 27, 1995, respectively. The CS RI/FS evaluated the nature and extent of contamination at the CS OU and identified and evaluated remedial alternatives to address such contamination.

26. On July 8, 1996, EPA issued a proposed plan for the CS OU and on September 25, 1996, EPA, with the State's concurrence, executed a ROD, which sets forth the Remedy to be implemented under CERCLA at the CS OU. The EPA issued a proposed plan on September 28, 2012, and a ROD amendment for the CS OU on September 30, 2013 with the State's concurrence. EPA issued Explanations of Significant Differences for the CS OU on June 19, 2017, and on June 12, 2020. The Remedy, as amended, includes the following components: cleanup of soils in current residential areas

within the Site exceeding the action levels of 250 ppm arsenic or 400 ppm lead through removal, replacement with clean soil, and placement of a vegetative or other protective barrier; addressing lead paint on houses by owners or some other program; cleanup of all future residential soils, through the DPS at the time of development, exceeding the action level of 250 ppm arsenic and 400 ppm lead; implementation of Institutional Controls to provide educational information to all residents describing potential risks and recommendations to reduce exposure to residual contamination. This Remedy has been or is being implemented as required in AOs issued by EPA to AR in 2002 and 2015.

27. ARWWS OU - AR worked on an RI/FS for the ARWWS OU from about December 1995 to about July 1996 pursuant to Administrative Order on Consent, Docket No. CERCLA VIII-88-16, Amendment No. 8, which AR and EPA entered into on November 27, 1995. EPA completed the RI/FS from about July 1996 to September 1998. The ARWWS RI/FS evaluated the nature and extent of contamination at the ARWWS OU and identified and evaluated remedial alternatives to address such contamination.

28. In October 1997 EPA issued a proposed plan for the ARWWS OU and on September 29, 1998 EPA, with the State's concurrence, executed a ROD, which sets forth the Remedy to be implemented under CERCLA at the ARWWS OU. The EPA issued ROD amendments for the ARWWS OU on September 30, 2011, and on June 12, 2020 with the State’s concurrence. The Remedy, as amended, includes the following components: consolidation of miscellaneous waste materials; placement of engineered covers over waste management areas; treatment of contaminated soils; implementation of storm water controls and Institutional Controls, including the monitoring and regulation of, and provision of point of use treatment for domestic wells in groundwater areas. A technical impracticality waiver for arsenic in groundwater has been applied to large areas of the Site. This Remedy has been or is being implemented as required in AOs issued by EPA to AR in 2000, 2002, 2003, 2004, 2005, 2007, 2008, 2010, 2011, 2015, and 2016, and the Consent Decree.

29. AR-ADLC Property Transfers - After execution of the Agreement, on May 5, 1994 ADLC received title to the Properties, including the Reconfigured Parcels as originally surveyed and deeded, from AR pursuant to the 1994 Conveyance Agreement.

30. The Authority subsequently acquired an interest in certain real property located within one of the Properties, the Golf Course Parcel. The Golf Course Parcel became the location of the Old Works Golf Course.

31. AR constructed the Old Works Golf Course and certain appurtenant facilities and the Old Works Historic Trail, completing work in 1997. These are now considered by the Parties as Dedicated Developments.

32. The 1994 Conveyance Agreement governing the conveyance of the Properties imposed certain Institutional Controls and operations and maintenance obligations on ADLC and the Authority with respect to certain portions of the Properties. Since 1994, ADLC has implemented Institutional Controls related to the Properties as required by the 1994 Conveyance Agreement and the Agreement. These Institutional Controls have included adopting and implementing the DPS to enforce restrictions on the use and development of the Properties, and the enforcement of restrictive covenants on the Properties. ADLC has also performed certain operations and maintenance obligations regarding the Properties required by the 1994 Conveyance Agreement and the Agreement.

33. On December 13, 2019, AR and ADLC entered into the Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Golf Course Parcel), Exhibit B. This agreement provides for reconfiguration of the legal description of the Golf Course Parcel and modification of restrictive covenants for the Golf Course and Hotel Parcels. This agreement and deeds have been recorded and are incorporated herein.

34. On July 9, 2020, AR and ADLC entered into the Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Old Works Historic Trail Parcel), Exhibit C. This agreement provides for modification of the legal description and restrictive covenants of the Old Works Historic Trail Parcel. This agreement and deed have been recorded and are incorporated herein.

35. On July 9, 2020, AR and ADLC entered into the Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Red Sands), Exhibit D. This agreement provides for modification of the legal description and restrictive covenants for the Red Sands Parcel. This agreement and deed have been recorded and are incorporated herein.

36. On July 9, 2020, AR and ADLC entered into Modification of Restrictive Covenants Agreements for the East Anaconda Yards Parcel, the Drag Strip Parcel, the Mill Creek Parcel, and the Stucky Ridge Parcel, Exhibits E, F, G, and H. These agreements and deeds have been recorded and are incorporated herein.

37. It is anticipated that the United States Court for the District of Montana will enter the Consent Decree in the second half of 2022. It is further anticipated that as of the effective date of the Consent Decree, AR's obligations under the Administrative Orders will be replaced and superseded by the requirements of the Consent Decree.

V. CONSIDERATION

38. In consideration of and in exchange for the Covenant Not to Sue herein, Settling Respondents shall each conduct all activities on the Properties and the Site in accordance with all final performance standards and Institutional Controls provided for in the Anaconda Site RODs, as amended, or other remedial decision documents. In addition, Settling Respondents shall perform or cause to have performed the obligations set forth below in accordance with such performance standards and Institutional Controls. Should EPA or the State conclude that action or inaction by a Settling Respondent

results, or would result, in the failure of the Settling Respondent to undertake complete and satisfactory performance of an obligation under this Amendment, EPA or the State shall provide the Settling Respondent written notice of any such conclusion and provide the Settling Respondent a reasonable opportunity to expeditiously cure any such deficiency. The opportunity to expeditiously cure deficiencies is limited to Settling Respondents and is not transferrable pursuant to Paragraph 75. If, after having had time to expeditiously cure any deficiency, a Settling Respondent fails to perform an obligation set forth below applicable to that Settling Respondent, the covenant not to sue in Section XIV shall be null and void as to that Settling Respondent, and the United States and the State reserve all rights they have to compel performance.

a. Development Permit System. ADLC has adopted the DPS which, among other things, provides restrictions on the use and development of lands in Anaconda-Deer Lodge County, including the Properties. The DPS, including revisions as of the date of this Amendment, is incorporated herein. ADLC and the Authority shall comply with the DPS and ADLC shall enforce DPS provisions throughout Anaconda-Deer Lodge County to ensure that all Site properties are used or developed only in compliance with the restrictions of the DPS, this Amendment, and applicable environmental laws.

b. Final Old Works Golf Course Operations and Maintenance Plan, September 26, 2019. Settling Respondents shall implement and perform the actions required of them under the Final Old Works Golf Course Operations and Maintenance Plan incorporated herein as Exhibit A, as properly amended. In the event that either Settling Respondent subsequently conveys its interest in the Golf Course Parcel, that Settling Respondent shall have a continuing duty to perform its obligations under this subparagraph. This obligation shall terminate if the golf course is re-conveyed to AR.

c. Residential Attic Abatement Implementation Plan. Settling Respondent ADLC shall implement and perform the actions required of it under the Residential Attic Abatement Implementation Plan, incorporated herein as Exhibit I.

d. Interior/Exterior Dust Program. Settling Respondent ADLC shall implement and perform the actions required of it under the Interior/Exterior Dust Program Plan, which is described in Section 6.3.2 of the ICIAP.

e. Community Protective Measures Program. Settling Respondent ADLC shall implement and perform the actions required of it under the Community Protective Measures Program Plan, Appendix F, to the ICIAP.

f. Restrictive Covenants.

i. The Properties were originally conveyed by AR to ADLC by quit claim deeds in 1994, each deed containing restrictive covenants, some of which have now been altered, eliminated, or amended.

ii. The Ballfields/Industrial Park and Lumber Yard parcels were originally transferred in 1994 and have not been modified. Settling Respondents and Successors in Interest and Assigns of Settling Respondents shall comply with and enforce the restrictive covenants in the original 1994 deeds for the above parcels, Exhibits J and K.

iii. In 2019 and 2020, modification agreements for the Golf Course Parcel (including the Hotel Parcel), Old Works Trail System Parcel, and Red Sands Parcel modified legal descriptions and restrictive covenants. In 2020, modification agreements for the Drag Strip Parcel, East Anaconda

Yards Parcel, Mill Creek Parcel, and Stucky Ridge Parcel modified certain restrictive covenants applicable to the respective parcels. Settling Respondents and Successors in Interest and Assigns of Settling Respondents shall comply with and enforce the restrictive covenants in the deeds, as modified by the modification agreements, for the above parcels.

iv. The Parties acknowledge that the modification agreements recorded for the Properties in 2019 and 2020 contain amended provisions relating to the operation, implementation, and enforcement of the restrictive covenants. Accordingly, to the extent that the terms and conditions of the restrictive covenants set forth in the modification agreements conflict with the terms and conditions of the restrictive covenants generally described in Section 6.2 of the ICIAP, the terms and conditions of the restrictive covenants in the modification agreements shall control.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST AND ASSIGNS

39. Settling Respondents hereby grant to EPA and the State, their authorized officers, employees, and representatives, an irrevocable immediate right of access to any property owned by the respective Settling Respondent and to which access is required for the implementation of Response Actions at the Site under federal or state law, to the extent access to such property is controlled by the Settling Respondents. EPA and the State agree to provide to Settling Respondents reasonable notice of the timing of Response Actions to be undertaken at the Properties. Notwithstanding any provision of this Amendment, EPA and the State shall retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et. seq*., CECRA, and any other applicable statute or regulations.

40. Nothing in this Amendment shall in any manner restrict or limit the nature or scope of Response Actions which may be taken by EPA or the State in fulfilling their responsibilities under federal or State law. The Settling Respondents recognize that the implementation of Response Actions may interfere with their use of the Properties. The Settling Respondents shall fully cooperate with EPA and the State in the implementation of Response Actions at the Properties and shall not interfere with such Response Actions. EPA and the State agree, consistent with their responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondents' current and future operations by such entry and response.

41. The Settling Respondents will provide access requested by AR to timely implement Response Actions at the Site.

42. The Settling Respondents shall notify any Successors in Interest or Assigns of the Properties of their obligation to provide the same access and cooperation. The Settling Respondents shall provide a copy of this Amendment to any current lessee or sublessee on the Properties within 30 days of the Effective Date and shall ensure that any lessee, sublessee or transferee of any of the Properties is informed of the CERCLA liability protections provided by the bona fide prospective purchaser provision, Section 107(r) of CERCLA and EPA's *Enforcement Discretion Guidance Regarding Statutory Criteria for Those Who May Qualify as CERCLA Bona Fide Prospective Purchasers, Contiguous Property Owners, or Innocent Landowners ("Common Elements"), July 29, 2019*.

VII. INFORMATION EXCHANGE AND EVALUATIONS

43. ADLC shall prepare and submit to EPA and the State annually a report concerning its obligations under this agreement by March 1 of each year for the previous calendar year. ADLC may

fulfill this requirement in part by providing to EPA and the State a copy of the report relating to ICs as provided for in Section 3.5 of the Funding Agreement.

44. ADLC will schedule and EPA will attend Annual Performance Evaluation Meetings with the State, Settling Respondents, and AR. For each annual cycle of report preparation and review, the Performance Evaluation Meeting will be scheduled within 60 days following the filing of the ADLC annual report.

45. Settling Respondents shall timely provide any other information requested by EPA or the State relating to their obligations under this Amendment, including all information necessary to support five-year reviews of the OW/EADA, ARWWS, and CS remedies for the Site.

VIII. ENHANCED FIVE-YEAR REVIEW PROCESS

46. Notices of failure to perform obligations assumed in Section V (Consideration). EPA will entertain notices from any person concerning ADLC's performance in implementing the Work provided for in Section V (Consideration), above. Any such notices will be handled under Section IX (Performance). EPA will consider notices of deficiencies and ADLC's responses to any such notices in its Five-year reviews, as provided in the following Paragraph.

47. Five-year Reviews. EPA will assess Settling Respondents' performance of any Work provided for in Section V (Consideration) in the ordinary course of its Site remedy protectiveness reviews performed pursuant to Section 121(c) of CERCLA no less often than every five years. ADLC and the Authority will provide access and other support reasonably requested by AR to timely implement Response Actions at the Site required by EPA as a result of the Section 121(c) review process.

IX. PERFORMANCE

48. Upon receipt of written notice from EPA of any failure to perform any obligations described in Section V (Consideration), the Settling Respondent(s) to which notice is addressed agrees:

a. Within 7 days following receipt of notice, to provide a written response to EPA and the State identifying steps taken or to be taken to address EPA's specific concerns;

b. Within 30 days of the date of the Settling Respondent's notice, to meet with EPA, the State, and other interested parties to review the circumstances discussed in any such written notice, if requested by one or more of the Parties to this Amendment; and

c. To timely notify EPA and the State of any correction of the non-compliance or deficiency in performance identified in EPA's written notice.

X. DUE CARE

49. Nothing in this Amendment shall be construed to relieve the Settling Respondents of their duty to exercise due care at the Properties with respect to the hazardous substances concerned, or their duty to comply with all applicable State and federal laws and regulations.

50. Emergency Response and Reporting. If any event occurs during performance of the Work that causes or threatens to cause a release of hazardous substances on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Settling Respondents shall:

a. Immediately take all appropriate action to prevent, abate, or minimize such release or threat of release;

b. Immediately notify the authorized EPA officer orally; and

c. Take such actions in consultation with the authorized EPA officer.

XI. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Amendment, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Amendment. The Parties shall attempt to resolve any disputes concerning this Amendment expeditiously and informally. If EPA contends that either Settling Respondent is in violation of this Amendment, EPA shall notify such Settling Respondent in writing, and pursuant to the procedure set forth in Section IX of this Amendment, setting forth the basis for its position. The Settling Respondent receiving such written notice may dispute EPA's position as set forth herein. EPA's decisions under this Section will be made in consultation with MDEQ.

52. **Informal Dispute Resolution**. If one or more Settling Respondents object to any EPA action taken pursuant to this Amendment, the Settling Respondent may send EPA a written Notice of Dispute describing the objection(s) within 7 days after such action. EPA and Settling Respondents shall have a mutually agreeable time period no greater than 45 days from EPA's receipt of Settling Defendants' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Amendment.

53. **Formal Dispute Resolution**. If the disputing Parties are unable to reach an agreement within the Negotiation Period, the disputing Parties shall, within a mutually agreeable time no greater than 45 days after the end of the Negotiation Period, submit a statement of position to the Remedial Project Manager ("RPM"). EPA may, within 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the EPA Region 8 Division Director level or higher will issue a written decision on the dispute to the disputing Parties. EPA's decision shall be incorporated into

and become an enforceable part of this Amendment. Settling Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

54. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Settling Respondents under this Amendment.

XII. FORCE MAJEURE

55. "Force Majeure," for purposes of this Amendment, is defined as any event arising from causes beyond the control of Settling Respondents, of any entity controlled by Settling Respondents, or of Settling Respondents' contractors that delays or prevents the performance of any obligation under this Amendment despite Settling Respondents' best efforts to fulfill the obligation. The requirement that Settling Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Amendment for which Settling Respondents intend or may intend to assert a claim of force majeure, Settling Respondents shall notify EPA's Remedial Project Manager, orally or, in his or her absence, an on-call EPA Region 8 On-Scene-Coordinator, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund and Emergency Management Division, EPA Region 8, within 20 days of when Settling Respondents first knew that the event might cause a delay. Within 7 days thereafter, Settling Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to

prevent or mitigate the delay or the effect of the delay; Settling Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Settling Respondents shall be deemed to know of any circumstance of which Settling Respondents, any entity controlled by Settling Respondents, or Settling Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 55 and whether Settling Respondents have exercised best efforts under Paragraph 55, EPA may, in its unreviewable discretion, excuse in writing Settling Respondents' failure to submit timely or complete notices under this Paragraph.

57. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Amendment that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Settling Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

58. If either Settling Respondent elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In

any such proceeding, Settling Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Respondents complied with the requirements of Paragraphs 54 and 55. If Settling Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Settling Respondents of the affected obligation of this Amendment identified to EPA.

59. The failure by EPA to timely complete any obligation under this Amendment is not a violation of this Amendment, provided, however, that if such failure prevents Settling Respondents from meeting one or more deadlines under this Amendment, Settling Respondents may seek relief under this Section.

XIII. CERTIFICATION

60. Settling Respondents certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA and the State all information currently in their possession or control and in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any contamination or potential contamination at the Properties and to their qualification for this Amendment. Settling Respondents also certify that to the best of their knowledge and belief they have not caused or contributed to a release of hazardous substances at the Properties. If EPA and the State determine that information provided by either Settling Respondent is false or not materially accurate and complete, the covenants not to sue in Paragraph 61 shall be null and void as to that Settling Respondent and the United States and the State reserve all rights they may have.

XIV. COVENANTS NOT TO SUE

61. United States' and the State's Covenants Not to Sue. Subject to the Reservation of Rights in Section XV of this Amendment, and conditioned upon Settling Respondents' satisfactory performance of their respective obligations under this Amendment:

a. the United States covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to CERCLA Section 106 or 107(a), 42 U.S.C. § 9606 or 9607(a) with respect to the Existing Contamination at the Properties; and,

b. the State covenants not to sue or take any other civil or administrative action against Settling Respondents for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a) and Mont. Code Ann. 75-10-701, *et seq*. with respect to the Existing Contamination at the Properties; and any claims of the State for natural resource damages pursuant to Section 107(a) and (f) of CERCLA, 42 U.S.C § 9607(a) and (f), with regard to any Existing Contamination at the Properties.

62. These covenants not to sue by the United States and the State are effective as of the Effective Date. These covenants extend only to Settling Respondents and do not extend to any other person.

63. These covenants not to sue by the United States and the State are not a general release under federal law or the law of any state.

64. With respect to any claim or cause of action asserted by the United States and/or the State, the Settling Respondents shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

65. Settling Respondents' Covenant Not to Sue. In consideration of the covenants not to sue in Paragraph 61, the Settling Respondents agree not to assert any claims or causes of action against the United States or the State, their authorized officers, employees, representatives, or the Hazardous Substance Superfund pursuant to Section 106(b)(2) of CERCLA, 42 U.S.C. § 106(b)(2), or any direct or indirect claim for reimbursement or funding under State law, including any direct or indirect claim for reimbursement from the Environmental Quality Protection Fund (established pursuant to MCA 75-10-704), the Orphan Share Account (established pursuant to MCA 75-10-743); or any other provision of law, arising from Existing Contamination, or for reimbursement of funds expended, expenses incurred, payments made, or work performed relating to the Site or the Properties, or to seek any other costs, damages, or attorney's fees from the United States, the State, or their contractors or employees arising out of Response Actions at or in connection with the Site or the Properties, including claims based on EPA's oversight of such Response Actions or approval of plans for such Response Actions. This covenant not to sue shall include all claims or causes of action for interference with contracts, business relations and economic advantage. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Section 307.14.

XV. RESERVATION OF RIGHTS

66. Notwithstanding the Covenants not to sue by the United States and the State set out in Paragraph 61 above, nothing in this Amendment is intended to be nor shall it be construed to be a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity, which the United States or the State has against the Settling Respondents for:

a. Any liability as a result of failure to provide access, notice and cooperation, or failure to otherwise comply with Section VI (Access/Notice to Successors in Interest and Assigns);

b. Any liability as a result of failure to exercise due care with respect to hazardous substances at the Properties;

c. Any liability as a result of failure to perform the obligations under this Amendment;

d. Any liability resulting from past releases of hazardous substances at the Properties caused or contributed to by Settling Respondents, their lessees or sublessees;

e. Any liability resulting from past or future exacerbation by the Settling Respondents, their lessees and sublessees, their Successors in Interest and Assigns, of the release or threat of release of hazardous substances from the Properties;

f. Any liability resulting from the creation of new releases or threats of release of hazardous substances, pollutants, or contaminants by any person at the Properties, except what is defined as Existing Contamination;

g. Failure to cooperate and/or interference with EPA, the State, their Response Action contractors, or other persons conducting Response activities under EPA or State oversight in the implementation of Response Actions at the Properties;

h. Future transportation or disposal of hazardous substances from the Properties;

i. Any and all criminal liability; and

j. Liability for violations of federal or state law that occur during Settling Respondents' ownership of the Properties.

67. Nothing in this Amendment is intended to limit, or constitute a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or

in equity, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Amendment.

68. Nothing in this Amendment is intended to limit the right of EPA or the State to undertake future Response Actions at the Properties or the Site or to seek to compel parties other than the Settling Respondents to perform or pay for Response Actions or to pay for natural resource damages at the Properties or the Site. Nothing in this Amendment shall in any way restrict or limit the nature or scope of Response Actions which may be taken or be required by EPA or the State in exercising their authority under federal or State law. Settling Respondents acknowledge that they have taken and will take title to properties where Response Actions may be required. The Settling Respondents further recognize that the implementation of Response Actions may interfere with the Settling Respondents' use of the Properties, and may require closure of their operations or a part thereof, provided, however, that any and all Response Actions shall be conducted in a manner that is intended to provide the least interference with then existing operations on the Site.

69. The Parties agree that the Settling Respondents' entry into this Amendment, and the actions undertaken by the Settling Respondents in accordance with or pursuant to the Amendment, Institutional Controls, and/or the DPS, and the Final Old Works Golf Course Operations & Maintenance Plan do not constitute an admission of any liability by the Settling Respondents.

XVI. EFFECT OF SETTLEMENT / CONTRIBUTION

70. Nothing in this Amendment precludes the United States, the State or Settling Respondents from asserting any claims, causes of action, or demands for indemnification, or contribution against any person not a party to this Amendment. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to

pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA.

71. The Parties agree that this Amendment constitutes an administrative settlement pursuant to which Settling Respondents have resolved any and all liability to the United States and/or the State within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.§§ 9613(f)(2) and 9622(h)(4) and/or Section 719(1) of CECRA, 75-10-719(1) MCA, and are entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA and/or Section 719(1) of CECRA, or as may be otherwise provided by law, for the "matters addressed" in this Amendment. The "matters addressed" in this Amendment are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or State or any other person for the Properties with respect to Existing Contamination and all actions or costs related to natural resource damages by the State or any other person for the Properties with respect to Existing Contamination; provided, however, that if the United States or State exercises rights under the reservations in Section XV (Reservation of Rights), other than in Subparagraphs 66.c. (liability for failure by a Settling Respondent to meet a requirement of this Amendment), 66.i. (criminal liability), or 66.j. (liability for violations of federal or state law that occur during Settling Respondents' ownership of the Properties), the "matters addressed" in this Amendment will no longer include those response costs or response actions that are within the scope of the exercised reservation. "Matters addressed" shall not include the enforcement of any right that any person may have arising from contractual obligations of Settling Respondents.

72. The Parties agree that this Agreement shall constitute an administrative settlement pursuant to which Setting Respondents have resolved any and all potential liability to the United States and/or the State within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

73. Settling Respondents shall, with respect to any suit or claim brought by either of them for matters related to this Amendment, notify EPA and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim. Settling Respondents shall, with respect to any suit or claim brought against them for matters related to this Amendment, notify EPA and the State in writing within ten (10) days after service of the complaint or claim upon them. In addition, Settling Respondents shall notify EPA and the State within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Amendment.

XVII. PARTIES BOUND/TRANSFER OF COVENANT

74. This Amendment is binding upon the United States, including EPA, the State, and upon Settling Respondents and their successors and assigns. Any change in ownership or corporate status of Settling Respondents including, but not limited to, any transfer of assets or real or personal property shall not alter Settling Respondents' responsibilities to continue to implement ICs under this Amendment. Each undersigned representative of Settling Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Settling Respondents to this Settlement Agreement.

75. Notwithstanding any other provisions of this Amendment, either Settling Respondent may transfer all of the rights, benefits and obligations conferred upon it under this Amendment to any person, except as specified, pursuant to written procedures approved by the United States and the State in their sole discretion and provided such transfer is in accordance with Section VI (Access/Notice to Successors in Interest and Assigns) whenever such transfer concerns an interest in the Properties. The benefits conferred upon Settling Respondents under this Amendment shall not be transferred or transferrable to AR, Cleveland Wrecking Company, to any potentially responsible party or responsible

party at the Anaconda Smelter Superfund Site, or to the successor in interest or assigns of any such party.

76. In the event of an assignment or transfer of any of the Properties, the Settling Respondents shall continue to be bound by all the terms and conditions, and subject to all obligations, of this Amendment except as the United States, the State and the Settling Respondents agree otherwise in writing. Moreover, subject to Paragraph 75, prior to or simultaneous with any assignment or transfer by either Settling Respondent of the Properties, the assignee or transferee must execute a certification signed by both EPA and the State in substantially the form provided in Exhibit L, Sample Transfer and Certification Form in order for the covenant not to sue to be effective with respect to any assignee or transferee. Subsequent assignees or transferees of Properties, beyond the initial assignment or transfer of Properties from either of the Settling Respondents, are expected to avail themselves of protections afforded a "bona fide prospective purchaser" under 42 U.S.C. §§ 9601(40) and 9607(r)(1) rather than execute a certification.

XVIII. DISCLAIMER

77. This Amendment in no way constitutes a finding by EPA or the State as to the risks to human health and the environment that may be posed by contamination at the Properties or the Site nor constitutes any representation by EPA or the State that the Properties or the Site are fit for any particular purpose.

XIX. DOCUMENT RETENTION

78. For a period of 10 years following completion of the Work, unless EPA agrees in writing to a shorter time period, Settling Respondents shall preserve all documents and information relating to the Work and any hazardous substances, pollutants or contaminants found on or released from the Properties. At the conclusion of the document retention period, Settling Respondents shall notify EPA at

least 90 days prior to the destruction of any such records, and upon request by EPA, Settling Respondents shall deliver any such records to EPA. These record retention requirements apply regardless of any corporate retention policy to the contrary and is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

XX. OPPORTUNITY FOR PUBLIC COMMENT

79. Notice of this Amendment shall be published in the Federal Register and in a daily newspaper of general circulation in the area affected. The notice shall provide for a period of not less than thirty (30) days for public comment. The Settling Respondents, United States and the State reserve the right to withdraw their consent if the comments regarding this Amendment disclose facts or considerations which indicate that this Amendment is inappropriate, improper, or inadequate.

XXI. EFFECTIVE DATE

80. The Effective Date of this Amendment shall be the date upon which the United States and the State issue written notice to the Settling Respondents that the public comment period pursuant to Section XX (Opportunity for Public Comment) has closed and that comments received, if any, do not require modification or withdrawal from this Amendment.

XXII. TERMINATION / MODIFICATION

81. If any Party determines that any or all of the obligations under Section VI (Access/Notice to Successors in Interest and Assigns) are no longer necessary to ensure compliance with the requirements of this Amendment, that Party may request in writing that the other Parties agree to terminate the provision(s) establishing such obligations.

82. If the Funding Agreement and/or the Golf Course Agreement is modified or terminated for whatever reason, the Parties agree to meet and confer to determine whether and to what extent the Amendment can or should remain in force.

83. If funding under either the Funding and/or Golf Course agreement is terminated or withheld, the Parties agree to meet and confer to determine whether and to what extent the Amendment can or should remain in force.

84. Any modifications to this Amendment or any Exhibits thereto shall be in writing and effective when signed by duly authorized representatives of EPA, MDEQ, and the Settling Respondents.

XXIII. NOTICES AND SUBMISSIONS

85. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Amendment, shall be deemed submitted upon the date of receipt by email, hand delivery, certified mail/return receipt requested, express mail, or facsimile. Submissions to Settling Respondents must be to:

Anaconda-Deer Lodge County
800 Main Street
Anaconda, MT 59711
Attn: Chief Executive

With copies to:

Anaconda-Deer Lodge County
800 Main Street
Anaconda, MT 59711
Attn: County Attorney

Submissions to the Authority must be to:

Old Works Golf Course, Inc.
1200 Pizzini Drive
Anaconda, MT 59711
Attn: President

Submissions to EPA must be to:

Remedial Project Manager
EPA Region 8, Montana Office
10 West 15th Street, Helena, MT 59626

With copies to:

State Project Officer
Anaconda CERCLA Site
Department of Environmental Quality
Remediation Division
P.O. Box 200901
Helena, Montana 59620-0901

XXIV. EXHIBITS AND DOCUMENTS INCORPORATED BY REFERENCE

86. The Exhibits to this Amendment are as follows and are hereby incorporated by reference:

Exhibit A - Final Old Works Golf Course Operations and Maintenance Plan September 26, 2019

Exhibit B - Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Golf Course Parcel)

Exhibit C - Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Old Works Historic Trail System Parcel)

Exhibit D - Parcel Reconfiguration and Modification of Restrictive Covenants Agreement (Red Sands Parcel)

Exhibit E - Modification of Restrictive Covenants Agreement (East Anaconda Yards Parcel)

Exhibit F - Modification of Restrictive Covenants Agreement (Drag Strip Parcel)

Exhibit G - Modification of Restrictive Covenants Agreement (Mill Creek Parcel)

Exhibit H - Modification of Restrictive Covenants Agreement (Stucky Ridge Parcel)

Exhibit I - Residential Attic Abatement Implementation Plan

Exhibit J – Deed (Ballfields/Industrial Park Parcel)

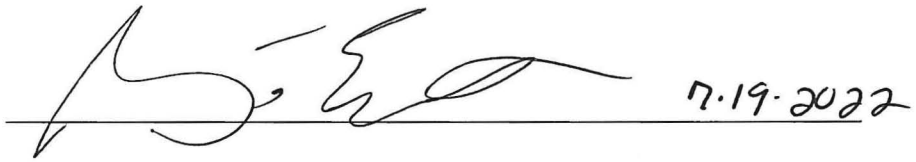
Exhibit K – Deed (Lumber Yard Parcel)

Exhibit L – Sample Transfer and Certification Form

IT IS SO AGREED:

ANACONDA-DEER LODGE COUNTY

BY:



Bill T. Everett
Chief Executive Officer

Date

IT IS SO AGREED:

Old Works Golf Course, Inc.

BY:

Daryl Dodd 8-2-2022

Daryl Dodd Date

President

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

BETSY SMIDINGER Digitally signed by BETSY SMIDINGER Date: 2022.09.26 11:38:47 -06'00'

Betsy Smidinger Date
Director, Superfund and Emergency Management Division
Region 8

BY:

CHRISTOPHER THOMPSON Digitally signed by CHRISTOPHER THOMPSON Date: 2022.09.28 14:00:08 -06'00'

Christopher A. Thompson Date
Associate Regional Counsel for Enforcement
Region 8

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

approved September 30, 2022 by signature on briefing memorandum

Todd Kim Date
Assistant Attorney General
Environment and Natural Resources Division

IT IS SO AGREED:

STATE OF MONTANA

BY:

For Chris Dorrington James M Echr Deputy Director 9/22/2022

Chris Dorrington Date
Director
Department of Environmental Quality