

AGREEMENT

This Water Service Agreement ("Agreement") is entered into and effective this ____ day of December 2019, between the CITY AND COUNTY OF BUTTE-SILVER BOW ("BSB") and MONTANA RESOURCES, LLP ("MR").

RECITALS

WHEREAS, BSB is the owner of the Silver Lake Water System ("SLWS") located in Deer Lodge County and Silver Bow County and consisting of, without limitation, all diversion works on Storm Lake Creek and Twin Lakes Creek and all reservoirs and impoundments including, but not limited to, Upper Twin Lakes and Storm Lake, together with Silver Lake and all associated inlet and outlet works, and all diversion facilities at Meyers dam, together with the pipeline therefrom and associated pumping facilities; and

WHEREAS, BSB is the owner of numerous water rights related to the SLWS known as the Silver Lake Water Rights ("SLWR"); and

WHEREAS, the SLWR include water rights that identify instream flows in Silver Bow Creek and the Upper Clark Fork River as a beneficial use; and

WHEREAS, BSB maintains and operates the SLWS to provide water to customers pursuant to the terms of Water Service Agreements; and

WHEREAS, BSB presently has Water Service Agreements with Montana Resources, LLP, REC Silicon (formerly known as ASIMI), Northwestern Corporation, Montana Craft Malt, and Western States Asphalt; and

WHEREAS, in 2006 the Montana Department of Natural Resources and Conservation ("DNRC") granted BSB Change Authorization 76G 30013720 to deliver water from the SLWS for instream flow in Silver Bow Creek; and

WHEREAS, the DNRC approved a renewal of Change Authorization 76G 30013720 with an expiration date of December 31, 2026; and

WHEREAS, the Authorization Limits approved by the Change Authorization 76G 30013720 are a flow rate of 2,083 GPM (3 MGD) and a volume of 3,360.00 AC-FT; and

WHEREAS, BSB and MR recognize the benefits that could accrue from increasing the SLWS water authorized for instream flow in Silver Bow Creek up to a maximum of 7 MGD; and

WHEREAS, MR is interested in obtaining water from the SLWS for instream flows in Silver Bow Creek, Warm Springs Creek, and the Clark Fork River; and

WHEREAS, BSB and MR are interested in entering into a long-term agreement but have agreed to this limited-term agreement for the purposes of obtaining real-time cost and practical experience regarding the water deliveries described herein; and

WHEREAS, prior to the expiration of this Agreement BSB and MR will enter into good faith negotiations for a long-term agreement with terms that comply with BSB's obligations under its existing water service agreements and which reasonably reflect the cost experience of the Parties under this Agreement.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement, the Parties agree as follows:

Section 1. Change Authorization Application. Immediately following the Effective Date, BSB shall take all such actions necessary to expeditiously: (i) obtain a Change Authorization from the DNRC of certain SLWR to provide for an additional 4 MGD up to 3,360 AC-FT per year of SLWS water for instream flow use in upper Silver Bow Creek near or at the confluence with Blacktail Creek (the "Section 1 Change Authorization"); and (ii) if the delivery location mutually agreed to by the Parties is other than upper Silver Bow Creek, formerly known as Metro Storm Drain, BSB will clarify with DNRC the ability to deliver the SLWR pursuant to Change Authorization 76G 30013720 to an alternative location in addition to upper Silver Bow Creek for instream use in Silver Bow Creek. The volume of 3,360 AC-FT per year is a cumulative volume for diversions under the Section 1 Change Authorization and Change Authorization 76G 30014720. MR will reimburse BSB for all filing fees, reasonable attorney's and expert witness fees, and other direct costs incurred to obtain the Change Authorization ("Change Authorization Costs"). Provided however, that in the event that Change Authorization Costs are expected to exceed \$50,000.00, MR may, after consultation with BSB and in its sole discretion, elect to discontinue reimbursement of Change Authorization Costs. In the event that MR elects to discontinue reimbursement of Change Authorization Costs, then BSB shall be under no duty to obtain the Section 1 Change Authorization; and BSB may, in its sole discretion, elect to continue any efforts to obtain the Section 1 Change Authorization. BSB provides no warranty or guarantee regarding DNRC's processing or approval of the Change Authorization application or clarification of Change Authorization 76G 30013720.

Section 2. Delivery of Water. For the consideration stated herein, beginning on the Effective Date, BSB agrees to deliver, at such times and in such amounts as requested by MR, water from SLWS, not to exceed 7 MGD or up to 2,410 AC-FT per year for the below-described uses. MR agrees to: (i) beneficially use all water requested and delivered to MR for the authorized purposes; (ii) not waste water; and (iii) use such water consistent with the terms of the SLWR.

2.1 Instream flow:

- (a) **Prior to Completion of Connection Specified in Section 7.** Prior to the completion of the connection specified in Section 7, there shall be no duty to deliver water for Instream flow in Silver Bow Creek pursuant to this Agreement.
- (b) **After Completion of Connection Specified in Section 7, but Prior to Issuance of Section 1 Change Authorization.** Upon completion of the connection specified in Section 7, BSB shall deliver up to 3 MGD as requested by MR for instream flows that are consistent with and do not exceed the authorized limits specified in Change Authorization 76G 30013720 for use in Silver Bow Creek. Delivery will be made at a

location mutually agreed to by BSB and MR consistent with Change Authorization 76G 30013720.

- (c) **After Completion of Connection Specified in Section 7, and After Issuance of Section 1 Change Authorization.** Upon completion of the connection specified in Section 7 and upon DNRC issuance of the Section 1 Change Authorization, BSB shall deliver up to 7 MGD, not to exceed 2,410 AC-FT per year, as requested by MR for instream flows that are consistent with and do not exceed the authorized limits specified in the Section 1 Change Authorization for use in Silver Bow Creek and Change Authorization 76G 30013720. Delivery will be made at a location mutually agreed to by BSB and MR.

2.2 Interim use:

- (a) **Prior to Completion of Connection Specified in Section 7, and Prior to Issuance of Section 1 Change Authorization.** BSB shall deliver up to 7 MGD, not to exceed 2,410 AC-FT per year, as requested by MR. Delivery will be made at a location mutually agreed to by BSB and MR.
- (b) **After Completion of Connection Specified in Section 7, but Prior to Issuance of Section 1 Change Authorization.** Upon completion of the connection specified in Section 7 but before DNRC's issuance of the Section 1 Change Authorization, BSB shall deliver up to 4 MGD as requested by MR. Delivery will be made at a location mutually agreed to by BSB and MR.
- (c) **After Completion of Connection Specified in Section 7, and After Issuance of Section 1 Change Authorization.** Upon completion of the connection specified in Section 7 and upon DNRC issuance of the Section 1 Change Authorization, there shall be no deliveries of water for Interim use.

2.3 Conditions Precedent. Obtaining the Section 1 Change Authorization is a condition precedent to the delivery of 7 MGD pursuant to Section 2.1(c). In the event that MR elects to discontinue reimbursement of Change Authorization Costs, as provided in Section 1, and BSB elects to not further pursue the Section 1 Change Authorization, then Section 2.1(c) shall be null and void. If the Section 1 Change Authorization is issued for a maximum flow rate of less than 4 MGD, then BSB's delivery obligation pursuant to Section 2.1(c) shall be reduced by the difference between 4 MGD less the maximum flow rate authorized under the Section 1 Change Authorization. Total deliveries shall in no event exceed a total of 7 MGD, not to exceed 2,410 AC-FT per year.

Section 3. Subordination of Water Delivery Obligations. BSB's obligations to deliver water as specified in Section 2 of this Agreement from the SLWS for Instream flow and Interim use during the term of this Agreement are subject to, and subordinate to, all industrial users, (current and future), and shall not preclude BSB's right to convey water through upper Silver Bow Creek, f/k/a Metro Storm Drain, for BSB's purposes in the Silver Bow Creek corridor.

Section 4. Right of First Refusal. During the term of this Agreement, MR shall have the right of first refusal to contract for water from the SLWS for instream flow in Warm Springs Creek

and the Clark Fork River as authorized in DNRC Change Authorization 76G 30013721. In the event BSB desires to lease or enter into a contract for the use of instream flow under DNRC Change Authorization 76G 30013721 to some person, corporation, or legal entity (hereinafter referred to as "Prospective Customer"), BSB shall first submit to MR written notice of BSB's desire to contract with the Prospective Customer and a copy of the terms and conditions of the Prospective Customer's bona fide offer. For a period of 10 business days following MR's receipt of BSB's written notice and a copy of the terms and conditions of the Prospective Customer's bona fide offer, MR shall have the right to contract for the use of instream flow water upon the identical cost and volume terms as those of the Prospective Customer's bona fide offer. MR's right of first refusal shall be exercised by MR giving BSB timely written notice of its intention to exercise the right of first refusal. If MR exercises its right of first refusal, MR must take such actions necessary to utilize the water in a manner consistent with the use contemplated in the Prospective Customer's offer. Any contract for use of water from the SLWS for instream flow in Warm Springs Creek and the Clark Fork River as authorized in DNRC Change Authorization 76G 30013721 shall be subordinate to the delivery of water pursuant to Section 2 of this Agreement.

Section 5. Unplanned Upsets. During the term of this Agreement, BSB's obligation to deliver more than 14 MGD of water to MR in the event of an Unplanned Upset under Paragraph C.6 of the Water Service Agreement with MR dated November 22, 1996, is subordinate to BSB's water deliveries to (i) REC Silicon (formerly known as ASIMI), (ii) Northwestern Corporation, (iii) Montana Craft Malt, (iv) Western States Asphalt, and (v) following timely consultation with MR and MR's concurrence, which cannot be unreasonably withheld, new industrial users with whom BSB enters into a Water Service Agreement during the term of this Agreement. Consultation shall occur within 10 business days following MR's receipt of notice of BSB's intent to contract with a new industrial user.

Section 6. MR Payments to BSB.

6.1 SLWS Payments. During the term of this Agreement, MR shall pay BSB: (i) the sum of \$178,000.00 per year in quarterly installments commencing on the Effective Date to be used for the SLWS; (ii) an amount equal to all power costs for pumping SLWS water from the Ramsay, TIFID, and Silver Lake pump stations; and (iii) an amount equal to the reasonable and ordinary operation and maintenance costs of operating the SLWS as described in Table 1. For purposes of this Agreement only, operation and maintenance costs do not include repair and replacement as defined in Section 6.2. Except for the quarterly installments referred to in Section 6.1(i) above, BSB will submit monthly invoices to MR to reflect the costs stated herein which MR has agreed to pay and MR will submit payment to BSB within 30 days of receipt of the monthly invoice. Provided, however, that in the event that BSB enters into new water service agreements during the term of this Agreement, BSB and MR shall meet and confer regarding MR's payments specified in Section 6.1(ii) and (iii) which, unless BSB and MR agree otherwise, will be reduced by the amount derived by the percentage of the volume of water provided for in the new water service agreements compared to the total volume of water provided for in this Agreement and all other SLWS water service agreements as of the Effective Date of this Agreement.

6.2 Repair and Replacement. During the term of this Agreement, MR agrees to pay a proportionate share of any repair and replacement costs incurred by BSB to keep the SLWS in good repair and good operating condition ("SLWS Repair and Replacement"). MR's

proportionate share for purposes of this Agreement shall be based on a constant rate of 2.15 MGD which equals an annual volumetric allotment of 2,410 AC-FT per year and shall be calculated as shown on the attached Exhibit A. SLWS Repair and Replacement means any in kind repair or replacement of any existing component of the SLWS which is necessary for the existing component to remain suitable and efficient for use in the same manner and fashion as originally intended. BSB shall first apply and restrict any amount paid as specified in Section 6.1(i) above in a separate SLWS Repair and Replacement Account to satisfy MR's proportionate share of the cost of the SLWS Repair and Replacement. If the amounts paid by MR as specified in Section 6.1(i) above is inadequate to satisfy MR's obligation to pay its proportionate share of the cost of the SLWS Repair and Replacement, MR shall pay the balance due to BSB within 30 days of being invoiced by BSB. The amount of any payment made by MR for a SLWS Repair and Replacement obligation which exceeds the total of MR's Section 6.1(i) payments made as of the date of the SLWS Repair and Replacement invoice shall be applied as a credit against MR's subsequent Section 6.1(i) payment obligation. If MR's subsequent Section 6.1(i) payment obligation is less than MR's obligation for the SLWS Repair and Replacement, BSB has no obligation to reimburse MR for the difference.

6.3 Capital Improvements. Except as set forth in Section 7, MR shall have no obligation to pay for capital improvements, which are defined as any addition of a new component to the SLWS and any repair or replacement of an existing component of the SLWS which serves to improve, increase or enhance the performance, productivity or capacity of an existing component. With BSB's approval, MR may choose to pay for a capital improvement that benefits MR's use of water.

Section 7. Hook-up Fee and Connector Cost.

7.1 Hook-up Fee. MR shall pay BSB the amount of \$300,000.00 as a one-time hook-up fee for access to the SLWS water, totaling 2,410 AC-FT per year, delivered pursuant to the terms of this Agreement. BSB shall deposit the hook-up fee in the SLWS Capital Improvement Account. If BSB and MR enter into any subsequent agreement for instream flows at Silver Bow Creek, this \$300,000.00 fee will be recognized by BSB as a credit against any hook-up fees in excess of that amount in any subsequent agreement.

7.2 Connector Cost. MR shall pay for the costs of connecting to the SLWS pipeline at a location mutually agreed to by the Parties. MR shall construct the connecting works and BSB shall tap the SLWS pipeline. The final design of the connection shall be mutually agreed to by the Parties and must meet all specifications of the BSB Public Works Department. MR is responsible for obtaining all easements and approvals for the connection.

Section 8. Term of Agreement and Termination.

8.1 Term. This Agreement shall take effect upon execution and shall continue in full force and effect for a period of 4 years. Provided however, upon mutual written agreement of the Parties, the Term may be extended for an additional 2 years.

8.2 Termination. This Agreement may be terminated by: (i) election by MR providing written notice at least 180 days prior to the anniversary date of this Agreement of its election to

terminate the Agreement; (ii) mutual agreement of the Parties; and (iii) default as provided in Section 9.

Section 9. Default.

9.1 Default by MR. If MR fails to make an undisputed payment when due, or otherwise fails to comply with the obligations herein, and the default continues for 60 days, BSB may in its discretion take any or all of the following actions:

- (a) Cease to supply water to MR under this Agreement until the default and all subsequent defaults are cured. This action shall not affect the obligations of MR already accrued or accruing during the period when the water is withheld.
- (b) Terminate the Agreement. This action shall not affect BSB's right to collect all payments owed by MR up to the date of termination under this Agreement
- (c) Institute and prosecute to final judgment or decree, actions or proceedings in law or in equity (1) for the collection of sums due and unpaid under this Agreement, or damages for breach, and enforce the judgment or final decree against MR; or, (2) for the purposes of compelling MR to abide by or perform the covenants, conditions, or obligations in this contract.

9.2 Default by BSB. If BSB fails to deliver or otherwise make delivery of water to MR as described herein MR shall have the right to terminate this Agreement upon prior written notice to BSB.

The remedies described above are cumulative and not exclusive. All other remedies under this Agreement, existing law, or statute shall remain available.

Section 10. No Warranties. BSB and MR agree and acknowledge that there are no representations, warranties or affirmations, by either BSB or MR, regarding the quality or the amount of water available from the SLWS, or the adequacy of any water or water supply from the SLWS or the water rights attendant to the SLWS for any purpose.

Section 11. Force Majeure. Neither Party shall be liable to the other Party for failure to perform its obligations hereunder if and to the extent such failure to perform results from reasonably unforeseen causes beyond its reasonable control, all of which causes herein are called "force majeure," including but not limited to strikes, civil disturbances, fires, floods, unusual climatic conditions, acts of God, or acts of a public enemy. Financial difficulty shall not be considered a cause beyond a Party's control. If either Party is unable to perform as a result of force majeure, it shall promptly notify the other Party at the beginning and ending of each such period. If any period of force majeure continues for 90 days or more, either Party shall have the right to terminate this Agreement upon 10 days prior written notice to the other Party, mailed or delivered after the above period of force majeure.

Section 12. Ownership in BSB. All right, title, and interest in and to the SLWS and the SLWR shall be and remain in BSB. MR shall acquire no right, title, or interest in the SLWS or

the SLWS water rights. MR shall acquire no rights or equities under this Agreement which will in any manner prejudice the right of BSB to terminate this Agreement in the event that MR shall be in default.

Section 13. Relationship of Parties. This Agreement shall not be construed to create a partnership, joint venture, association, or agency relationship between BSB and MR. Nothing in this Agreement shall in any way be construed to constitute MR as an agent or employee of BSB, and nothing herein shall be construed to constitute BSB to be an agent or employee of MR. The duties of BSB as set forth in this Agreement are not in any way controlled by MR. MR shall neither have nor exercise any control, direction or supervision over the judgment, manner or methods by which BSB performs its duties under this Agreement.

Section 14. Waiver. In the event any breach of this Agreement is waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach of this Agreement.

Section 15. Notices. All notices, invoices, or other communications required to be given to BSB and MR hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to BSB: The City and County of Butte-Silver Bow
 Attn: Chief Executive
 155 West Granite
 Butte, MT 59701

If to MR: Montana Resources, LLP
 Attn: Mark Thompson
 Vice President, Environmental Affairs
 600 Shields Avenue
 Butte, MT 59701

BSB and MR, by notice given hereunder, may designate different addresses to which subsequent notices, invoices, or other communications should be sent.

Section 16. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon BSB and MR and their respective successors and assigns.

Section 17. Assignment. With BSB's prior written consent, which shall not be unreasonably withheld, MR may assign its interest in and to this Agreement.

Section 18. Modification. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by BSB and MR.

Section 19. Governing Law. This Agreement shall be governed by and construed and interpreted according to the laws of the State of Montana without giving effect to conflict of laws principles.

Section 20. No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

Section 21. Counterparts. This Agreement may be executed in counterparts, which together shall constitute one agreement.

Section 22. Severability. In the event any provision of this Agreement is determined by valid order of any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, such provision shall be fully severable from the remainder of this Agreement, and the remainder of this Agreement shall remain fully enforceable.

Section 23. Entire Agreement. It is mutually understood and agreed that this Agreement is the entire agreement pertaining to the matters it addresses, and that there is no other agreement or understanding or any other thing to be done except as set forth in this Agreement.

IN WITNESS WHEREOF BSB and MR have caused this Agreement to be executed as of the _____ day of _____, 2019.

Montana Resources, LLP

The City and County of Butte-Silver Bow

President

DAVE PALMER
CHIEF EXECUTIVE

Date

ATTEST:

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

Table 1. Categorized Description of Silver Lake Water System (SLWS) Operation & Maintenance Expenses, Charges, Fees for Agreement.

<i>Operation & Maintenance Expenses</i>		
<i>Item(s)</i>	<i>Description</i>	<i>Cost</i>
Vehicle & Equipment Usage	Mileage/charges for BSB vehicle/equipment use in O&M of SLWS	Actual
Supplies	Chemicals, parts, other supplies needed for O&M of SLWS	Actual
Professional Services	Contracted services needed for O&M of SLWS (e.g. Snowcap Hydrology, engineering services)	Actual
<i>Utilities Expenses</i>		
<i>Item(s)</i>	<i>Description</i>	<i>Cost</i>
Utilities	Charges for Electricity, telecommunications, etc. for the SLWS (e.g. NorthWestern Energy, Verizon, Century Link, etc.)	Actual
Professional Services	Contracted services related to utilities (e.g. Wireless Watch Dogs, other)	Actual
<i>Labor Expenses (Wages & Salaries)</i>		
<i>Item(s)</i>	<i>Description</i>	<i>Cost</i>
Operator (1/5 time)	Fixed cost for 1/5 of one operator's full-time salary	Actual/fixed %
Labor	Direct charges for employees working directly on O&M of the SLWS	Actual
<i>Administration & Management Charges and Fees</i>		
<i>Item(s)</i>	<i>Description</i>	<i>Cost</i>
Quarter Pro Rata Share	Fixed rate of SLWS annual budget to reimburse BSB for interdepartmental services	Fixed share/NTE* \$5,000/quarterly
Administration & Management (10%)	Fixed rate of SLWS annual budget for services of water utility manager, director and billing	Fixed %/NTE* \$5,000/quarterly

*NTE is "not to exceed."

EXHIBIT A

	MGD	% of Repair and Replacement costs	
REC	3.68	50.3%	
MR II	2.15	29.4%	
MR I*	1	13.7%	Up to a total of \$238k
Northwestern	0.432	5.9%	
Craft Malt	0.045	0.6%	
Western States Asphalt	0.008	0.1%	
	7.315	100%	

* 1 MGD or actual use if over 1 MGD

\$605,422 repair or replacement would = \$178k to MR II