



- a.) Initial assessment phase consisting of site and structure analysis, development of abatement strategy, and materials estimate.
- b.) Activities related to the excavation and removal of soils, monitoring and sampling of environmental media and conducting other information gathering activities such as field investigation, data collection, soil boring, testing and periodic monitoring.
- c.) Work phase consisting of the actual residential abatement process.
- d.) Follow up sampling procedure to take place approximately one year after completion of the abatement project.

BSB will make every reasonable effort to minimize any inconvenience to Owner during the performance of the Work on the Property, and will work closely with Owner to address any concerns Owner may have about the Work. Unless otherwise agreed in writing by Owner and BSB, or required by EPA, all tools, equipment or other property taken or placed upon the Property by or at the direction of BSB shall remain the property of BSB and may be removed by BSB at any time within a reasonable period after completion of the Work.

3. FUTURE ACCESS. Owner hereby grants access to the Property at all reasonable times to BSB, EPA, MDEQ, ATLANTIC RICHFIELD and their representatives for the purpose of: (a) monitoring Property Owner's compliance with the Covenants set forth in Exhibit 4, (b) conducting any investigation, monitoring, sampling, or other activities with respect to the Property, or (c) undertaking any action that is deemed necessary or advisable with respect to the Property to address environmental conditions thereon.
4. RECORDATION. Owner agrees to permit BSB to create a photographic/video record to document the initial condition of specific areas of the Property, as well as, the post-Work condition of the Property. Copies will be made available for review upon owner's request.
5. INDEMINIFICATION OF OWNER. BSB agrees to indemnify and hold harmless Owner from any and all actions, claims, demands, liabilities, losses, damages or expenses, including damage to property or for loss of use of property, which may be imposed on or incurred by Owner as a result of BSB's negligent, reckless, or willful acts or omissions while on the Property, except to the extent that such actions, claims, demands, liabilities, losses, damages or expenses result from the acts or omissions of the Owner. Owner and BSB agree that the Work described in Exhibit 2 shall not give rise to a claim for indemnification under this provision.
6. COVENANT NOT TO SUE AND RELEASE. Owner covenants not to sue BSB and Atlantic Richfield Company ("ATLANTIC RICHFIELD") for, and releases BSB and ATLANTIC RICHFIELD from any liability for actions, claims, demands, losses, damages, expenses, injunctive relief, indemnification or any other relief or liabilities, including, but not limited to, damages to property or for loss of use of property, arising out of or related to Work described in Exhibit 2, provided that the Work is conducted in accordance with Exhibit 2.

7. COVENANTS, NOTICE OF COVENANTS AND NOTICE OF COMPLETION. Owner hereby agrees to abide by and impose the Covenants set forth in Exhibit 4. Contemporaneous with the execution of this Agreement, in order to provide notice of the Covenants and the Work performed, Owner also hereby agrees to execute the Notice of Covenants attached hereto as Exhibit 5. It is understood and agreed that the Work Plan attached hereto as Exhibit 2, together with any written modifications thereto, that are agreed upon by BSB and Owner following the execution of the Agreement, shall be attached to and made part of the Notice of Covenants. It is further understood and agreed that BSB shall promptly record the executed Notice of Covenants in the Butte-Silver bow County real property records following the completion of the Work phase of the residential abatement process.
  
8. SALE, LEASE, OR OTHER CONVEYANCE OF PROPERTY. Owner agrees that if he/she sells, leases, or otherwise conveys any portion of his/her right, title, or interest in any portion of the Property that all the Covenants set forth in Exhibit 4 shall be included in or attached to the deed, lease, or other conveyance document. The Owner agrees that such Covenants shall be binding on all subsequent owners. If, for any reason, the Owner fails to either abide by the Covenants or include the Covenants in a subsequent sale, lease, or other conveyance of all or any part of the Property, then the indemnification provisions of this Agreement shall be void and of no further force and effect.
  
9. NOTICE. BSB shall provide Owner with either written or oral notice seven (7) days prior to first commencing the work described in Exhibit 2 on the Property.
  
10. DELIVERY OF NOTICE. All notices by or pertaining this Agreement shall be in writing and shall be sent to Owner and BSB at the respective addresses below. Either Owner or BSB may designate a different address for receipt of notice by providing written notice of such change to the other. All notices shall be sent by certified mail, return receipt requested to:

**BSB:** Eric Hassler  
 Butte-Silver Bow County  
 Residential Metals Program  
 25 West Front Street, Butte, Montana 59701

**OWNER:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

11. RESTORATION OF PROPERTY. Upon completion of the Work described in Exhibit 2, BSB will, with the exception of the necessary abatement improvements, return the Property to the condition it was in at the time BSB first entered the Property under this Agreement to the extent practicable, provided that such restoration is not inconsistent with the Work described in Exhibit 2.

12. SOIL SAMPLES. BSB agrees to use its' best efforts to provide, upon Owner's prior written request, a portion of any sample taken on Owner's Property. A "SAMPLE REQUEST" form, attached as Exhibit 3 for Owner's use to request a sample portion has been provided to Owner by BSB.

13. MISCELLANEOUS

- a. Effect of Agreement. Except as otherwise expressly provided in this Agreement, nothing in this Agreement is intended or shall be construed as a waiver of any right, claim, or defense by any party to this Agreement against the other or against any other person or entity under CERCLA or any other law, or as creating any right or benefit in favor of any person or entity. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of Owner and BSB and their respective assigns and successors in interest.
- b. Negation of Agency Relationship. The Agreement shall not be construed to create, either expressly or by implication the relationship of agency or partnership between Owner and BSB. Neither Owner nor BSB is authorized to act on behalf of the other in any manner related to the subject matter of this Agreement, and neither shall be liable for acts, errors, or omissions of the other entered into, committed, or performed with respect to or in the performance of this Agreement.
- c. Termination. Except with respect to paragraph three (3) on page one, this Agreement will terminate following BSB's written notification that work described in Exhibit 2 is complete.
- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana and will be in the State of Montana.
- e. Construction. Whenever possible, each provision hereof will be interpreted in such a manor as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or such invalidity, without invalidating the remainder of such provision or the remaining provisions hereof.
- f. Entire Agreement. This Agree embodies the entire agreement of Owner and BSB with respect to the subject matter hereof, and no prior oral or written representation shall serve to modify or amend this Agreement. This Agreement may not be modified, except by written agreement signed and duly authorized by Owner and BSB.

IN WITNESS WHEREOF, Owner and BSB have executed this Agreement effective as of the first date written above.

OWNER:

\_\_\_\_\_

Date \_\_\_\_\_

Title: Owner

BUTTE-SILVER BOW:

\_\_\_\_\_

Date \_\_\_\_\_

Title: Environmental Health Specialist

**EXHIBIT 1 TO RESIDENTIAL ACCESS AGREEMENT**

**DESCRIPTION OF PROPERTY**

That certain real property as more fully described in the attached deed dated

\_\_\_\_\_.

Recorded at Roll \_\_\_\_\_, Card \_\_\_\_\_ in the records of Silver Bow County, Montana.

**EXHIBIT 2 TO RESIDENTIAL ACCESS AGREEMENT**

**WORK PLAN**

**EXHIBIT 3 TO RESIDENTIAL ACCESS AGREEMENT**

**SAMPLE REQUEST**

I, the undersigned, am the owner, his/her legal representative, or otherwise control the Property described herein. I have granted access to BSB and their representatives, to enter the Property and to take samples of environmental media from the Property.

I hereby request BSB provide to me a report of the results of that sampling.

Signature of person making request (if made on behalf of another person or company, please identify that party also):

\_\_\_\_\_ Date \_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

The following is the address at which the requesting party may be contacted and/or the sample portion delivered:

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

Phone \_\_\_\_\_

## EXHIBIT 4 TO RESIDENTIAL ACCESS AGREEMENT

### COVENANTS

- A. CREATION OF CONVENANTS. The following covenants shall burden the Property (described as Exhibit A) and are intended to be covenants of the Property Owner and the Property Owner's successors in interest, assigns, and transferees:
1. No Mining. There shall be no exploration for or mining, milling, processing, drilling, or any other method of development and/or production of any veins, loads, or mineral deposits (including, without limitation, hard rock minerals, sand, gravel, clay or other similar naturally occurring substances) on the Property. All other uses of the Property shall be permitted in accordance with and in a manner consistent with the requirements of applicable laws.
  2. Future Development. The Property Owner shall secure written approval and requisite permits from BSB prior to allowing any development of any kind on the Property, including, without limitation, ground water well drilling or any action that will alter, disturb or otherwise interfere with the Work (described in Exhibit B) performed on the Property. BSB shall approve the proposed development if the Property Owner provides acceptable assurances that the proposed development will be undertaken in accordance with the requirements of all applicable laws including, without limitation, the requirements of the Butte-Silver Bow Reclaimed Areas Guidebook and any applicable ground water control area.
  3. Maintenance. In order to protect and preserve the Work performed on the Property, the Property Owner will keep the Property in good repair, normal wear and tear expected, and will notify BSB of any problems that may arise with the Work. Owner further agrees to provide access to the Property at reasonable times in the future to verify compliance with this Covenant.
  4. Sale, Lease, or Other Conveyance. The Property Owner will disclose the nature of the Work performed on the Property and the terms of these Covenants to any future purchaser, lessee or other occupant of the Property. If the Property Owner sells, leases, or otherwise conveys any portion of his/her right, title or interest in any portion of the Property, the Covenants set forth herein shall be included in or attached to the deed, lease or other conveyance documents. The Property Owner shall also notify BSB of any sale, lease, or other conveyance of the Property.
  5. Obligation to Comply with Residential Access Agreement. The terms and conditions of that certain Residential Access Agreement dated \_\_\_\_\_ shall be binding upon the Property Owners, successors, and assigns and all future purchasers, lessees, or other occupants of the Property.

- B. BENEFITED PROPERTIES - BENEFITS. The Benefited Properties shall include all properties adjacent to or contiguous with the Property. The benefits from the Covenants include: (i) the reduction or minimization of potential risk associated with environmental conditions on, or, under, near, or associated with the Property, and (ii) the maintenance, use, and potential development of the Property in such a manner to allow economic benefits to accrue to the Benefited Properties.
- C. ENFORCEMENT RIGHTS - COVENANTS. BSB, EPA, MDEQ, and each of the Owners (as the same may appear from time to time) of the Benefited Properties shall have the right, but not the obligation, to enforce the Covenants. Each Covenant shall be enforceable, in perpetuity, to the fullest extent permitted by Montana law. All remedies available, at law, or in equity, shall be available for the enforcement of the Covenants. The selection of remedies shall be within the sole discretion of the party entitled to enforce the Covenants. The prevailing party in any action to enforce the Covenants shall be entitled to reasonable attorney's fees and costs incurred in such action.

**EXHIBIT 5 TO RESIDENTIAL ACCESS AGREEMENT**

**NOTICE OF COVENANTS**

The following property owner(s) hereby agree to have the "Covenants" attached and denoted as Exhibit 'A' imposed upon their property and to run with the land.

Legal description: \_\_\_\_\_

IN WITNESS WHEREOF, \_\_\_\_\_ has executed this notice at Butte, Montana on the \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
NAME OF PROPERTY OWNER (S)

STATE OF MONTANA     )  
  :  
County of Butte-Silver Bow    )            ss

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me,  
\_\_\_\_\_, a Notary Public for the State of Montana,  
Notary  
personally appeared \_\_\_\_\_, and is personally known to me or  
Property Owner (s)  
thru government-issued identification, the person(s) described in and whose name(s) is/are  
subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate above written.

SEAL

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

\_\_\_\_\_  
PRINT NAME OF NOTARY PUBLIC

FOR THE STATE OF \_\_\_\_\_

RESIDING AT \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

**EXHIBIT 6 TO RESIDENTIAL ACCESS AGREEMENT**

**STATEMENT OF COMPLETION**

Owner hereby acknowledges, by signing this Statement of Completion, that work performed by BSB Residential Metals Program was conducted as stated in the Work Plan (Exhibit 2) and completed to the satisfaction of the Owner.

We, the undersigned, agree to the terms of this agreement.

SIGNED: \_\_\_\_\_  
Owner

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_  
BSB Representative

DATE: \_\_\_\_\_