

**Supplemental Remediation and Access Agreement  
Between the Village of Hastings-on-Hudson  
And Atlantic Richfield Company**

**Whereas**, Atlantic Richfield Company (“AR” as defined in the 2016 Modified Consent Decree), the Village of Hastings -on-Hudson (“Village of Hastings”), and the Hudson Riverkeeper Fund, Inc. (“Riverkeeper”) entered into a 2016 Modification to the 2003 Consent Decree in *Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company, Civ. No. 94-2741 (S.D.N.Y)* (“2016 Modified Consent Decree”) addressing the environmental remediation of an approximately 28 acre property located at 1 River Road, in Hastings-On-Hudson, New York (the Property);

**Whereas**, the New York Department of Environmental Conservation (“NYSDEC”) issued a Record of Decision for Operable Unit 1 (“OU-1”), which addresses remediation on the Property;

**Whereas**, NYSDEC issued a Record of Decision for Operable Unit 2 (“OU-2”), which addresses remediation of Hudson River sediments, including sediments in Kinnally Cove;

**Whereas**, AR also entered into a 2013 Modified Consent Order with NYSDEC requiring AR to address and remediate contamination at the Property and also in Hudson River sediments adjacent to the Property;

**Whereas**, during the course of designing the remediation, it has become apparent that AR requires access to Kinnally Cove and to submerged Village-owned property, including property, sediments, and shoreline in the vicinity of MacEachron Park, to perform remediation pursuant to the 2016 Modified Consent Decree and the 2013 Modified Consent Order and OU-2 ROD;

**Whereas**, pursuant to Paragraph 7.4 of the 2016 Modified Consent Decree, the Parties have an obligation to continue to work in good faith and to cooperate in remediation and redevelopment;

**Whereas**, based on the progress of the remedial design, the Parties believe it is in their mutual interest to clarify or expand on certain provisions of the 2016 Modified Consent Decree and to provide certain additional access rights to AR;

**Now, therefore**, the Parties agree as follows.

**1. Village Trust Fund and MacEachron Park.**

(a) Article VIII of the 2016 Modified Consent Decree creates the Village Trust Fund and requires AR to make certain payments into the Village Trust Fund to fund certain projects. In consideration for remediation access to Village owned submerged lands, the work schedule agreements, and other consideration set forth in Paragraphs 2 through 7 below, AR agrees to make an additional payment of Three Million Dollars (\$3,000,000.00) no later than December 31, 2023 (the “MacEachron Park Renovation Payment”).

(b) The Village agrees that the MacEachron Park Renovation Payment shall be dedicated to the renovation, restoration, or improvement of MacEachron Park (collectively, the “Improvements”).

The Village shall design and select any such Improvements in its discretion, provided that such Improvements are consistent with continued use of MacEachron Park for recreational and park purposes. The Village, in its discretion, shall direct the timing and nature of the Improvements and shall contract for and supervise the work. AR agrees that it will cooperate with the Village to design its remediation activities in or in the vicinity of MacEachron Park to avoid interference with the Improvements, to the maximum extent practicable.

**2. AR Access to Conduct Remediation.** Paragraph 7.4(a) of the 2016 Modified Consent Decree requires the Village to “provide AR with access to any portion of the Site or any river bottom sediments for which the Village currently has or in the future obtains an ownership interest for the purposes of performing and maintaining the Site remedy or conducting further investigation with respect to upland or sediment conditions.” The Parties agree that, pursuant to this provision, the Village’s provision of access to AR, inter alia, as reflected in Exhibit A hereto, (a) extends to all those submerged lands (below the mean high tide line) that the Village owns running west from the shoreline of the Property, Kinnally Cove, and MacEachron park; (b) encompasses access to perform remediation of Hudson River sediments as required pursuant to the 2016 Modified Consent Order and the OU-2 ROD; and (c) continues until NYSDEC approves AR’s removal of the silt curtains and/or sheet pile upon completion of active sediment remediation work in Kinnally Cove and MacEachron Park (such as by NYSDEC approval of a Construction Completion Report), subsequent to which AR shall use reasonable diligence to remove the silt curtain and/or tie-in sheet pile barrier wall. As part of this access, the Village recognizes and accepts that AR may need to anchor a silt curtain and/or tie-in a sheet pile barrier wall on the banks of MacEachron Park depending on whether dredging in the river is performed under wet or dry conditions and gives AR permission to access MacEachron Park to do so. AR agrees that it will not use the upland portion of MacEachron Park for construction, construction staging, or other purposes, and that its work in the Hudson River and the Property will not materially impair public access to or use of the Park beyond the activities necessary to anchor a silt curtain and/or tie-in a sheet pile barrier wall on the banks of MacEachron Park. AR further agrees that it will remove the silt curtain (but not the anchors) between construction seasons. The Parties agree that such access does not create an easement or other vested right running to AR in any such property owned by the Village. The Parties further agree to cooperate on development of measures to address potential odors from natural organic material in the dredged sediments that has decayed over time.

**3. Remediation Work Schedule.** To shorten the overall duration of remediation at the Property and in the Hudson River, and to take full advantage of the limited construction season available for active work in the Hudson River due to protection of aquatic resources, the Parties agree that AR may engage in construction activity for up to 12 hours/day, six days a week (Mondays through Saturdays) during active remediation construction. AR agrees generally that such activity will occur between 7 am and 7 pm, with the recognition of both parties that hours may be adjusted to accommodate special circumstances. By way of example only, AR may choose to start earlier during especially hot summer weather, may adjust the schedule to account for deliveries of materials outside normal working hours, or may make other adjustments to account for shifting daylight hours during the course of the year. AR shall give reasonable written notice to the Village (consistent with Section 11.2 of the Consent Decree) of its intent to engage in

construction activity different than 7 am to 7 pm and the reason(s) therefor, and the Village's approval shall not be unreasonably withheld.

**4. Reuse of Dredged Sediments.** Paragraph 4.1(b) of the 2016 Modified Consent Decree allows AR to seek a beneficial use determination from NYSDEC with regard to the use of material as backfill, including dredged sediments. Under current NYSDEC policy, NYSDEC may approve the re-use of solidified or stabilized dredged sediments from the Hudson River for use as backfill on the Property but will not issue a beneficial use determination because it considers the Hudson River sediments and the Property to be a single remedial site and its policy does not require beneficial use determinations for the reuse of materials on a single remedial site. As a result, the Village and AR agree that AR may reuse between approximately 30,000 and 50,000 cubic yards of dredged Hudson River sediment as Acceptable Fill on the Property provided that (a) the dredged material is placed only in excavated areas to return such areas to their original grade and is not used within the top 2 feet of fill; (b) contaminant levels in the material do not exceed NYSDEC's cleanup targets for the Property with respect to contaminants, including PCBs and metals; (c) the dredged material is dewatered and stabilized for reuse (potential stabilization materials will be evaluated to enhance sustainability and/or reduce their carbon footprint); and (d) the placement of the fill, dewatering, and stabilization have been approved by DEC as part of AR's 100% design for the remedy. Exhibit B hereto reflects the location on the Property where such material, if reused as backfill, may be placed. The Parties agree that AR, consistent with Section 4.1(b) of the Consent Decree, shall provide the Village reasonably detailed information on the process being employed by AR to make the dredged material stabilized for backfilling on the Property at least three (3) months in advance of the commencement of dredging in Kinnally Cove and an opportunity to comment on such process, and AR shall give consideration to any such comments. The Parties further agree that AR shall afford the Village the opportunity to monitor the process employed by AR to make the dredged material stabilized for backfilling on the Property.

**5. The Northwest Corner Open Space.** Under Paragraph 7.1(f) of the 2016 Modified Consent Decree, AR shall designate the Northwest Corner, including the "extension" thereof created pursuant to the OU-1 ROD (constituting approximately 2 acres) as open space not to be developed. The Parties recognize that NYSDEC may require AR to install one or more extraction wells in the Northwest Corner after other remediation has been completed. To the extent that such wells are required, the Parties agree that (a) AR shall place restrictions on the deed designating the Northwest Corner as open space but permitting the placement of the extraction wells; (b) make good faith efforts to place the wells in such a manner as to allow for use of the Northwest Corner as open space; (c) place the wells in a shed, or wellhouse, or other protective structure that prevents public access to the wells; and (d) work with NYSDEC to reduce the amount of land needed for the wells to the extent practicable. The Parties shall cooperate, if necessary, to have NYSDEC and the New York State Department of Health agree that the Northwest Corner can serve as publicly accessible open space with the extraction well(s) placed in a shed or wellhouse or other protective structure. The Parties further agree to continue to count the approximately 2 acres of the Northwest Corner as open space as designated in the 2016 Modified Consent Decree, provided that the Northwest Corner is and remains publicly accessible.

**6. Storage of Water Tower.** Provided that the Village develops an approved Water Tower preservation plan pursuant to the terms of the 2016 Modified Consent Decree, AR agrees that the Water Tower may be stored on the Property until the earlier of (a) NYSDEC's determination that AR has substantially completed the OU-1 remedy or (b) AR's transfer of title to the Property to Hastings Waterfront LLC upon substantial completion of the remediation, if such transfer occurs. The Parties recognize that the Water Tower may be moved from one location on the Property to another, and then returned to the current location or an Open Space area of the Property (see below) during remediation to facilitate remediation, and any such relocation shall occur at the Village's expense (with appropriate use of any Water Tower contribution AR provided to the Village under the 2016 Modified Consent Decree). The Parties will cooperate in good faith to reduce the expense of any such move. Further, AR does not object to the reconstruction of the Water Tower, after remediation is complete, on an Open Space area of the Property, provided that the Village has obtained the consent of the future developer.

**7. Transportation of Materials to and From the Site.** Paragraph 4.5 of the 2016 Modified Consent Decree require AR to use "all reasonable efforts to maximize the use of barges and rail to transport material excavated from the Site and to bring equipment and material to the Site . . . in effectuating the remediation, as well as to transport any sediment excavated from the Hudson River pursuant to the OU-2 ROD that are placed on the Site and not used as backfill in implementing the OU-1 ROD." The Parties agree that this provision shall remain in effect and that AR shall continue to use all reasonable efforts to maximize the use of barges and rail. To the extent that AR has used all reasonable efforts to maximize the use of barges and rail transport, there may nonetheless be some instances where neither barging nor rail is a feasible or practicable option; in such event the Parties agree that (a) AR will identify such instances where trucks may be required to transport material to and from the Site after AR has obtained construction bids; (b) AR will provide the Village with information sufficient for the Village to consider the potential impact that may result from truck transportation (duration, frequency, route, nature of materials, schedule, etc.) and the reason that barging and/or rail is not an alternative; and (c) the Village shall consider such a proposal in good faith.

**8. Sloped Shoreline and Kinnally Cove Design Elements.** To the extent that AR chooses to install a Sloped Shoreline along the Property rather than a sheet pile bulkhead, Paragraph 4.6(a) of the Modified Consent Decree requires the Sloped Shoreline to be designed to include appropriate grading and armoring to protect against erosion. The Parties recognize that such armoring will include substantial riprap for erosion control. In light of NYSDEC's requirements to provide wetlands as mitigation for the extension of the Northwest Corner and other development constraints of the Property, the Parties further recognize that an open stream structure will not be part of the final remediation design. With respect to the Sloped Shoreline, the Parties further agree that (a) AR shall retain a landscape architect with shoreline restoration experience to work with AR and the Village to develop a landscape plan, which landscape plan shall include the proposed final alignment of the shoreline subject to NYSDEC approval, topographic variation of both planted areas and hard surfaces, including armoring, walking paths, recreation areas and a plantings plan, and which plan will meet or exceed the plan for MacEachron Park as the minimum standard of excellence; (b) the Village may designate a Village representative to participate in the development of such landscape plan; and (c) AR will complete the work described in the landscape plan, including the plantings on the Sloped

Shoreline, as part of its remediation of the Property. Finally, AR has submitted to NYSDEC a conceptual remedial design with respect to Kinnally Cove which proposes that the Cove will be backfilled after dredging to a grade one foot below current grade to allow for subsequent natural sedimentation, and the Village does not oppose that limitation on backfill. If NYSDEC ultimately approves dredging and backfilling in Kinnally Cove, AR further agrees that the landscaping plan for the sloped shoreline will include wetland plantings in Kinnally Cove provided that the Village obtains appropriate approval and permitting from NYSDEC and other relevant government authorities to allow portions of Kinnally Cove to become a wetland. Any destabilization of the existing or restored MacEachron Park shoreline resulting from dredging activities in Kinnally Cove shall be remediated by AR.

## **9. Other Terms**

- (a) Capitalized terms in this agreement that are not otherwise defined herein shall have the definitions set forth in the 2016 Modified Consent Decree.
- (b) This agreement may only be modified in writing and only by mutual consent of the Parties.
- (c) This agreement is not intended for the benefit of any third party and shall not be enforceable by any third party.
- (d) This agreement shall be interpreted and enforced under the laws of New York by a federal court for the Southern District of New York. As this Agreement interprets the 2016 Modified Consent Decree, any action pertaining to this Agreement shall be commenced and prosecuted in the United States District Court for the Southern District of New York.
- (e) This agreement is the result of review, negotiation, and compromise by each Party and shall not be construed or resolved against any Party by reason of any conclusion that this agreement has been drafted by that Party.
- (f) Each person signing this agreement represents and warrants that he or she is duly authorized to execute the agreement by the Party on whose behalf it is indicated that the person is signing.
- (g) This agreement may be executed in counterparts, each of which will be deemed an original copy of the agreement and all of which, when taken together, will constitute one and the same agreement. The "Effective Date" of this agreement shall be the date upon which the last of each counterpart has been executed.

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For the Village of Hastings-On-Hudson

By: Nicola C. Amocost

Title: Mayor

Date: December 28, 2023

For Atlantic Richfield

By: Patricia Gallery

Title: President

Date: December 28, 2023

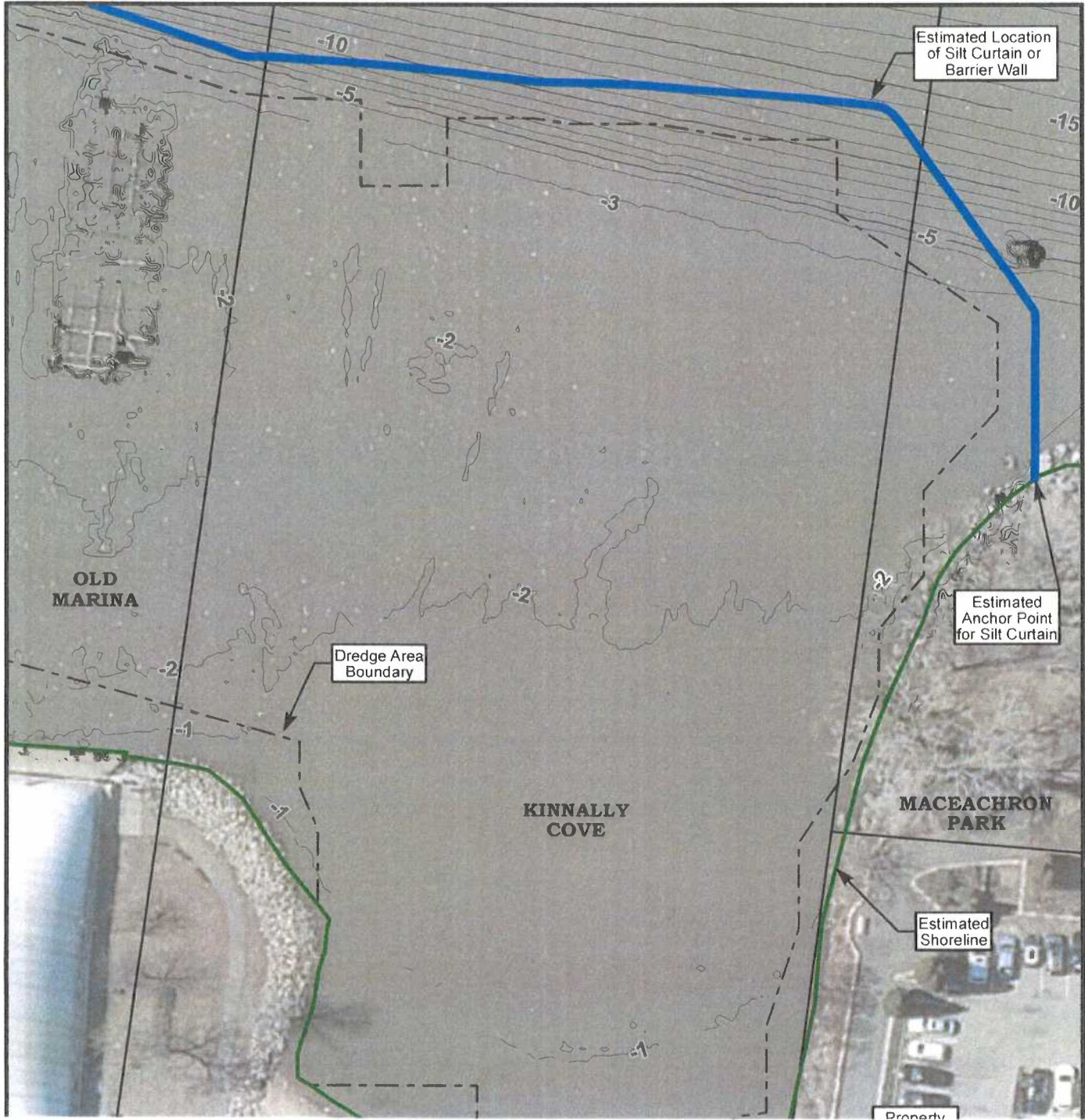


Exhibit A

# OU-1 Removal

