

Dated November 27, 2017

Amended and Restated Environmental Response/Restoration Trust Agreement

By and among

Maxus Energy Corporation, *et al.*
as Debtors,

Greenfield Environmental Passaic River Trust, LLC,
not individually but solely in its representative capacity
as ERRT Trustee,

and

Maxus Liquidating Trust

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**AMENDED AND RESTATED ENVIRONMENTAL RESPONSE/RESTORATION TRUST
AGREEMENT**

(Diamond Alkali Site)

This Amended and Restated Agreement is dated as of November 27, 2017 (the “Agreement”), and amends, restates and supersedes in its entirety that certain Environmental Response/Restoration Trust Agreement dated as of July 14, 2017, by (a) Greenfield Environmental Passaic River Trust, LLC, not individually but solely in its representative capacity as the trustee for the trust established pursuant to this Agreement (such person and each successor trustee, the “ERRT Trustee”), (b) Maxus Energy Corporation, on behalf of itself and the other Debtors¹ (collectively, the “Debtors”), and (c) the Liquidating Trust set up by the Liquidating Trust Agreement entered on July 5, 2017 is executed pursuant to the Confirmation Order to facilitate the implementation of the Debtors' *Amended Chapter 11 Plan of Liquidation Proposed by Maxus Energy Corporation, et al. and the Official Committee of Unsecured Creditors*, dated April 19, 2017 (as the same may have been amended, modified or supplemented from time to time in accordance with the terms and provisions thereof, the “Plan”) that provides for the establishment of the Environmental Response/Restoration Trust (the “ERRT”) created hereby. Each of the Debtors, the ERRT Trustee and the Liquidating Trust is sometimes referred to individually as a “Party” and collectively as the “Parties.” Capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned to such terms in the Plan.

RECITALS:

WHEREAS, on June 17, 2016, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court;

WHEREAS, on May 22, 2017, the Bankruptcy Court entered the Confirmation Order. A copy of the Confirmation Order is attached hereto as **Exhibit 1**;

WHEREAS, the ERRT Effective Date is July 14, 2017;

WHEREAS, in accordance with the Plan and the Confirmation Order, the ERRT is established for the sole purpose of distributing funds pursuant to the ERRT Waterfall and managing such funds prior to distribution;

WHEREAS, this Agreement and the Plan govern the ERRT, which is intended to qualify as a “qualified settlement fund” (for which no grantor trust election has been made) within the meaning of section 1.468B-1 et seq. of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code;

WHEREAS, the ERRT shall be established for the benefit of, and is intended to be beneficially owned by, the United States, on behalf of the EPA and NRD Trustees, in accordance with section 468B(g)(2) of the Internal Revenue Code.

WHEREAS, in accordance with the Plan, the Beneficial Interests are intended to be exempt, to the extent applicable, from the requirements of the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities, pursuant to section 1145 of the Bankruptcy Code;

¹ The Debtors in the above-captioned chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Maxus Energy Corporation (1531), Tierra Solutions, Inc. (0498), Maxus International Energy Company (7260), Maxus (U.S.) Exploration Company (2439), and Gateway Coal Company (7425). The address of each of the Debtors is 10333 Richmond Avenue, Suite 1050, Houston, Texas 77042.

WHEREAS, this Agreement is the "Environmental Response/Restoration Trust Agreement" contemplated under the Plan and executed in order to facilitate the implementation of the Plan;

NOW, THEREFORE, pursuant to the Plan and Confirmation Order, in consideration of the premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties hereby agree as follows:

Section 1. Definitions

1.01 Definitions. Any capitalized term used, but not otherwise defined, herein shall have the meaning set forth in the Plan. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“Agreement” shall have the meaning given in the preamble.

“Allowed Invoices” means Invoices approved by the ERRT Trustee pursuant to Section 3.03 hereof.

“Beneficial Interests” means, in the aggregate, the interests in the ERRT.

“Beneficial Owner” means the United States, consistent with the parties' intentions that the ERRT meet the requirements of Section 468B(g)(2) of the Internal Revenue Code.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*

“Court” means the Bankruptcy Court or, if the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of this Agreement, a United States District Court having competent jurisdiction with respect to such matters.

“Diamond Alkali Site” means the Diamond Alkali Superfund Site inclusive of its four operable units and encompassing the former manufacturing facility at 80-120 Lister Avenue in Newark, New Jersey, the Lower Passaic River Study Area (LPRSA), the Newark Bay Study Area and the areal extent of contamination. The LPRSA includes the 17-mile tidal stretch of the Passaic River from Dundee Dam to Newark Bay, and tributaries. The Newark Bay Study Area includes Newark Bay and portions of the Hackensack River, Arthur Kill, and Kill van Kull.

“Distribution Date” means May 15 and November 15 of each year.

“Environmental Remediation Expenses” means the reasonable and necessary fees, costs and expenses paid by a PRP for Response Work after the Effective Date of the Plan; *provided, however*, that Environmental Remediation Expenses shall *not* include Excluded Costs.

“Environmental Restoration Expenses” means the reasonable and necessary costs and expenses paid by a PRP or NRD Trustees for Restoration Work after the Effective Date of the Plan; *provided, however*, that Environmental Restoration Expenses shall *not* include Excluded Costs.

“EPA” means the United States Environmental Protection Agency.

“ERRT” means the Maxus Environmental Response/Restoration Trust established pursuant to this Agreement.

“ERRT Account” shall have the meaning given in Section 2.03 hereof.

“ERRT Administrative Account” means the ERRT Account established in accordance with this Agreement to fund the payment of ERRT Expenses.

“ERRT Assets” means all assets held from time to time by the ERRT, including the ERRT Initial Cash and the Class B Beneficial Interests issued by the Liquidating Trust.

“ERRT Cash Distribution” means any transfer of Cash by the Liquidating Trust to the ERRT (other than the ERRT Initial Cash) on account of the Class B Beneficial Interests, in accordance with the Liquidating Trust Waterfall as set forth in the Plan and the Liquidating Trust Agreement.

“ERRT Effective Date” means July 14, 2017.

“ERRT Expenses” means (a) the reasonable and documented fees and expenses incurred (or to be incurred) by the ERRT Trustee and all ERRT Trustee Professionals and ERRT Trustee Non-Professionals retained by the ERRT Trustee in connection with the performance of the ERRT Trustee’s duties in connection with this Agreement, (b) all claims, fees, expenses, charges, taxes, liabilities, and obligations of the ERRT, including, without limitation, those on account of its indemnification obligations as set forth in this Agreement for the benefit of any ERRT Party, (c) the reasonable costs and expenses related directly or indirectly to the winding down and termination of the ERRT and ERRT Trustee and (d) any other fees and expenses as set forth in Section 3.02 hereof, all of which shall be paid from the ERRT Proceeds in accordance with the Plan, including the ERRT Waterfall, and this Agreement.

“ERRT Initial Cash” means \$30,000 in Cash held by the Liquidating Trust to fund the administrative expenses of the ERRT incurred on a pre- and post-ERRT Effective Date basis to the extent that such expenses are incurred before any ERRT Cash Distribution is received by the ERRT, provided that neither the ERRT nor the ERRT Trustee shall be obligated to take any action under or in connection with this Agreement or the Plan until and unless the ERRT Trustee receives funds sufficient to manage the administrative and other obligations of the ERRT or the ERRT Trustee.

“ERRT Parties” means, collectively, the ERRT, the ERRT Trustee, and the ERRT Trustee’s and its member’s (Greenfield Environmental Trust Group, Inc.’s) shareholders, officers, directors, employees, members, managers, partners, affiliated entities, principals, consultants, agents, accountants, attorneys or other professionals or representatives engaged or employed by the ERRT or the ERRT Trustee, including the ERRT Trustee Professionals and the ERRT Trustee Non-Professionals.

“ERRT Proceeds” means any Cash held by the ERRT at any time, including the ERRT Initial Cash, the ERRT Cash Distributions, and the net proceeds of any liquidation, sale, lease, recovery or other disposition of or other proceeds in respect of any of the ERRT Assets.

“ERRT Transfer Date” means each date on which any ERRT Cash Distribution shall be made.

“ERRT Trustee Non-Professionals” means non-professionals retained by the ERRT Trustee including, without limitation, employees, independent contractors, alternative dispute resolution panelists, or other agents as the ERRT Trustee deems appropriate.

“ERRT Trustee Professionals” means professionals retained by the ERRT Trustee including, without limitation, disbursing and transfer agents, legal counsel, accountants, experts, investment, treasury, auditing, and forecasting and other consultants, and other agents or advisors, as the ERRT Trustee deems appropriate.

“Excluded Costs” means i) any fees, costs, or expenses for any internal or external legal counsel, regardless of scientific or technical expertise; ii) customary selling, general and administrative expenses for internal personnel of a PRP; iii) costs incurred in connection with investigating claims against, or allocating potential liability among, PRPs pursuant to CERCLA Sections 107 and 113 or similar provisions of Law; iv) any fees, costs or expenses associated with Operable Units 1 or 3 of the Diamond Alkali Site (subject to Section 3.05); v) any costs that have been incurred, but have not been paid, by a PRP or a NRD Trustee; or vi) any costs included in an allowed Class 4 Environmental Claim by a PRP.

“Governmental Authority” means any domestic, federal, state, regional or local administrative, executive, legislative, or judicial governmental authority, agency, commission, political subdivision with jurisdiction over the Diamond Alkali Site including the EPA, NRD Trustees, and their State agency equivalents.

“Hazardous Substance” means any substance or material meeting the definition of a “Hazardous Substance” as defined in CERCLA Section 9601, et seq., or as defined in the National Contingency Plan or meeting the definition of a Hazardous Substance under the laws, regulations or Governmental Authority of any State or political subdivision. Hazardous Substance includes “hazardous waste” as that term is defined under the Federal Resource Conservation and Recovery Act or under the laws, regulations or Governmental Authority of any State or political subdivision.

“Invoices” means invoices and certifications in the form reasonably required by the ERRT Trustee, submitted by PRPs or NRD Trustees to the ERRT Trustee for reimbursement of Environmental Remediation Costs or Environmental Restoration Costs.

“IRC” means the Internal Revenue Code of 1986, as amended.

“Law” means any statute, law, ordinance, ruling, consent decree, permit, policy, rule or regulation of, issued by, or entered into by any Governmental Unit and all judicial or administrative interpretations thereof and any common law doctrine.

“NRD” means damages under CERCLA for injury to, destruction of, or loss of natural resources resulting from the release of a hazardous substance, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

“NRD Trustees” means the Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service, and the Department of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), which have been designated pursuant to CERCLA Section 107 to act as trustees for NRD pertaining to the Diamond Alkali Site.

“Operable Unit 2” means the following portion of the Diamond Alkali Site: the lower 8.3 miles of the Lower Passaic River, from RM 0, at the river’s confluence with Newark Bay, to RM 8.3, near the border between the City of Newark and Belleville Township, New Jersey, located in and about Essex and Hudson Counties, New Jersey; but not including Operable Unit 1 or the former manufacturing plant located at 80 and 120 Lister Avenue, Newark, New Jersey.

“Operable Unit 3” means the following portion of the Diamond Alkali Site: the area defined by the EPA as the Newark Bay Study Area, encompassing Newark Bay and portions of the Hackensack River, Arthur Kill, and the Kill Van Kull.

“Operable Unit 4” means the following portion of the Diamond Alkali Site: the area defined by the EPA as the Lower Passaic River Study Area encompassing the 17.4 mile tidal stretch of the river from Dundee Dam to Newark Bay, exclusive of Operable Unit 3 for Newark Bay; but not including Operable Unit 1 or the former manufacturing plant located at 80 and 120 Lister Avenue, Newark, New Jersey.

“Order” means any judgment, order, injunction, decree, writ or license issued or entered by or with any Governmental Authority or any arbitrator, whether preliminary, interlocutory or final, including any order entered by the Bankruptcy Court in the Bankruptcy Case.

“Parties” means the Debtors, the ERRT Trustee, and the Liquidating Trust. PRPs are not Parties.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, charitable foundation, unincorporated organization, Governmental Authority or any agency or political subdivision thereof or any other entity.

“Plan” shall have the meaning given in the recitals to this Agreement.

“PRPs” means all Persons who are actually or potentially liable to any Person for environmental remediation or restoration in connection with the Diamond Alkali Site, whether pursuant to CERCLA Section 107(a), CERCLA Section 113, or any other Law and who are either: (a) creditors who have filed claims in the Debtors' bankruptcy cases, or (b) non-creditors who agree to submit themselves to the jurisdiction of the Bankruptcy Court in all matters pertaining to this Agreement and to be bound by all provisions of the Plan, the Confirmation Order, and the Trust Agreements.

“Remediation Distribution Account” shall have the meaning given in Section 2.03 hereof.

“Remedy” shall have the meaning given in Section 101(24) of CERCLA, 42 U.S.C. § 9601(24).

“Removal” shall have the meaning given in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23).

“Response Work” means implementation of a Removal or Remedy at Operable Units 2 and 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site pursuant to the requirements of an administrative order issued by or entered into with EPA or a consent decree entered into with EPA including, without limitation, the performance of remedial investigations, feasibility studies, remedial designs, remedial actions, engineering evaluations, cost analyses, and removal actions as those terms are defined in CERCLA and the National Contingency Plan; *provided, however*, that Response Work does not include any Excluded Costs.

“Restoration Distribution Account” shall have the meaning given in Section 2.03 hereof.

“Restoration Plan” means a written document issued by the NRD Trustees that identifies specific project to restore, replace, rehabilitate, and/or acquire the equivalent of injured natural resources and their services in connection with NRD that (a) was made available to the public for adequate public notice and opportunity for hearing, (b) includes applicable environmental compliance analyses for each selected Restoration Project, (e.g., National Environmental Policy Act, Endangered Species Act, Clean Water Act Section 404 permits); and (c) was adopted after consideration of public comment and the environmental compliance analyses.

“Restoration Project” means a specific project, identified in a final Restoration Plan, which is designed to compensate the public for the injury, destruction, or loss of injured or destroyed natural resources and to compensate the public for the loss of services such resources provide, pending restoration, in connection with NRD.

“Restoration Work” means the development and finalization of Restoration Plan(s) and the selection, contracting, implementation and/or monitoring of Restoration Project(s) on account of NRD at Operable Units 2 and 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site undertaken by any PRP pursuant to an agreement with the NRD Trustees, or by the NRD Trustees; *provided, however*, that Restoration Work does not include any Excluded Costs.

“Review Date” means January 1 and June 30 of each year during which the ERRT holds any ERRT Assets and/or ERRT Proceeds.

“Treasury Regulation” means any regulation promulgated by the United States Department of the Treasury, including any temporary regulations from time to time promulgated under the IRC.

“Termination Date” shall have the meaning given in Section 2.09 hereof.

“Trust Agreements” means this Agreement and the Liquidating Trust Agreement.

Section 2. The ERRT

2.01 Establishment of ERRT and Appointment of ERRT Trustee.

(a) A trust, which shall be known as the "Maxus Environmental Response/Restoration Trust," is hereby established on behalf of the United States (on behalf of the EPA and NRD Trustees).

(b) The ERRT Trustee is hereby appointed as trustee of the ERRT effective as of the ERRT Effective Date and agrees to accept and hold the ERRT Assets in trust for the benefit of the United States (on behalf of the EPA and the NRD Trustees) subject to the terms of the Plan, the Confirmation Order, and this Agreement. The ERRT Trustee and each successor ERRT Trustee serving from time to time hereunder shall have all the rights, powers and duties set forth herein.

2.02 Transfer of Assets and Rights to the ERRT.

(a) As of the ERRT Effective Date, and pursuant to and subject in all respects to the terms of the Confirmation Order, the Debtors, in their respective capacities as debtors-in-possession on behalf of the Estates, and the Liquidating Trust, as applicable, have transferred, assigned, and delivered to the ERRT, without recourse, all of their respective rights, title, and interests in and to the ERRT Assets, including the Class B Beneficial Interests, free and clear of any and all Liens, Claims, encumbrances and interests (legal, beneficial or otherwise) of all other Persons and Entities.

(b) On each ERRT Transfer Date, the Liquidating Trust shall cause to be transferred, assigned, and delivered to the ERRT, without recourse, all of their respective rights, title, and interests in the Cash from the applicable ERRT Cash Distribution, free and clear of any and all Liens, Claims, encumbrances and interests (legal, beneficial or otherwise) of all other Persons and Entities.

(c) The Debtors and the Liquidating Trust shall have no reversionary or further interest in or with respect to any ERRT Assets and any ERRT Cash Distributions, in each case, effective upon the transfer thereof to the ERRT.

(d) For all federal income tax purposes and subject to Section 7.03 of this Agreement: (i) the ERRT Trustee and the Liquidating Trust shall treat the transfer of the ERRT Assets by the Liquidating Trust to the ERRT as a transfer to a qualified settlement fund pursuant to section 468B of the IRC and related Treasury Regulations; (ii) the ERRT Trustee will at all times seek to have the ERRT treated as a “qualified settlement fund” as that term is defined in Treasury Regulation section 1.468B-1; (iii) the ERRT Trustee will not elect to have the ERRT treated as a grantor trust; (iv) the ERRT will be treated as a separate taxable entity; and (v) the ERRT Trustee shall treat the ERRT as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC. The ERRT Trustee shall cause any taxes imposed on the earnings of the ERRT to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the ERRT under applicable tax Laws.

2.03 Creation of the Trust Accounts.

(a) Upon receipt of ERRT Assets delivered to the ERRT on or after the ERRT Effective Date (other than the ERRT Initial Cash), the ERRT Trustee shall create an account within the ERRT for the purpose of funding environmental remediation related activities at the Diamond Alkali Site as provided in Article IX.B of the Plan (the “Remediation Distribution Account”) and a separate account within the ERRT for the purpose of funding restoration activities related to NRD at the Diamond Alkali

Site as provided in Article IX.B of the Plan (the “Restoration Distribution Account”). The purpose of the Remediation Distribution Account and the Restoration Distribution Account shall be to reimburse Allowed Invoices in accordance with Section 3.03 below, and may not be used for any other purpose except as expressly provided in Section 4.04(b) of this Agreement or, as applicable, Section 5 of this Agreement. The ERRT Trustee shall also create a segregated ERRT Administrative Account on or after the ERRT Effective Date in amounts necessary to fund present and anticipated future ERRT Expenses, subject to the approval of the Liquidating Trust Oversight Committee and the United States, which approval shall not be unreasonably withheld, after consultation with the ERRT Trustee. The separate accounts described in this Section 2.03 are referred to in this Agreement individually as an “ERRT Account” and collectively as the “ERRT Accounts.” Subject to Section 4.04(b) hereof, the income and gains from any investment of the ERRT Assets shall be allocated, paid and credited to such ERRT Account. The ERRT Trustee shall cause the Cash proceeds of the ERRT Assets to be distributed and/or deposited in the ERRT Accounts in accordance with the priority of use set forth in Article IX.B. of the Plan.

(b) The ERRT Accounts may be divided into such number of trust subaccounts dedicated for specific uses as may be deemed necessary in the sole discretion of the ERRT Trustee (each, a “Trust Subaccount”) to comply with the terms of, and implement, the Plan and this Agreement. Specifically, and without limitation, the ERRT Trustee may in its discretion divide the Remediation Distribution Account and the Restoration Distribution Account into one or more subaccounts in order to implement the Diamond Alkali Remediation Allocation in Article I.A.46 of the Plan. For clarification purposes, the Diamond Alkali Remediation Allocation is applicable to funding restoration activities related to NRD.

2.04 Objective and Purpose.

The ERRT is intended to satisfy all the requirements of, and is intended by the parties to be classified as, a qualified settlement fund (for which no grantor trust election has been made) pursuant to section 468B of the IRC and related Treasury Regulations, and as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC. The exclusive purpose and function of the ERRT is to fund Environmental Remediation Expenses and Environmental Restoration Expenses and, thereby, to facilitate appropriate remediation and restoration solely with respect to Operable Units 2 and 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site, as required by applicable administrative orders or consent decrees for the Diamond Alkali Site and Law, in accordance with the terms of the Plan. In carrying out this purpose and function, the ERRT will: (i) issue an irrevocable letter of direction to the Liquidating Trust directing the Liquidating Trust to make the first \$61 million of distributions on account of the Class B Beneficial Interests (after providing for the ERRT Expenses) directly to the EPA Diamond Alkali Special Account and the DOI Diamond Alkali Account as provided in the ERRT Waterfall in the Plan and in accordance with the written instructions to be provided by the United States, and (ii) reimburse Allowed Invoices submitted by PRPs and the NRD Trustees for Environmental Remediation Expenses or Environmental Restoration Expenses at Operable Units 2 and 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site, all as provided in the Plan, including the ERRT Waterfall, and in this Agreement, provided that the ERRT Trustee may, after consultation with the Liquidating Trust Oversight Committee, withhold any and all amounts, determined in the ERRT Trustee’s reasonable discretion, required by any law, regulation, rule, ruling, directive, court order or governmental requirement. The performance by the ERRT Trustee of its duties under this Agreement, including but not limited to the distribution of the ERRT Proceeds, shall not be considered to be ERRT Trustee’s engaging in a trade or business. The ERRT shall not be the successor of the Debtors for any purposes including with respect to, or held liable for, any of the Claims asserted against the Debtors prior to the Effective Date.

2.05 Relationship to, and Incorporation of, the Plan and Confirmation Order.

This Agreement is to aid in the implementation of the Plan and the Confirmation Order, and therefore this Agreement incorporates the provisions of the Plan and the Confirmation Order by this reference. To that end, the ERRT Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan, in each case solely to the extent such actions or orders are in furtherance of this Agreement, but in each case subject in all respects to and solely to the extent not inconsistent with the terms of the Plan. To the extent that there is conflict between the provisions of this Agreement, and the provisions of the Plan, and/or the Confirmation Order, the terms of this Agreement shall govern.

2.06 Holder of ERRT Assets. The ERRT shall be the exclusive holder of the ERRT Assets and ERRT Accounts described herein for purposes of 31 U.S.C. § 3713(b).

2.07 Investment and Safekeeping of ERRT Proceeds.

(a) The ERRT Assets and ERRT Proceeds, until distributed or spent as provided herein and in the Plan, shall be held in trust and segregated. All interest, dividends, and other revenue earned in an ERRT Account shall be retained in the respective ERRT Account and used only for the same purposes as the principal in that account, as set forth in this Agreement and the Plan. The ERRT Trustee shall be under no liability for interest or producing income on any moneys received by the ERRT hereunder and held for distribution or payment as provided in this Agreement, except as such interest shall actually be received by the ERRT Trustee. Investments of any moneys held by the ERRT shall be subject to the investment policy statement and guidelines established by the Liquidating Trust Oversight Committee, which investment policy statement and guidelines shall be reasonably acceptable to the ERRT Trustee and the United States and shall be specifically detailed in writing.

(b) The ERRT Trustee is expressly prohibited from holding any or all of the ERRT Assets or ERRT Proceeds in a common, commingled or collective trust fund and from holding any or all of the ERRT Assets or ERRT Proceeds in a common, commingled or collective trust fund with the assets of any other entity. However, the funds provided for ERRT Expenses can be held in one account.

(c) Nothing in this Section shall be construed as authorizing the ERRT Trustee to cause the ERRT to carry on any business or to divide the gains therefrom, including without limitation, the business of an investment company, a company “controlled” by an “investment company,” or required to register as such under the Investment Company Act of 1940, as amended. The sole purpose of this Section 2.07 is to authorize the investment of the funds in the ERRT Accounts or any portions thereof as may be reasonably prudent pending use of the proceeds for the purposes of the ERRT.

2.08 Insurance. The ERRT may maintain customary insurance coverage for the protection of Persons serving as administrators and overseers of the ERRT on and after the ERRT Effective Date.

2.09 Termination. Consistent with the terms of the Plan and subject to the fulfillment of all of its legal responsibilities, the ERRT Trustee shall not unduly prolong the duration of the ERRT past the time reasonably necessary to fulfill the purposes of the ERRT, and shall at all times endeavor to effect the distribution of ERRT Assets and ERRT Proceeds and other receipts relating thereto in accordance with the terms hereof. The ERRT Trustee shall, subject to written consent of the Liquidating Trust Oversight Committee, terminate the ERRT as soon as practicable consistent with this Agreement and the Plan, but in no event prior to the earlier of (i) the dissolution of the Liquidating Trust and the distribution of all the ERRT Proceeds available at such date in accordance with the ERRT Waterfall or (ii) the completion of the Response Work and the Restoration Work in connection with the Diamond Alkali Site, as confirmed in writing by the United States (the “Termination Date”).

Section 3. Distributions

3.01 ERRT Accounts. The ERRT Trustee shall establish, maintain and hold the ERRT Accounts consistent with the Plan and Section 2.01 of this Agreement, to administer the ERRT Assets and distributions therefrom. The ERRT Trustee shall also maintain a dedicated ERRT Administrative Account for administrative funds, which shall be used solely to pay the ERRT Expenses as set forth herein.

3.02 ERRT Budget.

(a) The ERRT shall aim to minimize administrative expenses in order to preserve funding for the reimbursement of Environmental Remediation Expenses and Environmental Restoration Expenses. By January 1 of each year during which the ERRT holds any ERRT Assets and/or ERRT Proceeds, the ERRT Trustee shall provide the United States and the Liquidating Trust Oversight Committee with a budget for the following annual period for anticipated ERRT Expenses and anticipated Environmental Remediation Expenses and Environmental Restoration Expenses in light of the administrative orders issued by or entered into by PRPs with EPA, consent decrees entered into by PRPs with EPA, agreements entered into by PRPs with the NRD Trustees, or restoration actions expected to be implemented by the NRD Trustees with respect to the Diamond Alkali Site. Such annual budget shall include a future year forecast of administrative expenditures, with annual details for at least the next three years (or such longer period as the Liquidating Trust Oversight Committee shall reasonably request). The ERRT Trustee shall not exceed by more than 10% any ERRT Expense that has been provided for in the applicable budget (or revised budget) approved as described in Section 3.02(b).

(b) The annual budget shall be subject to the approval of the Liquidating Trust Oversight Committee and the approval of the United States, which approval shall not be unreasonably withheld. The annual budget shall be approved or disapproved by February 15th of each year, provided that the ERRT Trustee may incur or pay ongoing or recurring expenses approved in the prior year's budget that occur between the time a proposed annual budget is submitted and the time it is approved. If disapproved by the Liquidating Trust Oversight Committee or the United States, such budget shall be revised and resubmitted as expeditiously as possible. The ERRT shall regularly, but not less often than annually, and otherwise upon the reasonable request of the Liquidating Trust Oversight Committee or the United States, provide documentation to the Liquidating Trust Oversight Committee and the United States to substantiate compliance with the applicable approved budget and application of ERRT Assets consistently with the terms of this Agreement and the Plan. The approved budget shall be funded by proceeds set aside and otherwise made available to the ERRT as provided in the Plan.

3.03 Reimbursement of Environmental Remediation Expenses and Environmental Restoration Expenses.

(a) Each PRP that has paid Environmental Remediation Expenses on Operable Units 2 or 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site may submit Invoices for the amounts it has paid to the ERRT Trustee for reimbursement from those funds in the Remediation Distribution Account available for such expenses pursuant to Article IX.B of the Plan. Each PRP or NRD Trustee that has paid Environmental Restoration Expenses attributable to Operable Units 2 or 4 (or, in accordance with Section 3.05 of this Agreement, Operable Unit 3) of the Diamond Alkali Site may submit Invoices for the amounts it has paid to the ERRT Trustee for reimbursement from those funds in the Restoration Distribution Account available for such expenses pursuant to Article IX.B of the Plan. Such Invoices shall be accompanied by reasonable documentation sufficient to permit the ERRT Trustee to determine that the Invoices are for Environmental Remediation Expenses or Environmental Restoration Expenses the PRP or the NRD Trustee has paid and do not include any Excluded Costs. No PRP or NRD Trustee shall submit any Invoice for Environmental

Remediation Expenses or Environmental Restoration Expenses that have not already been paid by the PRP or NRD Trustee. A PRP or NRD Trustee shall provide such additional documentation or other information as the ERRT Trustee may reasonably request in connection with the ERRT Trustee's review of any Invoices submitted for reimbursement.

(b) Within 30 days of each Review Date or within 30 days after the ERRT receives reasonably requested additional documentation, whichever is later, the ERRT Trustee shall review the Invoices and the accompanying supporting documentation submitted by PRPs or NRD Trustees during the six-month period preceding the Review Date. The ERRT Trustee shall approve, in whole or in part, any Invoice for Environmental Remediation Expenses or Environmental Restoration Expenses. The ERRT Trustee shall have the discretion to reject, in whole or in part, any Invoice which in the reasonable opinion of the ERRT Trustee does not satisfy the conditions set forth in this Section 3.03, or has been submitted with insufficient supporting documentation for the ERRT Trustee to approve such Invoice, or reflects amounts the PRP or NRD Trustee has not yet paid, or includes Excluded Costs.

(c) Within 30 days of the Review Date or within 30 days after the ERRT receives reasonably requested additional documentation, whichever is later, the ERRT Trustee shall notify any PRP or NRD Trustees whose Invoice has not been approved in whole or in part, explaining the reasons for such decision. PRPs or NRD Trustees shall have the right to request the ERRT Trustee to reconsider within 15 days of receipt of such notice. Absent the ERRT Trustee's receipt of a timely written request for reconsideration within such 15 days, the ERRT Trustee's decision shall be deemed final. If the ERRT Trustee does not approve a disputed Invoice submitted by a PRP upon reconsideration, the ERRT Trustee and the relevant PRP shall engage in binding arbitration with the Liquidating Trustee as final arbiter, which shall fully resolve the dispute within 120 days of the Review Date. If the ERRT Trustee does not approve a disputed Invoice submitted by an NRD Trustee upon reconsideration, the parties shall engage in informal negotiations for a period of 21 days and, if the issue is not resolved, the dispute shall be resolved by the Bankruptcy Court. For the avoidance of doubt, third parties shall have no right to object to the ERRT Trustee's decision regarding a disputed Invoice, or to appear in the binding arbitration proceedings or court proceedings with respect to such disputed Invoice, and there shall be no discovery in any arbitration.

(d) On each Distribution Date, all Allowed Invoices for Environmental Remediation Expenses which have not yet been paid in full on prior Distribution Dates shall be reimbursed by the ERRT from the funds available in the Remediation Distribution Account, if any, on a pro rata basis and in accordance with the Plan, including the ERRT Waterfall and the Diamond Alkali Remediation Allocation, and all Allowed Invoices for Environmental Restoration Expenses which have not yet been paid in full on prior Distribution Dates shall be reimbursed by the ERRT from the funds available on the Restoration Distribution Account, if any, on a pro rata basis and in accordance with the Plan, including the ERRT Waterfall and the Diamond Alkali Remediation Allocation. Invoices, or portions of Invoices, that are still under consideration or in dispute within 10 days of the Distribution Date, if not finally disapproved, may be re-submitted for consideration for the next Review Date.

3.04 Manner of Payment. Payments made by the ERRT pursuant to the Plan and this Agreement shall be in United States dollars by checks drawn on a domestic bank selected by the ERRT Trustee that is a member of the FDIC or by wire transfer. Payments shall be made to the notice persons indicated in the relevant Allowed Invoice.

3.05 Residual Funds. In accordance with the definition of "Diamond Alkali Remediation Allocation" in the Plan, solely in the event all remediation and restoration activities have been completed at or on account of Operable Unit 2 and Operable Unit 4 of the Diamond Alkali Site, any residual funds in the Remediation Distribution Account or in the Restoration Distribution Account at that time not otherwise required for the ERRT Administrative Account, as determined by the ERRT Trustee in

consultation with the Liquidating Trust Oversight Committee, shall be used to reimburse remediation expenses in, and environmental restoration expenses on account of, Operable Unit 3, and the provisions of this Agreement shall be applied *mutatis mutandis*. Upon the completion of remediation and restoration activities at or on account of Operable Unit 3, any remaining funds not otherwise required for the ERRT Administrative Account shall be transferred to the United States in accordance with Section 6.03 of this Agreement.

Section 4. The ERRT Trustee

4.01 Appointment. Greenfield Environmental Passaic River Trust, LLC serves, not individually but solely in its representative capacity, as the ERRT Trustee to administer the ERRT and the ERRT Accounts, in accordance with the Plan, the Confirmation Order and this Agreement, effective upon the ERRT Effective Date.

4.02 Generally. The ERRT Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the ERRT and consistent with the Plan, and not otherwise. The ERRT Trustee shall have the authority to bind the ERRT, and any successor ERRT Trustee, or successor or assign of the ERRT, but shall for all purposes hereunder be acting in its representative capacity as ERRT Trustee and not individually. Notwithstanding anything to the contrary contained herein, the ERRT Trustee shall not be required to take action or omit to take any action if, after the advice of counsel, the ERRT Trustee believes in good faith such action or omission is not consistent with the ERRT Trustee's fiduciary duties. The ERRT Trustee shall have no obligation to make any distributions for which the Remediation Distribution Account or the Restoration Distribution Account, as applicable, lacks sufficient funds, or to make any distributions on account of Invoices that a) have not been approved, b) include Excluded Costs, or c) do not reflect amounts a PRP or NRD Trustee has paid.

4.03 Powers. In connection with the administration of the ERRT, except as otherwise set forth in this Agreement or the Plan, the ERRT Trustee is authorized to perform any and all acts necessary to accomplish the purposes of the ERRT. The powers of the ERRT Trustee shall, without any further Court approval or Order, include, without limitation, each of the following: (i) to receive, manage, invest, supervise and protect the ERRT Assets, withdraw, make distributions and pay ERRT Expenses, taxes and other obligations owed by the ERRT or the ERRT Accounts from funds held by the ERRT Trustee and/or the ERRT (or the ERRT Accounts) in accordance with the Plan and this Agreement, and withhold and pay to the appropriate taxing authority any withholding taxes on distributions from the ERRT; (ii) to engage ERRT Trustee Professionals and ERRT Trustee Non-Professionals to assist the ERRT and/or the ERRT Trustee with respect to the responsibilities described herein; (iii) to approve or reject Invoices submitted in accordance with Section 3.03 hereof; (iv) to make distributions of the ERRT Proceeds from the ERRT Accounts for the purposes contemplated in this Agreement and in the Plan; (v) to issue an irrevocable letter of direction to the Liquidating Trust directing the Liquidating Trust to make the first \$61 million of distributions on account of the Class B Beneficial Interests (after providing for reasonable fees and expenses of the ERRT) directly to the EPA Diamond Alkali Special Account and the DOI Diamond Alkali Account as provided in the ERRT Waterfall in the Plan and in accordance with the written instructions to be provided by the United States; and (vi) to effect all actions and execute all agreements, instruments and other documents necessary to implement this Agreement, including to exercise such other powers as may be vested in or assumed by the ERRT and/or the ERRT Trustee pursuant to this Agreement and any Order or as may be necessary and proper to carry out the provisions of this Agreement and the Plan. No Person dealing with the ERRT shall be obligated to inquire into the authority of the ERRT Trustee in connection with the conservation or disposition of ERRT Assets. The ERRT Trustee is authorized to execute and deliver all documents on behalf of the ERRT to accomplish the purposes of this Agreement and the Plan.

4.04 Management of ERRT Assets.

(a) The ERRT Trustee shall use the Remediation Distribution Account and the Restoration Distribution Account to pay for Allowed Invoices in accordance with Section 3.03(d) of this Agreement, and the ERRT Waterfall, the Plan, and the Confirmation Order. The ERRT Trustee shall use the ERRT Administrative Account to fund the ERRT Expenses in accordance with section 3.02 of this Agreement.

(b) Annually, beginning with the first year during which the ERRT holds any ERRT Assets or ERRT Proceeds, and when and as may otherwise be appropriate, the ERRT Trustee shall provide the United States and the Liquidating Trust Oversight Committee with an update of anticipated future ERRT Expenses. If there is an anticipated shortfall in the ERRT Administrative Account based on anticipated future ERRT Expenses, funds from the Remediation Distribution Account or the Restoration Distribution Account may be transferred to the ERRT Administrative Account, upon the discretion of the ERRT Trustee and with approval of the Liquidating Trust Oversight Committee (and the reasonable consent of the United States). If there is an anticipated surplus of funds in the ERRT Administrative Account based on anticipated future ERRT Expenses, funds in the ERRT Administrative Account may be transferred to the Remediation Distribution Account or the Restoration Distribution Account, upon the discretion of the ERRT Trustee and with approval of the Liquidating Trust Oversight Committee (and the reasonable consent of the United States).

4.05 Accounting. The ERRT Trustee shall maintain proper books, records, and accounts relating to all transactions pertaining to the ERRT, including the assets and liabilities of the ERRT and the Allowed Invoices and payments made in respect thereof, in such detail and for such period of time as may be necessary to enable the ERRT Trustee to make full and proper accounting in respect thereof in accordance with Article VI below and to comply with applicable provisions of Law and good accounting practices. Except as otherwise provided herein or by the Plan, the ERRT Trustee shall not be required to file any accounting or seek approval of the Court with respect to the administration of the ERRT, or as a condition for making any payment or distribution out of the ERRT Assets or ERRT Proceeds. The Liquidating Trust Oversight Committee and the United States shall have the right upon fourteen (14) days' prior written notice delivered to the ERRT Trustee to inspect the ERRT's books and records at the ERRT's designated place of business or to have copies of particular books and records sent to the Liquidating Trust Oversight Committee or the United States, with the requesting party paying all reasonable copying and delivery expenses.

4.06 Tax Status. Subject to Section 7.03 of this Agreement, the ERRT Trustee shall not take, or fail to take, any action that would jeopardize treatment of the ERRT as a qualified settlement fund or as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC for U.S. federal income tax purposes, and to the extent provided by Law, this Agreement shall be governed and construed in all respects consistent with such intent. In the event that the ERRT Trustee determines that the Beneficial Owner or the ERRT may, will, or have become subject to adverse tax consequences, it is authorized to take such actions that will, or are intended to, alleviate such adverse tax consequences.

4.07 Other Professionals. The ERRT Trustee shall have the authority to retain and pay such ERRT Trustee Professionals and ERRT Trustee Non-Professionals as the ERRT Trustee, in accordance with the budget approved by the Liquidating Trust Oversight Committee, may deem necessary or appropriate to assist the ERRT Trustee in carrying out its powers and duties under this Agreement and the Plan, including, without limitation, counsel to the ERRT Trustee and ERRT. The ERRT Trustee may commit the ERRT to pay all such ERRT Trustee Professionals and ERRT Trustee Non-Professionals compensation for services rendered and expenses incurred.

4.08 Limitation of the ERRT Trustee's Authority. The ERRT and the ERRT Trustee shall not and are not authorized to (i) engage in any trade or business with respect to the ERRT Assets or any proceeds therefrom except as and to the extent the same is deemed in good faith by the ERRT Trustee to be reasonably necessary or proper for the conservation or protection of the ERRT Assets, or the fulfillment of the purposes of the ERRT; (ii) subject to Section 7.03 of this Agreement, take any actions that would cause the ERRT to fail to qualify as a qualified settlement fund or as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC for U.S. federal income tax purposes; (iii) bring cost recovery, contribution or other claims under Environmental Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Recovery Act (42 U.S.C. §§ 9601 *et. seq.*); (iv) perform any environmental remediation or restoration activities; (v) own any real property; (vi) pay any Excluded Costs to any Person; or (vii) take any action inconsistent with the Plan, including, without limitation, asserting or seeking to pursue any Claims or Causes of Action released by the Plan.

4.09 Reliance by the ERRT Parties. Unless it is finally judicially determined by a court of competent jurisdiction, with all appeal periods having expired, that an ERRT Party's liability resulted from the ERRT Party's gross negligence, fraud or willful misconduct, (a) the ERRT Parties may rely on, and shall be protected from liability in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, or other electronic or paper document believed by them to be genuine and to have been signed or presented by the proper party or parties; (b) the ERRT Parties may consult with legal counsel, financial or accounting advisors and other professionals and shall not be personally liable for any action taken or not taken in accordance with the advice thereof; and (c) persons dealing with the ERRT Parties shall look only to the ERRT Assets and/or ERRT Proceeds to satisfy any liability incurred by the ERRT Parties to such person in carrying out the terms of this Agreement or any Order of a Court, and the ERRT Parties shall have no personal obligations to satisfy any such liability. Any action taken or omitted to be taken with the express approval of the Bankruptcy Court or with the approval of the Liquidating Trust Oversight Committee and the United States will conclusively be deemed not to constitute gross negligence, fraud or willful misconduct.

4.10 Compensation of the ERRT Trustee.

(a) The ERRT shall pay its own reasonable and necessary costs and expenses, and shall reimburse the ERRT Trustee for its actual, reasonable out-of-pocket fees and expenses to the extent incurred by the ERRT Trustee in connection with the ERRT Trustee's duties hereunder, including, without limitation, necessary travel, lodging, postage, photocopying, telephone and facsimile charges upon receipt of periodic billings, all in accordance with the approved annual budget or fee schedule. The ERRT Trustee, and employees of the ERRT and the ERRT Trustee, who perform services for the ERRT shall be entitled to receive reasonable compensation for services rendered on behalf of the ERRT in accordance with the approved annual budget or fee schedule.

(b) The ERRT Assets and ERRT Proceeds shall be subject to the claims of the ERRT Trustee, and the ERRT Trustee shall be entitled to reimburse itself out of any available cash in the ERRT Accounts, and the ERRT shall be obligated to pay, for actual out-of-pocket expenses and for actual hours worked, with the understanding that the ERRT Trustee shall first reimburse and/or pay for services out of the ERRT Trust Administrative Account to the extent of available funds.

(c) All compensation and other amounts payable to the ERRT Trustee shall be paid from the ERRT Trust Assets and/or ERRT Proceeds.

4.11 Liability of the Parties.

(a) The injunction, release and exculpation provisions set forth in Article XI of the Plan shall govern. Moreover, in no event shall any of the ERRT Parties be held liable to any third parties for any liability, action, or inaction of any other party under this Agreement.

(b) None of the Beneficial Owner, the United States, the Liquidating Trust Oversight Committee or the Debtors shall be deemed to be an owner, operator, trustee, partner, agent, shareholder, officer or director of the ERRT or the ERRT Parties, or to be an owner or operator of the Diamond Alkali Site or any Operable Unit of the Diamond Alkali Site on account of this Agreement or actions contemplated thereby.

(c) Nothing in this Agreement shall be deemed to limit the authority of the EPA or the NRD Trustees to take any action they deem appropriate and necessary under CERCLA or any other applicable federal or state law or regulation.

(d) No provision of this Agreement or the Plan shall require the ERRT Trustee to expend or risk its own personal funds or otherwise incur any personal financial liability based on the ownership of the ERRT Assets or ERRT Proceeds or the performance or non-performance of any of its duties or the exercise of any of its authorities as ERRT Trustee hereunder unless it is finally judicially determined, by a court of competent jurisdiction, that such liability resulted from the ERRT Trustee's gross negligence, fraud or willful misconduct.

4.12 Termination and Removal of the ERRT Trustee.

(a) **Termination.** The duties, responsibilities and powers of the ERRT Trustee will terminate on the date the ERRT is dissolved under applicable Law in accordance with the Plan or this Agreement, or by an order of a Court; provided that this Section and Sections 4.09, 4.10 and 4.11 above shall survive such termination and dissolution. The ERRT Trustee may resign from its trusteeship generally and without cause giving not less than 60 days prior written notice thereof to the Bankruptcy Court, the United States and the Liquidating Trust Oversight Committee, provided that a successor trustee has been appointed as of the effective date of any such resignation.

(b) **Removal.** The ERRT Trustee may be removed only for cause at any time by:

(i) The entry of an order by a Court finding that the ERRT Trustee committed fraud or willful misconduct after the ERRT Effective Date in relation to the ERRT Trustee's duties under this Agreement; or

(ii) The entry of an order by a Court finding: (a) a material failure on the part of the ERRT Trustee to perform and carry out its duties and responsibilities under this Agreement; or (ii) the ERRT Trustee has exercised its duties and responsibilities under this Agreement in a manner that is or is reasonably expected to be ineffective or that is or is reasonably expected to be inefficient given the ERRT's purposes, its budget, and the staffing and costs reasonably necessary to achieve those purposes.

(iii) The provisions of this Section and Sections 4.09, 4.10 and 4.11 above shall survive the removal of the ERRT Trustee.

4.13 Appointment of Successor ERRT Trustees. Any successor ERRT Trustee shall be appointed by the Liquidating Trust Oversight Committee (with the consent of the United States not to be unreasonably withheld). Any successor ERRT Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the ERRT records. Thereupon, such successor ERRT Trustee shall, without any further act, become vested with all the estates,

properties, rights, powers, trusts and duties of its predecessor in the ERRT with like effect as if originally named herein; provided, however, that a removed or resigning ERRT Trustee shall, nevertheless, when requested in writing by the successor ERRT Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor ERRT Trustee under the ERRT all the estates, properties, rights, powers, and trusts of such predecessor ERRT Trustee.

4.14 No Bond. The ERRT Trustee shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the ERRT Trustee is otherwise so ordered, all costs and expenses of procuring any such bond or surety shall be paid as an ERRT Expense with Cash derived from the ERRT Assets held by the ERRT.

Section 5. Indemnification

5.01 Indemnification of the ERRT Trustee and the ERRT Parties

(a) To the fullest extent permitted by law, the ERRT shall indemnify, defend and hold harmless the other ERRT Parties (collectively, the “ERRT Indemnified Parties” and each an “ERRT Indemnified Party”) from and against any and all loss, cost, damage, expense (including fees and expenses of attorneys and other advisors and any court costs incurred by any ERRT Indemnified Party) or liability by reason of anything any ERRT Indemnified Party did, does or refrains from doing for the business or affairs of the ERRT, except to the extent that it is finally judicially determined by a court of competent jurisdiction that the loss, cost, damage, expense or liability resulted from the ERRT Indemnified Party’s gross negligence, fraud or willful misconduct. Notwithstanding any provision in this Agreement to the contrary, the ERRT may use all ERRT Assets to satisfy the indemnification obligations under this Section 5.

(b) Notwithstanding any provision herein to the contrary, the ERRT Indemnified Parties shall be entitled to obtain advances from the ERRT to cover their reasonable expenses of defending themselves in any action brought against them as a result of the acts and omissions, actual or alleged, of an ERRT Indemnified Party in its capacity as such, provided, however, that the ERRT Indemnified Parties receiving such advances shall repay the amounts so advanced to the ERRT immediately upon the entry of a final, non-appealable judgment or order finding that such ERRT Indemnified Parties were not entitled to any indemnity under the provisions of this Section 5.01.

(c) The rights to indemnification under this Section 5.01 are not exclusive of other rights that any ERRT Indemnified Party may otherwise have at law or in equity, including common law rights to indemnification or contribution. Nothing in this Section 5.01 shall affect the rights or obligations of any Person (or the limitations on those rights or obligations) under this ERRT Agreement or any other agreement or instrument to which that Person is a party.

(d) The rights to indemnification under this Section 5.01 in respect of any ERRT Indemnified Party shall survive the termination, resignation or removal of such ERRT Indemnified Party from the capacity for which they are indemnified. Termination or modification of this ERRT Agreement shall not affect any indemnification rights or obligations then existing.

Section 6. Beneficial Owner

Beneficial interests in the ERRT shall be held by the Beneficial Owner.

6.01 Identification of the Beneficial Owner.

(a) In order to determine the actual names and addresses of the authorized representatives of the Beneficial Owner, the ERRT and the ERRT Trustee shall be entitled to rely conclusively on the name and address of the authorized representative for the Beneficial Owner listed below in Section 6.01(b), who may from time to time provide additional or replacement names and addresses of authorized representatives, or listed in any written notice provided to the ERRT Trustee in the future by an authorized representative of the Beneficial Owner. The Beneficial Owner's sole rights and remedies at law and in equity with respect to Invoices are limited as expressly set forth in this Agreement.

(b) The ERRT Trustee shall send copies of all reports, budgets, annual balance statements, and other documents that the ERRT Trustee is required to submit to the Beneficial Owner under the Plan or this Agreement to the addresses below, provided that the addressees identified below may from time to time provide additional or replacement names and addresses of authorized representatives. Any such submission shall include a reference to the Bankruptcy Case, as well as the name of any other identifying information of any permits or agreements related to the submission:

Chief Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
PO Box 7611, Washington, DC 20044-7611

Attn: DJ # 90-11-3-07683/11
David L. Gordon
Senior Counsel
Donald G. Frankel
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division United States Department of Justice PO
Box 7611, Washington, DC 20044-7611
(202) 514-3659
david.l.gordon@usdoj.gov
donald.frankel@usdoj.gov

6.02 Beneficial Interests. Beneficial interests in the ERRT shall not be transferrable. The beneficial interests to be issued to the Beneficial Owner under the Plan are not intended to be "securities" under applicable laws, but the Parties do not represent or warrant that such interests shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such interests constitute securities, the Parties intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance.

6.03 Distribution of Remaining ERRT Funds. If, at the Termination Date, funds remain in the ERRT Accounts and no Allowed Invoices have not been paid in full (including Allowed Invoices for Operable Unit 3, in accordance with Section 3.05 above), any funds remaining with the ERRT shall be transferred to the United States, after payment in full of the YPF Tranche B Claims in accordance with the terms of the Plan.

6.04 Non-Beneficiaries. PRPs submitting Invoices shall be bound by the provisions of this Agreement, but shall not be a party to the Agreement. PRPs' sole rights and remedies at law and in equity with respect to Invoices are limited as expressly set forth in this Agreement, and PRPs submitting Invoices shall not sue or assert any other claim or cause of action against the ERRT or the ERRT Trustee. PRPs shall not be third-party beneficiaries of any enforcement rights under this Agreement, other than the

right to pursue binding arbitration in the event an Invoice is disallowed, as provided in Section 3.03(c) hereof.

Section 7. Reporting and Taxes

7.01 Reports. As soon as practicable after the end of each year, and as soon as practicable upon termination of the ERRT, the ERRT Trustee shall submit to the United States and the Liquidating Trust Oversight Committee a written report, including: (a) financial statements of the ERRT at the end of such calendar year and the receipts and disbursements of the ERRT for such period; and (b) a description of any action to be taken by the ERRT, and prior to such action being taken, in the performance of its duties which, as determined by outside counsel, accountants or other professional advisors, materially and adversely affects the ERRT and of which notice has not previously been given to the United States and the Liquidating Trust Oversight Committee. The ERRT shall promptly submit additional reports to the United States and the Liquidating Trust Oversight Committee whenever, as determined by outside counsel, accountants or other professional advisors, an adverse material event or change occurs which affects the ERRT hereunder. The ERRT shall also provide the reports or information required by Section 3.02 of this Agreement.

7.02 Other. The ERRT Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the ERRT, that are required by any applicable Governmental Unit.

7.03 Taxes. The ERRT Trustee shall be responsible for filing all federal, state, local and non-U.S. tax returns and paying taxes for the ERRT. The ERRT shall comply with all withholding and reporting requirements imposed by any federal, state, local, or non-U.S. taxing authority, and all distributions made by the ERRT shall be subject to any such withholding and reporting requirements. Amounts properly withheld from distributions to recipient beneficiaries and paid over to any Governmental Unit will be treated as amounts distributed to the recipient beneficiary.

The ERRT is intended to be treated as a qualified settlement fund for U.S. federal income tax purposes and as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC. In connection with the foregoing, for U.S. federal income tax purposes, it is intended that the ERRT be treated as a separate taxable entity, on whose behalf the ERRT Trustee will file tax returns and pay taxes. The Parties agree that, unless otherwise required by appropriate tax authorities, the ERRT shall file or cause to be filed tax returns, reports and other forms as required by applicable Law and consistent with the characterization of the ERRT as provided in the preceding two sentences. The ERRT Trustee shall be the “administrator,” within the meaning of Treasury Regulation section 1.468B-2(k)(3), of the ERRT. Notwithstanding anything to the contrary in this Agreement, the tax treatment of the ERRT is subject to any definitive guidance from the Internal Revenue Service any opinion of counsel to the ERRT as to the proper treatment of the ERRT for U.S. federal income tax purposes, or a judicial decision with respect to the tax treatment of the ERRT. The ERRT Trustee shall file tax returns and pay applicable taxes with respect to the ERRT in a manner consistent with the provisions of Treasury Regulation section 1.468B-2 and this Section 7.03. All such taxes shall be paid from the ERRT Assets (or the income or proceeds thereof).

The ERRT may request an expedited determination of taxes of the ERRT under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the ERRT for all taxable periods through the dissolution of the ERRT.

Section 8. Miscellaneous Provisions

8.01 Amendments and Waivers. Any provision of this Agreement may be amended or waived by mutual written consent of the ERRT Trustee, the Beneficial Owner and the Liquidating Trust; provided, however, that no change shall be made to this Agreement that would alter the provisions of

Section 7.03 hereof or adversely affect the federal income tax status of the ERRT as a qualified settlement fund and as a settlement fund exempt from U.S. federal income tax pursuant to section 468B(g)(2) of the IRC subject to Section 7.03 hereof, or, unless agreed to in writing by the affected ERRT Trustee, the rights of the ERRT Trustee. Technical amendments to this Agreement may be made as necessary, to clarify this Agreement or enable the ERRT Trustee to effectuate the terms of this Agreement, in a manner consistent with the Plan with the mutual consent of the ERRT Trustee, the Beneficial Owner and the Liquidating Trust.

8.02 Cooperation. The ERRT and the ERRT Trustee shall take such actions and execute such documents as are reasonably requested by the Liquidating Trust Oversight Committee with respect to effectuating the Plan and the transactions contemplated thereby, provided that such actions are not inconsistent with this Agreement or the Plan. To the extent that the Liquidating Trust Oversight Committee requests the ERRT and/or the ERRT Trustee to take such an action, the ERRT and ERRT Trustee shall do so at the sole expense of the Liquidating Trust but only if such action is not inconsistent with this Agreement or the Plan.

8.03 Law and Jurisdiction. Except to the extent the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or CERCLA or its implementing regulations are applicable, this Agreement shall be governed by, and construed and enforced in accordance with, the federal laws of the United States and, to the extent there is no applicable federal law, the domestic laws of the State of Delaware, without giving effect to the principles of conflicts of law thereof. The Bankruptcy Court shall retain continuing jurisdiction over the ERRT.

8.04 Severability. If any provision of this Agreement or application thereof to any Person or circumstance shall be finally determined by the Court to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by Law.

8.05 Sufficient Notice. Any notice or other communication hereunder shall be in writing and by reliable overnight courier with proof of delivery or certified letter with receipt requested, and shall be addressed to the Person for whom such notice is intended, to the name and address set forth in the case of the Beneficial Owner in Section 6.01 of this Agreement or such other address provided in writing to the ERRT by an authorized representative of the Beneficial Owner. All notices or other communication shall be considered effective on receipt, unless otherwise provided. All notices or other communications may also be provided by electronic mail with each recipient obligated to provide receipt of the notice by return email upon review of the notice. Any notice or other communication required to be provided to the United States shall be provided to the addresses below, provided that any notice or other communication hereunder related to Invoices submitted by NRD Trustees to the ERRT Trustee for reimbursement of Environmental Restoration Costs shall only be provided to the relevant NRD Trustee, and provided further that the ERRT Trustee shall seek and receive approval from or consult with the addressees set forth in Section 6.01 of this Agreement wherever the United States has approval or consultation rights under this Agreement and does not need to provide such notice or communication to the addresses below:

DOJ:

Chief Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
PO Box 7611, Washington, DC 20044-7611 Attn: DJ # 90-11-3-07683/11

David L. Gordon
Senior Counsel
Donald G. Frankel
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division United States Department of Justice PO
Box 7611, Washington, DC 20044-7611
(202) 514-3659
david.l.gordon@usdoj.gov
donald.frankel@usdoj.gov

NOAA:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Donna Roberts, DARF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
donna.roberts@noaa.gov

and

Chauncey Kelly, Section Chief
National Oceanic and Atmospheric Administration
Office of General Counsel
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8.06 Headings. The section headings contained in this Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Agreement or any term or provision hereof.

8.07 Actions Taken on Other Than Business Day. If any payment or act under the Plan or this Agreement is required to be made or performed on a date that is not a business day, then the making of such payment or the performance of such act may be completed on the next succeeding business day, but shall be deemed to have been completed as of the required date. For the purposes of this agreement, a business day shall be any of the days Monday through Friday excluding national holidays.

8.08 Consistency of Agreements and Construction. To the extent reasonably possible, the provisions of this Agreement shall be interpreted in a manner consistent with the Plan. Where the provisions of this Agreement are irreconcilable with the provisions of the Plan, the provisions of the Agreement control.

8.09 Compliance with Laws. Any and all distributions of ERRT Assets and/or ERRT Proceeds shall be in compliance with applicable Laws, including, but not limited to, applicable federal, state, and territorial securities Laws.

8.10 Preservation of Privilege. In connection with the ERRT Assets, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) of the Debtors shall be transferred and shall vest in the ERRT. The ERRT's receipt of such privileges associated with the ERRT Assets shall not operate as a waiver of other privileges possessed or retained by the Debtors or the Liquidating Trust, nor shall it operate to eliminate the rights of any co-defendant to any applicable joint privilege.

8.11 No Recourse to Beneficial Owner, United States or Liquidating Trust Oversight Committee. In no event shall the Beneficial Owner, the United States or the Liquidating Trust Oversight Committee have any responsibility for paying any expenses, fees, and other obligations of the ERRT or any Environmental Remediation Expenses, even after any funding therein is depleted, and in no event shall the ERRT or the ERRT Trustee, or any of their agents, representatives, or professionals, have recourse to the Beneficial Owner, the United States or the Liquidating Trust Oversight Committee therefor. Nothing herein shall obligate, require or impose any duty on the ERRT or the ERRT Trustee to oversee, confirm or ensure that (x) the Liquidating Trustee or the Liquidating Trust Oversight Committee are acting in compliance with the provisions of the Liquidating Trust Agreement or the Plan or (y) the ERRT Cash Distributions, as calculated and disbursed by the Liquidating Trust, are correct.

8.12 Uniform Custodial Trust Act. This Agreement shall not be subject to any provision of the Uniform Custodial Trust Act as adopted by any state, now or in the future.

[Signature Pages Follow]

FOR THE DEBTORS

By:

Date: _____

FOR THE ERRT

The ERRT Trustee

Greenfield Environmental Passaic River Trust, LLC, not individually but solely in the representative capacity as ERRT Trustee

By: Greenfield Environmental Trust Group, Inc., Member

Name:

Title:

Date: _____

FOR THE LIQUIDATING TRUST

By: Joseph J. Farnan, Jr., solely in its capacity as Liquidating Trustee

Date: _____