

**The State of Colorado  
Department of Public Health and Environment  
and  
Town of Rico, a Colorado Municipal Corporation**

**Intergovernmental Agreement  
regarding  
Administration and Enforcement of Voluntary Cleanup Plan**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is executed by the State of Colorado, acting through the Colorado Department of Public Health and Environment (“the Department”), whose address is 4300 Cherry Creek Drive South, Denver, CO 80246, and the Town of Rico, Colorado, a Colorado Municipal Corporation, (“Town”), whose address is P.O. Box 109, 2 Commercial Street, Rico, CO 81332.

**Recitals**

**Whereas**, elevated levels of lead in the Town and the surrounding area are present from past mining activities and also occur naturally due to local geologic conditions; and

**Whereas**, elevated levels of lead in general may pose an unacceptable threat to human health and the environment; and

**Whereas**, the presence of elevated levels of lead has been described in a number of documents, including the Rico Townsite Soils Voluntary Cleanup Program (“VCUP”) application submitted by the Town and Atlantic Richfield Company (“Atlantic Richfield”) (together, the “Applicants”) and approved by the Department on May 16, 2023 (the “VCUP Application”), pursuant to the Colorado Voluntary Cleanup and Redevelopment Act, § 25-16-301 to -311, C.R.S.; and

**Whereas**, the VCUP Application establishes a cleanup program that accounts for previous cleanup throughout the Town; provides additional sampling at certain properties; initiates local land use controls to govern man-made changes in the use or character of land that involves or results in construction, grading, excavation, digging, demolition, drilling, planting, placing non-native fill, landscaping, or other similar activities that disturb or move soils; and provides individual property owners with information and resources to perform cleanup work as part of future development; and

**Whereas**, VCUP activities will proceed in three Phases; and

**Whereas, in VCUP Phase 1, the Applicants will address the need for soil sampling and analysis at individual properties as needed to define the scope of remaining soil remediation, and will then engage in soil remediation at developed properties based on their zoning designation where there is an exceedance of the applicable lead action level, as well as remediation of soil on unpaved roads and alleys where there is an exceedance of the residential action level; and**

**Whereas, in VCUP Phase 2, and as a condition precedent to this IGA, the Town has adopted, by a Town ordinance, the Overlay Zone Regulations as Appendix D of the Rico Land Use Code that establish two overlay zoning districts within the current Town boundaries as defined areas of environmental concern; and**

**Whereas, the two overlay zoning districts are the Environmental Remediation Overlay Zone District (“EROZ”) for formerly remediated VCUP mine sites and the Rico Soils Overlay Zone District (“RSOZ”) for all other properties; and**

**Whereas, the Regulations specify the requirements for soil testing, handling, stockpiling, remediation, and disposal when soil that contains lead above an action level, or when a soils covers on previously remediated properties is disturbed by excavation, construction, or other development activities; and**

**Whereas, in VCUP Phase 2, Atlantic Richfield will establish the Rico Soils Management Program to provide information resources for the public, technical resources for the Town, and materials to support individual property owners within the RSOZ; and**

**Whereas, in VCUP Phase 3, the Town will be responsible for implementing the Rico Soils Management Program with funding from Atlantic Richfield; and**

**Whereas, performance of the VCUP Application will, in some locations, result in residual contamination levels remaining at levels that have been determined to be safe for one or more specific uses, but not all uses, and may incorporate engineered features or structures that require monitoring, maintenance, or operation or that will not function as intended if disturbed; and**

**Whereas, the State Hazardous Waste Management Program, at C.R.S. § 25-15-326, provides that any document recorded by the owner of real property in connection with a voluntary cleanup plan that restricts or requires certain uses or activities to protect human health and the environment by limiting exposure to substances or by ensuring the integrity of a response action shall be considered valid and enforceable on its terms; and**

**Whereas, such documents recorded by the owner of real property in connection with the VCUP Application, the Regulations, or the Rico Soils Management Program may provide the Department or the Town with authority to enforce the terms of such documents; and**

**Whereas, the Town and the Department agree that the Department should be able to enforce any interests or authorities vested in the Town with respect to any such documents recorded by the owner of real property in connection with the VCUP Application, the Overlay Zone Regulations, or the Rico Soils Management Program; and**

**Whereas, the State Hazardous Waste Management Program, at C.R.S. § 25-15-320(2), provides the Department and the Town with authority to enter into intergovernmental agreements to provide for the Department's enforcement of local ordinances that apply to properties that result in residual contamination levels determined safe for one or more specific uses, but not all uses, or where engineered features like soils covers are incorporated and require monitoring, maintenance or operation or that will not function as intended if disturbed; and**

**Whereas, the State Hazardous Waste Management Program, C.R.S. § 25-15-320(5), allows the Department to accept environmental covenants or to issue restrictive notices in cases where such covenants or notices are not required, including approvals of voluntary cleanup plans, but the owner of the remediated land nonetheless desires to create such a covenant or requests that the Department issue such a notice; and**

**Whereas, in lieu of accepting an environmental covenant or issuing a restrictive notice, the State Hazardous Waste Management Program, C.R.S. § 25-15-320(3) allows the Department to enter into an intergovernmental agreement with the Town to enforce the Overlay Zone Regulations; and**

**Whereas, C.R.S. § 29-1-203 authorizes governments to cooperate with one another to provide any functions, service or facility lawfully authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and**

**Whereas, C.R.S. § 25-15-320(3) authorizes the Department to enter into an intergovernmental agreement with the Town to enforce the Overlay Zone Regulations; and**

**Whereas, the Department and the Town enter into this IGA pursuant to the authority in C.R.S. § 29-1-203 and § 25-15-320 for the purpose of protecting human health and the environment and maintaining engineered components, and for the purposes of ensuring the Town's cooperation if the Department seeks financial assistance from Atlantic Richfield should the Department seek to enforce the Overlay Zone Regulations as set forth herein, and for the purpose of authorizing the Department to enforce independently or on behalf of the Town any documents recorded by the owner of real property in connection with the VCUP Application, the Overlay Zone Regulations, or the Rico Soils Management Program.**

## Agreement

The Department and the Town agree as follows:

1. The above recitals shall be incorporated into this IGA as if they were set forth below.
2. The Town shall maintain the Overlay Zone Regulations, subject to its authority to repeal or amend, but then only in accordance with the following:
  - a. The Town shall give at least 60 days written notice to the Department of any proposed amendment to or repeal of the Regulations; and
  - b. In the event of an Overlay Zone Regulations amendment, the Town and the Department shall work together to ensure continued protection of human health and the environment within the RSOZ and EROZ pursuant to C.R.S. § 25-15-320(3)(b)(III). Any amendments to the Overlay Zone Regulations shall incorporate such requirements as the Department may recommend to ensure continued protection of human health and the environment.
3. As provided in C.R.S. § 25-15-320(3)(b)(III), this IGA authorizes the Town and the Department to enforce the Overlay Zone Regulations within the RSOZ and EROZ. Pursuant to C.R.S. § 25-15-322, the Department and the Town shall have the authority to file an action in Dolores County district court seeking injunctive relief to require compliance with the Overlay Zone Regulations. Pursuant to C.R.S. §§ 30-28-124, -124.5, -209 and -210, the Town shall also have the authority to enforce Overlay Zone Regulations violations within the RSOZ and EROZ.
4. This IGA does not prevent or limit the Town from enforcing the Overlay Zone Regulations as it would in the normal course of business.
5. If the Department seeks to enforce the Overlay Zone Regulations to obtain injunctive relief from Dolores County District Court, the Department shall inform the Town in writing of its intended actions not less than 14 days in advance of any filing.
6. If the Department seeks to enforce the Overlay Zone Regulations, the Town will not object to, and will cooperate with, any effort by the Department to request that Atlantic Richfield provide financial assistance to the Department's enforcement of the Overlay Zone Regulations in the same or similar manner in which Atlantic Richfield provides financial assistance to the Town for the same type of enforcement.
7. The Town authorizes the Department to enforce any interests vested in the Town in any documents recorded by the owner of real property in connection

with the VCUP Application, the Overlay Zone Regulations, or the Rico Soils Management Program.

8. This IGA shall become effective on the date of execution by the last signatory party to this IGA.
9. This IGA may be amended by mutual consent of the parties at the same organizational level as those who sign this IGA, or terminated by either party providing the other 14 days written notice.


IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated for each respective signatory:

Town of Rico, Colorado

By: Nicole Y. Pieterse Digitally signed by Nicole Y. Pieterse  
Date: 2024.10.17 15:34:24 -06'00'

Mayor \_\_\_\_\_  
Title Date

ATTEST:

  
\_\_\_\_\_  
NAME Anna Wolf  
Town Clerk

Colorado Department of Public Health and Environment

By: \_\_\_\_\_

\_\_\_\_\_  
Tracie White, Director Date  
Hazardous Materials Waste Management Division