

PARTICIPATION AGREEMENT
FOR THE CLEAN STREAMS FOUNDATION, INC. TRUST

This Participation Agreement ("Participation Agreement") entered into this 1st day of October, 2005, by and between COLT RESOURCES, INC. ("Colt"), a Pennsylvania Corporation, with a business address of 8235 Forsyth Blvd., Suite 400, St. Louis, Missouri 63105, and the CLEAN STREAMS FOUNDATION, INC. ("Trustee" or "Foundation"), a Pennsylvania nonprofit corporation, with its registered place of business at 160 North McKean Street, Kittanning, Pennsylvania 16201.

WHEREAS, Colt wishes to provide funds or other assets and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; and

WHEREAS, the Trustee has established through a Declaration of Trust, dated April 7, 2001 which Declaration of Trust establishes a Trust which purpose is to help assure that funds are available to the Commonwealth of Pennsylvania in the future to operate and maintain treatment systems, to prevent pollution, and to protect natural resources from the adverse impacts of untreated discharges into waters of the Commonwealth (the "Trust"); and

WHEREAS, the Trustee has agreed and is willing to accept Colt's funds and guarantees and perform the duties as are required to be performed pursuant to this Participation Agreement and the Declaration of Trust; and

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and undertakings of the parties as set forth herein, and with the intention of being legally bound hereby, the parties agree as follows:

JLH, Jr.

ARTICLE ONE

DEFINITIONS

§1.1 The “Department” means the Pennsylvania Department of Environmental Protection, and its successor if any, which is the governmental agency with responsibilities related to the administration of the water pollution control and mining reclamation programs in Pennsylvania.

§1.2 “Operate” means, but is not limited to, the operation, maintenance, improvement, and replacement of the currently existing and functioning treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.3 “Participant” means an individual, organization, or corporation that has elected to participate in the Trust pursuant to a Participation Agreement entered into between Colt and the Foundation, for purposes of providing funds and/or financial guarantees to assure that funds will be available in the future for the operation of certain treatment systems, for the public purpose of prevention or abatement of pollution, and for the protection of natural resources, the environment, and the health and welfare of the public.

§1.4 “Treatment Systems” means those certain treatment systems and activities which are more particularly described in a Consent Order & Agreement between Colt and the Department for which Colt has provided funds and/or financial guarantees to be held in trust by the Foundation as an alternate financial assurance mechanism which provides for the sound future treatment of discharges for the public purpose of protecting the environment and the health and welfare of the public.

§1.5 “Trustee” means the Foundation acting as trustee under the terms and provisions of the Declaration of Trust, the Consent Order and Agreement between Colt and the Department, and this Participation Agreement entered into with Colt.

ARTICLE TWO

PARTICIPATION IN THE TRUST

§2.1 Colt agrees to provide certain funds, assets, and/or financial guarantees to be held by the Trustee for purposes of assuring that funds are available in the future for the operation of certain treatment systems, for the prevention of pollution, and for the protection of natural resources; which systems are more particularly described in the Consent Order and Agreement between Colt and the Department (hereinafter "Treatment Systems").

§2.2 The Trustee agrees to establish within the Trust Fund two Sub-Accounts: a sub-account designated as the Colt Primary Trust Account; and a sub-account designated as the Colt Capital Improvement Account.

§2.3 Colt agrees to make an initial payment or transfer to the Trust totaling \$100,954.27 simultaneously with its execution of this Participation Agreement.

§2.4 Colt agrees to make total payments or transfers to the Trust as agreed upon between Colt and the Department pursuant to the Consent Order and Agreement between the Department and Colt dated August 22, 2005, which is attached hereto as Exhibit A ("CO&A").

§2.5 Any guarantees, including but not limited to, letters of credit, insurance, surety bonds, etc., delivered by Colt shall be held by the Trustee until the Department either directs the Trustee to release such guarantee or portion thereof or the Department directs the Trustee to forfeit said bonds or enforce said guarantee and for the Trustee to deposit the proceeds of such guarantee into the Trust Fund. The Trustee shall be under no obligation to pay any premiums or other costs associated therewith. Instead, all such premiums and costs, as well as the responsibility for maintaining the guarantees in full force and effect, shall remain the obligation of Colt. The Trustee shall take no action with respect to guarantees except as directed, in

writing, by the Department in accordance with the provisions of the Declaration of Trust, and the Trustee shall not be liable to any party for acting in accordance with such directions.

§2.6 Any payments made by Colt or on its behalf to the Trustee for deposit into the Trust shall consist of cash, bank checks, bank wire transfers, negotiable instruments, or other property acceptable to the Trustee. The Trustee shall have no responsibility for the amount or adequacy of such payment, but the Trustee shall notify the Department in writing of any deficiencies in the payments agreed to be made by Colt whenever the Trustee has knowledge of such deficiencies.

ARTICLE THREE

ADMINISTRATION

§3.1 The principal of the Sub-Accounts shall consist of:

- (a) The payments or transfers to the Trustee made by Colt pursuant to this Agreement for said Sub-Accounts.
- (b) Such payments from time to time and at any time to the Trustee as such may be directed by the Department pursuant to any agreement between the Department and Colt.
- (c) Cash, funds or property transferred from any person to the Trustee and accepted by the Trustee for said Sub-Accounts.
- (d) Any proceeds from surety bonds which are transferred to the Trustee for said Sub-Accounts.
- (e) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this §3.1.
- (f) All earnings, accretions and profits received with respect to the foregoing items in this §3.1.

JLH/d

§3.2 The Trustee shall hold and administer the funds of the Sub-Accounts in accordance with the terms and conditions of the Declaration of Trust.

§3.3 The Trustee shall distribute such amounts from the Sub-Accounts as the Department shall direct to pay for the operation of the Treatment System or Treatment Systems and for such other purposes as is consistent with the CO&A. This amount shall be paid to a third party administrator to the Trust, who shall be responsible for paying the costs of operating the Treatment System in accordance with any instructions that may be issued by the Department in relation thereto, or to such other payee as directed by the Department and consistent with the CO&A.

§3.4 Colt understands that the Trust is intended to be categorized, for federal and state income tax purposes, as a charitable trust in accordance with and under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and any implementing regulation cited therein or any corresponding successor provision. Should it be determined that the Trust is not a charitable trust or the law changes so that the Trust becomes taxable for income tax purposes, then Colt agrees that it will contribute to the Trustee the amount of the income tax assessed or levied against or in respect of the particular Sub-Accounts. The Trustee shall use the money contributed by Colt to pay the income tax assessed or levied against or in respect of the Sub-Accounts established pursuant to this Participation Agreement.

§3.5 Colt hereby adopts the Declaration of Trust as the document which governs the administration of this Participation Agreement and the Sub-Accounts and directs the Trustee to hold and administer the Sub-Accounts in accordance with the terms and conditions of the Declaration of Trust and the CO&A. Colt acknowledges that the Commonwealth of Pennsylvania acting through the Department is the legal beneficiary of the Trust and has all

rights of a beneficiary under the law, as well as the rights granted under the Declaration of Trust. The Department shall have access to the Trust as provided therein.

§3.6 The funds in the Sub-Accounts and any other property held by the Trustee pursuant to this Participation Agreement shall not be subject to assignment, alienation, pledge, attachment, garnishment, sequestration, levy or other legal process, either voluntary, involuntary or by operation of law, by, on behalf of, or in respect of Colt and shall not be subject or applied to the debts, obligations or liabilities of Colt, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity.

Furthermore, Colt shall have no legal title to any part of the Trust Fund, and it is the intention of the parties to this Participation Agreement that Colt's entry into the Trust shall extinguish and remove all of Colt's interest in the Trust from Colt's estate under the Bankruptcy Code or similar laws.

§3.7 Except as otherwise provided in this Participation Agreement, all payments made to the Trustee or deposits into the Trust by Colt shall be irrevocable once made, and upon delivery thereof by Colt, all interest of Colt therein shall cease and terminate, and no part thereof, nor any income therefrom, shall be used for or devoted to purposes other than for the exclusive benefit of the Department and the Trust as provided herein.

§3.8 The Trustee shall at least quarterly furnish Colt, until such time as it dissolves and ceases to carry on its business, a statement providing an accounting of all transactions involving the Sub-Accounts and confirming the value of the Sub-Accounts. Such statement shall value Trust investments at market value which shall be that market value determined no more than thirty (30) days prior to the date of the statement.

§3.9 The Trustee shall be responsible for the keeping of all appropriate books and records relating to the receipt and disbursement of all moneys and assets under this Agreement.

The Trustee shall also cause to be prepared all income tax or information returns required to be filed with respect to the Trust and shall execute and file such returns. Each Participant, upon request, shall furnish the Trustee with such information as may be reasonably required in connection with the preparation of such income tax or information returns.

ARTICLE FOUR

AMENDMENTS

§4.1 This Participation Agreement may be amended by an instrument in writing, executed by Colt and the Trustee, with the consent and acknowledgment of the Department, or by the Trustee and the Department in the event Colt ceases to exist or defaults, but during the existence of Colt any amendment under this paragraph cannot in any manner affect the irrevocable nature of the Trust.

ARTICLE FIVE

NOTICES

§5.1 All notices, inquiries, directions or other written communications made or given pursuant to the Trust shall be given to Colt, the Department and the Trustee by certified mail, return receipt requested, addressed to the following addresses, and shall be deemed to be received upon the earlier of the date of signed receipt of the certified mailing or seven (7) days following the date of mailing:

Participant: Colt Resources, Inc.
8235 Forsyth Blvd., Suite 400
St. Louis, MO 63105

With a copy to:

Deborah A. Weedman, Esq.
8235 Forsyth Blvd., Suite 400
St. Louis, MO 63105

Stephen G. Allen, Esq.
Stites & Harbison, PLLC

250 West Main Street, STE 2300
Lexington, KY 40507

Trustee: Clean Streams Foundation, Inc.
c/o Jack J. Steiner, Esq.
160 North McKean Street
Kittanning, Pennsylvania 16201

With a copy to:

Clean Streams Foundation, Inc.
c/o Dean K. Hunt, Esq.
520 West Short Street
Lexington, Kentucky 40507-1252

Beneficiary: Javed I. Mirza
District Mining Manager
Pennsylvania Department of Environmental Protection
Knox District Mining Office
P.O. Box 669
Knox, PA 16232-0669

With a copy to:

Samuel C. Faith
Mineral Resources Program Specialist
Pennsylvania Department of Environmental Protection
California District Mining Office
25 Technology Drive
California Technology Park
Coal Center, PA 15423

and

Gail Guenther
Assistant Counsel
Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745

§5.2 Any change in the above addresses shall be made by giving notice to all parties to this Participation Agreement.

ARTICLE SIX

DISPUTES

§6.1 In the event of any dispute between the parties, the parties agree to attempt to resolve the dispute through negotiation or a method of alternative dispute resolution. No litigation shall be commenced without a certification by an authorized officer, employee, or agent of any party that the dispute cannot be resolved by negotiation or alternative dispute resolution provided in writing at least 20 days before commencing legal action.

§6.2 A party receiving such notice shall have 10 days after receipt of said notice to demand that said dispute be resolved by binding arbitration. If arbitration is requested, the dispute shall be resolved in accordance with the arbitration rules of the American Arbitration Association then in effect without regard to the date of execution of this Agreement.

ARTICLE SEVEN

CONSTRUCTION

§7.1 As used in this Agreement, words in the singular include the plural and words in the plural include the singular. Words used in this Agreement shall be given the meaning set forth in the Declaration of Trust, or in the absence of a definition therein, their plain and ordinary meaning, except that, words used in a financial or investment context that are terms of art shall be given their commonly accepted meaning when used in the context of financial services and investment practices. The headings of each section of this Agreement are for descriptive purposes only and shall not affect the interpretation or legal efficacy of this Agreement.

§7.2 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability. Such prohibition or unenforceability shall not invalidate the remaining provisions hereof; nor shall such prohibition or unenforceability in a jurisdiction render any

provision invalid or unenforceable in any other jurisdiction.

§7.3 All covenants and agreements contained herein shall be binding upon and inure to the benefit of Colt, the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action taken by Colt, the Department or the Trustee shall bind their successors and assigns.

§7.4 This Agreement shall be construed and governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or representatives duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written above.

PARTICIPANT:

COLT RESOURCES, INC.

By 

Print Name: John L. Hawk Jr.

Its Vice President

TRUSTEE:

THE CLEAN STREAMS FOUNDATION, INC.

By 

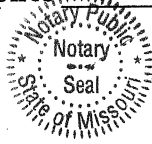
Print Name: Wayne Masterman

Its Chairman

STATE OF Missouri,
COUNTY OF St. Louis, to-wit:

The foregoing instrument was acknowledged before me this 29th day of
September, 2005, by John L. Hank, Jr., the Vice President of
COLT RESOURCES, INC..

My commission expires December 30, 2006.



MARY B. HOCKLE
St. Louis County
My Commission Expires
December 30, 2006

Mary B. Hockle
Notary Public
Mary B. Hockle

STATE OF Kentucky
COUNTY OF Fayette to-wit:

The foregoing instrument was acknowledged before me this 6 day of
October, 2005, by Wayne Masterson the Chairman of the
CLEAN STREAMS FOUNDATION, INC.

My commission expires 11-06-05.

Deanna Z. Zurbacher
Notary Public

CONSENT AND ACKNOWLEDGMENT

The Department of Environmental Protection hereby consents to Colt and the Trustee entering into this Participation Agreement pursuant to the Consent Order & Agreement between Colt and the Department dated August 22, 2005, and acknowledges the Commonwealth of Pennsylvania's and the Department's status as the beneficiary of the Trust and to evidence its consent and acknowledgment of the terms and conditions set forth herein, as well as the powers and authorities granted to the Department hereunder.

BENEFICIARY:

THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
COMMONWEALTH OF PENNSYLVANIA

By Michael Terretti

Print Name: MICHAEL TERRETTI

Its Director of District Mining Operations

EXHIBIT "A"
AGREEMENT BETWEEN
COLT AND THE DEPARTMENT