

**PARTICIPATION AGREEMENT**  
**FOR THE CLEANS STREAMS FOUNDATION, INC. TRUST**

This Participation Agreement ("Participation Agreement") entered into this 31<sup>ST</sup> day of JULY, 2014 by and between ROSEBUD MINING COMPANY, a Pennsylvania company, with its principal place of business at 301 Market Street, Kittanning, Pennsylvania 16201 ("Participant" or "Rosebud"), 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, Rosebud has entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Protection ("the Department" or "DEP") dated December 5<sup>TH</sup>, 2012 ("COA" or "DEP Agreement") in which Rosebud has agreed to establish a trust fund to operate and maintain a treatment facility that will treat the St. Michael Shaft Discharge and the Other St. Michael Discharges (as defined in the COA) in the Little Conemaugh River Watershed; and

WHEREAS, the COA provides that Rosebud shall pay a total of \$15,000,000 into the trust fund in accordance with the payment schedule set forth in Paragraph 7(b) of the COA; and

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

WHEREAS, the DEP has requested that Rosebud deposit all of the payments made pursuant to the COA into the Trust; and

WHEREAS, the DEP has agreed that Rosebud's obligations to establish a trust fund under the COA shall not be expanded or modified by the terms of the Declaration of Trust or as it may be amended or revised in the future; and

WHEREAS, the Trustee has agreed and is willing to accept the Participant's funds or other assets or 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:

#### **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 treatment facilities approved by the Department and any other facilities which may be required in the future.

§1.3 "Participant" means Rosebud, a Pennsylvania company that has elected to participate in the Trust pursuant to a Participation Agreement entered into between the Participant and the Foundation, for purposes of providing funds that will be available to the DEP in the future for the operation of the Treatment Facility (as defined herein), for the public purpose of prevention or abatement of pollution, and for the protection of natural resources, the environment, and for the health and welfare of the public.

§1.4 "Treatment Facility" means the Treatment Facility as defined in Paragraph V of the COA for which a Participant has provided funds or other assets or guarantees to be held in trust by the Foundation.

§1.5 "Trustee" means the Foundation acting as trustee under the terms and provisions of the Declaration of Trust and a Participation Agreement entered into with a Participant.

## **ARTICLE TWO PARTICIPATION IN THE TRUST**

§2.1 The Participant agrees to provide certain funds to be held by the Trustee for the DEP's use for operating and maintaining the Treatment Facility after Active Mining Operations (as defined in the COA) end.

§2.2 The Trustee agrees to establish within the Trust Fund a Sub-Account designated as "Sub-Account For the St. Michael Treatment Facility ("Sub-Account").

§2.3 The Participant agrees to make payments as agreed upon between the Participant and the Department pursuant to the COA which is attached hereto as Exhibit "A".

§2.4 Any payments made by the Participant 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 the Participant whenever the Trustee has knowledge of such deficiencies.

## **ARTICLE THREE ADMINISTRATION**

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

- (a) The payments or transfers to the Trustee made by the Participant

pursuant to this Agreement for said Sub-Account.

(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 the Participant.

(c) Cash, funds or property transferred from any person to the Trustee and accepted by the Trustee for said Sub-Account.

(d) All investments, reinvestments, assets or proceeds attributable to or derived from the foregoing items in this §3.1.

(e) All earnings, accretions and profits received with respect to the foregoing items in this §3.1.

§3.2 The Trustee shall hold and administer the funds of the Sub-Account in accordance with the terms and conditions of the Declaration of Trust, this Participation Agreement, and the DEP Agreement.

§3.3 The Trustee shall distribute such amounts from the Sub-Account as the Department shall direct, in accordance with the terms of the COA, to pay for the operation of the Treatment Facility after Active Mining Operations end. This amount may be paid to a third party administrator to the Trust, who shall be responsible for paying the costs of operating the Treatment Facility in accordance with any instructions that may be issued by the Department in relation thereto.

§3.4 Except as expressly set forth in this Participation Agreement, the Participant hereby adopts the Declaration of Trust as the document which governs the administration of this Participation Agreement and the Sub-Account and directs the Trustee to hold and administer the Sub-Account in accordance with the terms and conditions of the Declaration of

Trust. The Participant 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.

§3.5 The funds in the Sub-Account 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 the Participant and shall not be subject or applied to the debts, obligations or liabilities of the Participant, including, without limitation, any direct action or seizure by any creditor or claimant under any writ or proceeding at law or in equity. Furthermore, other than as provided in the COA, the Participant 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 the Participant's entry into the Trust shall extinguish and remove all of Participant's interest in the Trust from Participant's estate under the Bankruptcy Code or similar laws.

§3.6 Except as otherwise provided in the COA, the Declaration of Trust or this Participation Agreement, all payments made to the Trustee or deposits into the Trust by the Participant shall be irrevocable once made, and upon delivery thereof by the Participant, all interest of the Participant 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.

§3.7 The Trustee shall at least quarterly furnish the Participant a statement providing an accounting of all transactions involving the Sub-Account and confirming the value of the

Sub-Account. Such statement shall value Trust investments at market value which shall be that market value determined not more than thirty (30) days prior to the date of statement.

§3.8 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.

§3.9 Notwithstanding anything to the contrary in Article Eight of the Declaration of Trust, the Department and the Trustee agree that Rosebud shall not be responsible for the payment of any tax assessed or levied against the Trust. Furthermore, Rosebud waives its right under the Trust to receive notice of any proposed changes to the Trustee's compensation arrangement and to consult with the Department regarding any such changes.

§3.10 Notwithstanding any statements to the contrary in the Declaration of Trust relating to a Participant's potential liability for mine drainage treatment facilities covered by the Trust, or for claims against the Trust by third parties, the Trustee and the DEP agree that Rosebud's obligations relating to the Trust are limited to those payment obligations set forth in the COA attached hereto as Exhibit A.

#### **ARTICLE FOUR AMENDMENTS**

§4.1 This Participation Agreement may be amended by an instrument in writing, executed by the Participant and the Trustee, with the consent and acknowledgment of the Department, or by the Trustee and the Department in the event Participant ceases to exist or defaults, but during the existence of the Participant 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 the Participant, 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: Rosebud Mining Company  
301 Market Street  
Kittanning, PA 16201

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

Beneficiary: Pennsylvania Department of Environmental Protection  
Director, Bureau of Mining and Reclamation  
Fifth Floor, Rachel Carson Building  
400 Market Street  
Harrisburg, PA 17105-8461

§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.

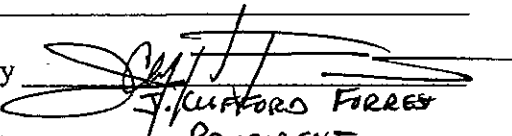
§7.3 All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Participant, the Department and the Trustee, as well as their successors and assigns. Similarly, any request, notice, direction, consent, waiver or other writing or action taken by the Participant,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

By   
Its J. CLIFFORD FIERRES  
PRESIDENT

TRUSTEE:

THE CLEAN STREAMS FOUNDATION, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF PENNSYLVANIA  
COUNTY OF ARMSTRONG, to-wit:

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of  
JULY, 2014, by J. WIFFORD FORREST, the  
PRESIDENT of the ROSBY MINING COMPANY.

My commission expires \_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
JAMES R. BARKER, Notary Public  
Kittanning Boro., Armstrong County  
My Commission Expires August 6, 2016

James R. Barker  
Notary Public

STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, the  
\_\_\_\_\_ of the CLEAN STREAMS FOUNDATION, INC.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**CONSENT AND ACKNOWLEDGMENT**

The Department of Environmental Protection hereby consents to Participant entering into this Participation Agreement pursuant to the Consent Order and Agreement between the Participant and the Department dated December \_\_, 2012 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 \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT "A"**

**CONSENT ORDER AND AGREEMENT BETWEEN  
THE PARTICIPANT AND THE DEPARTMENT**