

Request for Proposals

Hotel Facility and Related Developments East Yards Development Area

Anaconda-Deer Lodge County (ADLC) is requesting proposals for the development of a 20-acre parcel in the East Yards Development Area. ADLC intends to award this parcel to the Proposer presenting the best overall use of the parcel and the best hotel facility. ADLC will subsequently deed the parcel to the successful Proposer and enter into an agreement with the Proposer to construct a hotel facility and related amenities.

Proposal Scope

The proposal shall include the following:

- Detailed plans and a 10-year financial pro forma for a hotel facility with a minimum of 75 guest rooms. This hotel must include: a restaurant and bar space, a minimum of 2,500 square feet of meeting space, a fitness center, a swimming pool, a hot tub, a free hot breakfast, and adequate parking for all entities.

The hotel will be constructed with interior access to guest rooms in order to better accommodate the supervision needs of school events and other chaperoned activities.

The hotel should be pet friendly.

Affiliation with a nationally recognized franchise is preferred.

Approximately eight acres of the 20-acre parcel will be reserved for this portion of the project.

- Conceptual plan to develop the remaining 12 acres with ancillary uses that could support the hotel/restaurant and vice-versa.

Disbursement of Property

The property being offered by ADLC in this Request for Proposals (RFP) is located in the East Anaconda Yards, and is depicted in Attachment C. The parcel includes the following lots as identified on the parcel map:

Lot 1 - F (4.69 acres)

Lot 1 - G (9.06 acres)

Lot 1 - J (3.13 acres)

Lot 1 - K (3.34 acres)

This property is being made available to qualified Proposers through ADLC Municipal Code for Property Disbursement, Chapter 18 — REVENUE AND FINANCE, Article V.-SALES OF PROPERTY, Section 18-124 Disposal of real property.

ADLC Subsidy and Revolving Loan

The County expects to provide a \$1 million grant toward approved hotel construction costs. In addition, a \$2 million revolving line of credit will be available for approved costs. The term of the revolving loan will be five years at 1% interest. Semi-annual interest-only payments will be required, followed by a balloon principal payment at the end of the term.

Funding assistance to help the developer with connections to city water and sewer systems may also be available upon request.

Zoning and Permitting

Approximately 14 acres of the 20-acre parcel is zoned Highway Commercial (see enclosed map) under ADLC's Development Permit System, and lodging and restaurant facilities are an allowed use with an approved Administrative Development Permit.

The remaining acreage is zoned Railroad Transitional, and lodging and restaurant facilities are an allowed use with an approved Major Development Permit.

Proposed ancillary uses will require zoning and permitting review.

An ADLC building permit is required.

A portion of the parcel has received Montana Department of Environmental Quality subdivision approval for water, sewer, storm water, and solid waste.

Anaconda's Development Districts are identified in Attachment D.

Property Condition

This property is on a Waste Management Area in a Superfund site. ADLC's Institutional Controls Program will provide assistance before and during the project regarding soils handling and any related issues.

1.0 Instructions to Proposers

ADLC is seeking a qualified developer capable of successfully constructing a quality hotel facility and related amenities. The proposals are to be submitted in accordance with the following instructions which define the required information to be submitted and the proposal due date.

1.1 Definition of a Proposer

The term "Proposer" as used in the RFP shall mean any person or firm submitting a proposal response to this RFP.

1.2 Discrepancies, Omissions and Additional Information

The Proposer is responsible for completely examining the RFP and all exhibits, as applicable. Failure to do so will be at the sole risk of the Proposer. Should the Proposer find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any question arise concerning this RFP, the Proposer shall notify ADLC in writing (or email) of such findings or questions immediately. Should such matters remain unresolved by ADLC in writing prior to the Proposer's preparation of its proposal, such matters must be addressed in the proposal.

Inquiries should be submitted to:

Heather Edwards
Executive Assistant
ADLC Courthouse
800 Main Street, Anaconda, MT 59711
Telephone: 406-563-4000
Email: hedwards@adlc.us

ADLC is not responsible for oral statements made by its employees, agents, or representatives concerning this RFP. If the Proposer requires additional information, it must request that such information be furnished in writing by ADLC.

The Proposer will be expected to perform the work in accordance with a mutually agreed upon contract.

1.3 Site Conditions

The Proposer shall make whatever arrangements are necessary and as coordinated with ADLC to become fully informed regarding all site conditions, and any other matters which might in any way affect construction and operation of the hotel facility. Any failure to investigate fully the site conditions and other matters shall be at Proposer's sole risk.

The parcel contains covenants, which must be reviewed prior to submitting a proposal. The parcel covenants can be found in Attachment E, on Pages 8-10.

1.4 Proposal Preparation Costs

All costs of proposal preparation, including Site visits and meetings, and any other pre-award costs, shall be at Proposer's expense.

1.5 Preparation and Submittal of Proposals

Proposals shall be prepared and submitted in the quantity, form and format requested by this RFP. Submittals of proposals shall be paper copies and an electronic copy. The proposal shall be submitted as outlined in the Receipt and Opening of Proposals section of this RFP. All proposals shall be properly executed, all blank spaces filled in, and any interlineations, alterations or erasures fully explained and initialed by the Proposer. The proposal shall be organized as follows:

Part 1 - Proposal Response Letter. Complete attached Proposal Response Letter Form in Attachment A;

Part 2 – Proposer's Business Information. Complete attached Business Information Form in Attachment B;

Part 3 – Statement of Qualifications. Provide information as detailed in Section 2.3;

Part 4 – Past Experience. Provide information as detailed in Section 2.4;

Part 5 – Proposed Use. Provide information as detailed in Section 2.5;

Part 6 – Technical Compatibility. Provide information as detailed in Section 2.6.

Part 7 – Financial Capability. Provide information as detailed in Section 2.7.

Part 8 – Cash Flow Analysis. Provide information as detailed in Section 2.8.

Part 9 – Site Plan. Provide information as detailed in Section 2.9.

Part 10 - Exceptions and Clarifications. List any exceptions and clarifications if identified; and

Part 11 – Alternate Proposals. Provide Alternate Proposal(s) if desired.

1.6 Modification and Withdrawal of Proposals

The Proposer may, without prejudice, modify or withdraw its proposal by written request, provided that such request is received by ADLC prior to the proposal due date.

1.7 Important RFP Dates

There are important dates that must be acknowledged by the Proposer to complete the requirements of this RFP:

- RFP issued: Wednesday, March 18
- Last day for questions from Bidders: Wednesday, April 1, 5 p.m. Mountain Time
- Proposals due: Thursday, April 9, 5 p.m. Mountain Time

Notice of award to the successful Proposer is anticipated to be completed by April 21, 2020.

1.8 Receipt and Opening of Proposals

Seven signed paper copies of the complete proposal and an electronic copy must be plainly labeled “East Anaconda Development Area Hotel Proposal” and received by ADLC at the address below by Thursday, April 9, 2020, at 5 p.m. Mountain Time.

Bill Everett
Chief Executive Officer
ADLC Courthouse
800 Main Street, Anaconda, MT 59711

1.9 Proposer Award

ADLC has the sole right to select the successful Proposer for award, to reject any proposal as unsatisfactory or non-responsive or incomplete, to award the property, or not to award the property as a result of this RFP. The property will be awarded to the Proposer who in ADLC’s judgment demonstrates the best use of the property, and the best ability to provide a quality hotel facility and complete the construction successfully.

ADLC reserves the right to withdraw or delay this RFP if the “Remedy Coordination, Funding, and Settlement Agreement” with Atlantic Richfield is not approved or is delayed.

1.10 Proposals become public information

All proposals submitted in response to this RFP are the property of ADLC and become publicly available information. If the Proposer desires to protect any proprietary information from public review, the Proposer shall provide a non-disclosure statement, as well as identifying the particular information in the proposal to be protected under the non-disclosure statement.

1.11 Evaluation Criteria

The proposal may be evaluated on, but not limited to, the following criteria:

- Overall hotel facility design and operations;
- Conceptual plan for overall long-term site development;
- Financial pro forma;
- Completeness of the proposal;
- Relevant demonstrated experience of the Proposer;
- Demonstrated financial capacity;
- Other evaluation criteria as may be determined by ADLC.

1.12 Formal Presentation

Proposers may be asked to make a formal presentation to ADLC as part of the bid evaluation and award process, as well as answer any questions ADLC may have.

1.13 Disclaimer

The Proposer acknowledges and agrees that ADLC's evaluation review or approval of Proposer's submitted proposal herein shall not constitute approval of omissions or noncompliance due to review or oversight by ADLC, with any applicable regulations of federal, state and/or local authorities.

If the Proposer chooses to include alternatives in addition to the proposal, the Proposer may at their own option. ADLC will only consider alternative plans if a complete and responsive proposal to the RFP is submitted by the Proposer. ADLC has no obligation to review alternatives.

2.0 Proposal Requirements

The following proposal requirements are organized to provide structure and clarity not only for submittal, but for evaluation. Any documents provided by ADLC in this RFP to be filled out by the Proposer must be completed and returned with the proposal.

2.1 Proposal Response Letter

This letter is an acknowledgement of RFP requirements and conditions. Please sign and date this form and include the form with the proposal. (See Attachment A)

2.2 Proposer's Business Information Form

Please complete the requested information and include the completed form with the proposal. (See Attachment B)

2.3 Statement of Qualifications

Please describe why your entity is the most qualified to construct the hotel facility and develop the surrounding acreage of the parcel, and why your proposal represents the best use of the property.

2.4 Past Experience

Please describe your experience developing similar quality hotel projects to the hotel facility proposed in this RFP. Include a brief summary of each property developed, including its location and amenities, and when the property was developed.

2.5 Proposed Use and Operation

Please describe and illustrate as necessary the proposed hotel facility utilizing approximately eight acres of the parcel, including the required amenities listed below. Please describe any pertinent operational details.

- A minimum of 75 guest rooms, with interior room access
- Restaurant and bar space
- A minimum of 2,500 Square feet of meeting space
- Fitness center
- Swimming pool
- Hot tub
- A free hot breakfast
- Adequate parking
- Pet friendly

2.6 Technical Compatibility

Please describe how this hotel facility and future developments will be compatible with surrounding current land uses and ADLC development districts.

2.7 Financial Capability

Please describe the Proposer's financial capability to construct the hotel facility, and the Proposer's ability to facilitate future development on the remainder of the parcel.

2.8 Cash Flow Analysis

Please provide a 10-year financial pro forma with a cash flow analysis for the hotel facility. Include the proposed construction cost, as well as any supplemental funding to be utilized from ADLC or other sources.

2.9 Site Plan

Please include a detailed description and any renderings that may be available of the hotel facility, and future development on the remainder of the parcel.

List of Attachments

Attachment A: Proposal Response Letter

Attachment B: Proposer's Business Information

Attachment C: Parcel Site Map

Attachment D: Anaconda Development Districts Map

Attachment E: Parcel Covenants

Attachment A
Proposal Response Letter

PROPOSAL RESPONSE LETTER

PROPOSER _____

In response to the above titled Request for Proposal (RFP), the undersigned hereby proposes to Anaconda-Deer Lodge County (ADLC) to construct a hotel facility and related amenities as stipulated in the RFP.

The undersigned agrees that this proposal constitutes a firm offer to ADLC which cannot be withdrawn for forty-five (45) calendar days from the proposal due date.

The undersigned certifies that the Proposer has examined and is fully familiar with all of the provisions of the RFP, and is satisfied they are accurate; that the Proposer has carefully checked all the words and figures and all statements made in this proposal; that the Proposer has satisfied itself with respect to the actual site conditions; and other matters which in any way affect the construction of the hotel facility. The undersigned hereby agrees on behalf of Proposer that ADLC will not be responsible for any errors or omissions in this proposal.

If awarded the property, the undersigned agrees to execute a Contract with ADLC within thirty (30) days of receipt. The undersigned hereby certifies that he or she is authorized to bind the Proposer to this proposal, and to a contractual agreement resulting therefrom.

Attached are the required RFP responses and all other information which the Proposer desires considered as part of this proposal. The Proposer acknowledges that ADLC, at its option, may incorporate the information submitted by the Proposer into a resulting contractual agreement.

The undersigned also acknowledges receipt, understanding and full consideration of the following addenda to the RFP. If no addenda have been received, enter "none". Addenda Nos. _____.

BY:

(Signature)

(Type or Print Name)

(Title)

(Date)

Attachment B

Proposer's Business Information

PROPOSER'S BUSINESS INFORMATION

1. ADMINISTRATIVE INFORMATION

Please submit the following information:

- Name of Proposer: _____
- Type of business entity: _____
(Sole Proprietorship, Partnership, Corporation, Joint Venture, etc.)
- Parent corporation (if applicable): _____
- For corporation, state of incorporation: _____
- Federal Tax Identification Number: _____

- **Information For Contract Notices**

Street: _____

P.O. Box: _____

City, State, Zip : _____

Phone No.: _____

Fax No.: _____

Attention: _____

Name and Title

Attachment C Parcel Site Map

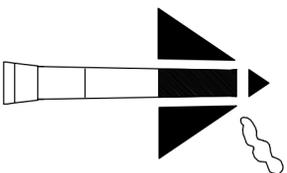
The parcel being offered by ADLC includes the following lots:

Lot 1 – F

Lot 1 – G

Lot 1 – J

Lot 1 – K



NORTH
SCALE

AMENDED PLAT EAST YARDS FRONTAGE SUBDIVISION

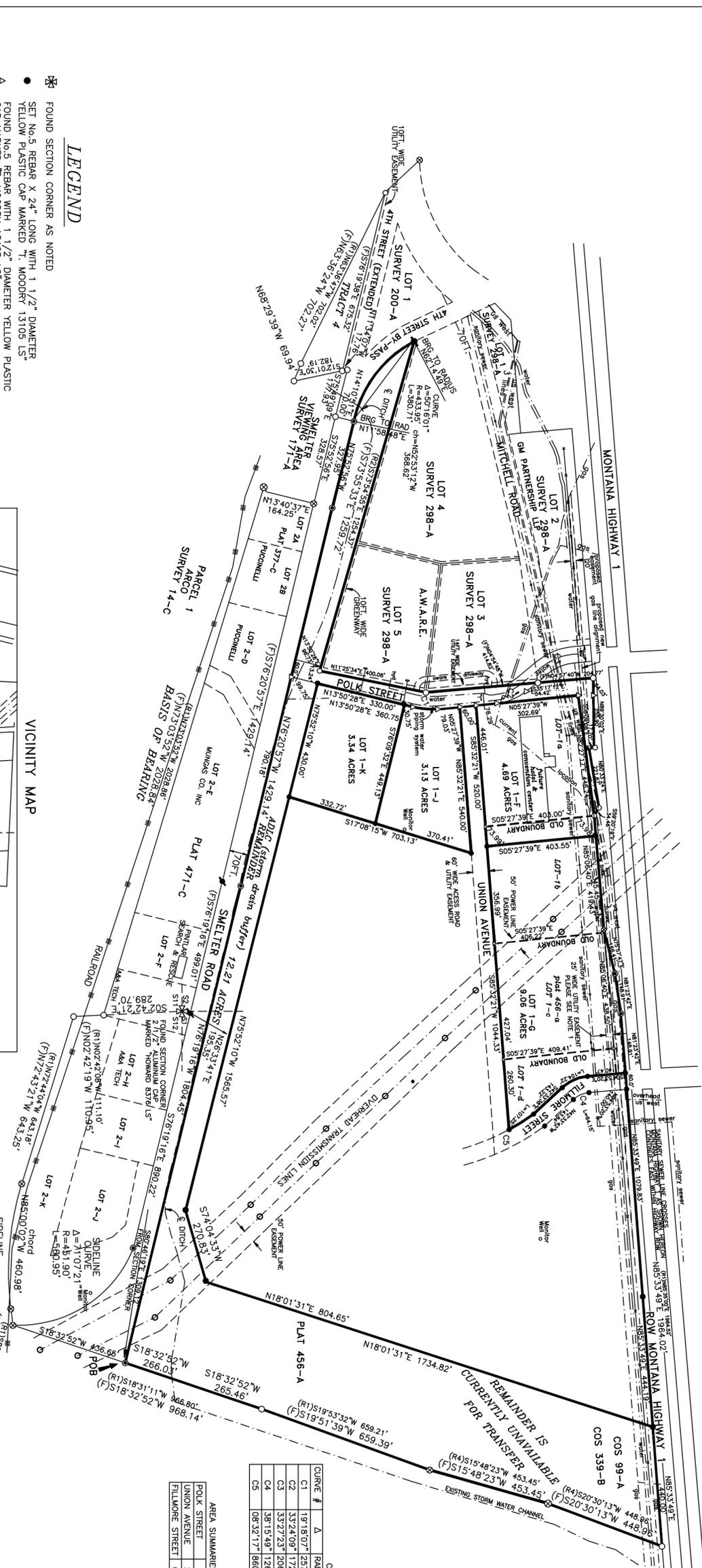
SECTIONS 1, 2, & 12, T.4N., R.11W., P.M., M., ANACONDA-DEER LODGE COUNTY, MONTANA ANACONDA, MONTANA

PURPOSE OF SURVEY: RETRACEMENT SURVEY, TOPOGRAPHY AND ASBUILT UTILITY SURVEY OF
EAST YARDS AREA TO AID AND ASSIST WITH A FUTURE 2 LOT MINOR SUBDIVISION.

NOTE 1: ALL APPARENT, LOCATED AND SURVEYED EASEMENTS (SUBDIVISION, BUILDING SETBACKS, UTILITY EASEMENTS, AND STORM DRAIN EASEMENTS), ALONG WITH, SURVEYED UNDERGROUND UTILITY LINES AS SHOWN HEREON, SHALL CARRY AN EASEMENT FOR THE INSTALLATION, REPAIR AND MAINTENANCE OF SAID LINES. THE WIDTH OF SAID EASEMENTS MAY VARY DUE TO DEPTH OF BURED UTILITIES, AND THESE OF UTILITIES THEY REPRESENT.

NOTE 2: THIS AREA IS A REGENERATED SUPERFUND WASTE MANAGEMENT AREA. ALL OBSERVABLE FEATURES (SUCH AS SURFACE AND UNDERGROUND UTILITY LINES, EASEMENTS, AND DITCHES) IDENTIFIED IN THE OUT CLAIM DEED (EAST ANACONDA YARDS PARCEL), EXISTING STORM WATER DITCHES MUST BE MAINTAINED SO THEY CONTINUE TO FUNCTION AT DESIGN CAPACITY.

NOTE 3: RECIPROCAL EASEMENT AGREEMENT. THE OWNERS OF LOT 1-1 OF THE EAST YARDS RECREATION COMPLEX MINOR SUBDIVISION, AND THEIR RESPECTIVE HEIRS AND ASSIGNS, DO HEREBY GRANT UNTO EACH OTHER UNSPECIFIED RECIPROCAL EASEMENTS FOR SHARED PARKING, PEDESTRIAN AND VEHICULAR ACCESS, OVER AND THROUGH ALL PROPERTY THITHER TO AND FROM THE EAST YARDS RECREATION COMPLEX MINOR SUBDIVISION, AND TO AND FROM THE EAST YARDS RECREATION COMPLEX MINOR SUBDIVISION, IN ORDER TO PROMOTE AND PROTECT ANY BUSINESS ESTABLISHMENT WITHIN THE SUBDIVISION.



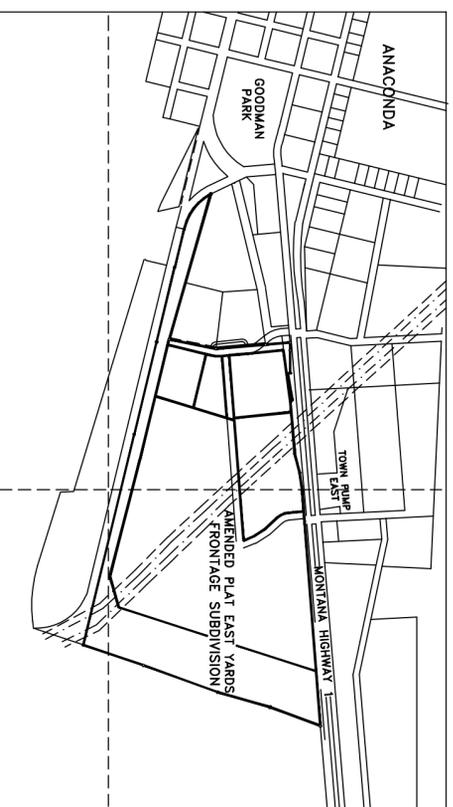
CURVE #	Δ	RADIUS	LENGTH	CHORD
C1	18°18'07"	257.07'	86.60'	NO.4°11'25"E 86.19'
C2	33°24'09"	172.85'	100.77'	N22°09'43"E 99.35'
C3	33°27'23"	1206.55'	120.61'	N22°08'06"W 118.90'
C4	35°15'49"	128.06'	84.19'	S24°01'15"E 82.83'
C5	08°32'17"	860.00'	128.16'	S31°58'13"E 128.04'

AREA	SUMMARIES OF SUBDIVISION ROADS
POLK STREET	1.17 ACRES 50,923 SQ. FT.
UNION AVENUE	2.21 ACRES 96,096 SQ. FT.
FILMORE STREET	0.64 ACRES 27,691 SQ. FT.

LEGEND

- ✱ FOUND SECTION CORNER AS NOTED
 - SET NO.5 REBAR X 2.4" LONG WITH 1 1/2" DIAMETER YELLOW PLASTIC CAP MARKED "T. MOODRY 13105 LS"
 - ▲ FOUND NO.5 REBAR WITH 1 1/2" DIAMETER YELLOW PLASTIC CAP MARKED "T. MOODRY 13105 LS"
 - FOUND NO.5 REBAR WITH 1 1/2" DIAMETER YELLOW PLASTIC CAP MARKED "P.TS-THOMPSON 8795 LS"
 - FOUND NO.5 REBAR WITH 1 1/2" DIAMETER RED PLASTIC CAP MARKED "B. THOMPSON 8795 LS"
 - FOUND NO.5 REBAR WITH 1 1/2" DIAMETER RED PLASTIC CAP MARKED "P.TS-THOMPSON 8795 LS"
 - ⊗ NO.5 REBAR WITH 1 1/2" DIAMETER YELLOW PLASTIC CAP, MARKED "HOWARD 8376 S"
 - ⊠ FOUND NO.5 REBAR-NO CAP
 - 1 1/4" DIAMETER YELLOW PLASTIC CAP, HAMMOND 3711 S
 - PROTRACTED OR PROJECTED SURVEY LINES
 - SURVEYED LINES AND LINES OF CONTROL
 - SURVEYED UTILITY LINES
 - PROPERTY BOUNDARIES, THIS SURVEY
- (R1) CERTIFICATE OF SURVEY 99-A (PARCEL E), DUA, 1994
 (R2) EAST YARDS SUBDIVISION 298-A, THOMPSON 8795 LS
 (R3) EAST FOURTH STREET SUBDIVISION 200-A, THOMPSON 8795 LS
 (R4) CERTIFICATE OF SURVEY 339-B, T. MOODRY 13105 LS, MSTS, 2002
- BASIS OF BEARING**
 BETWEEN FOUND MONUMENTS ALONG THE SOUTHERN BOUNDARY OF PARCEL E, AS SHOWN ON CERTIFICATE OF SURVEY 99-A

VICINITY MAP



SURVEY COMMISSIONED BY:
 S.C. RECREATION COMPLEX
 WARNER GROUP

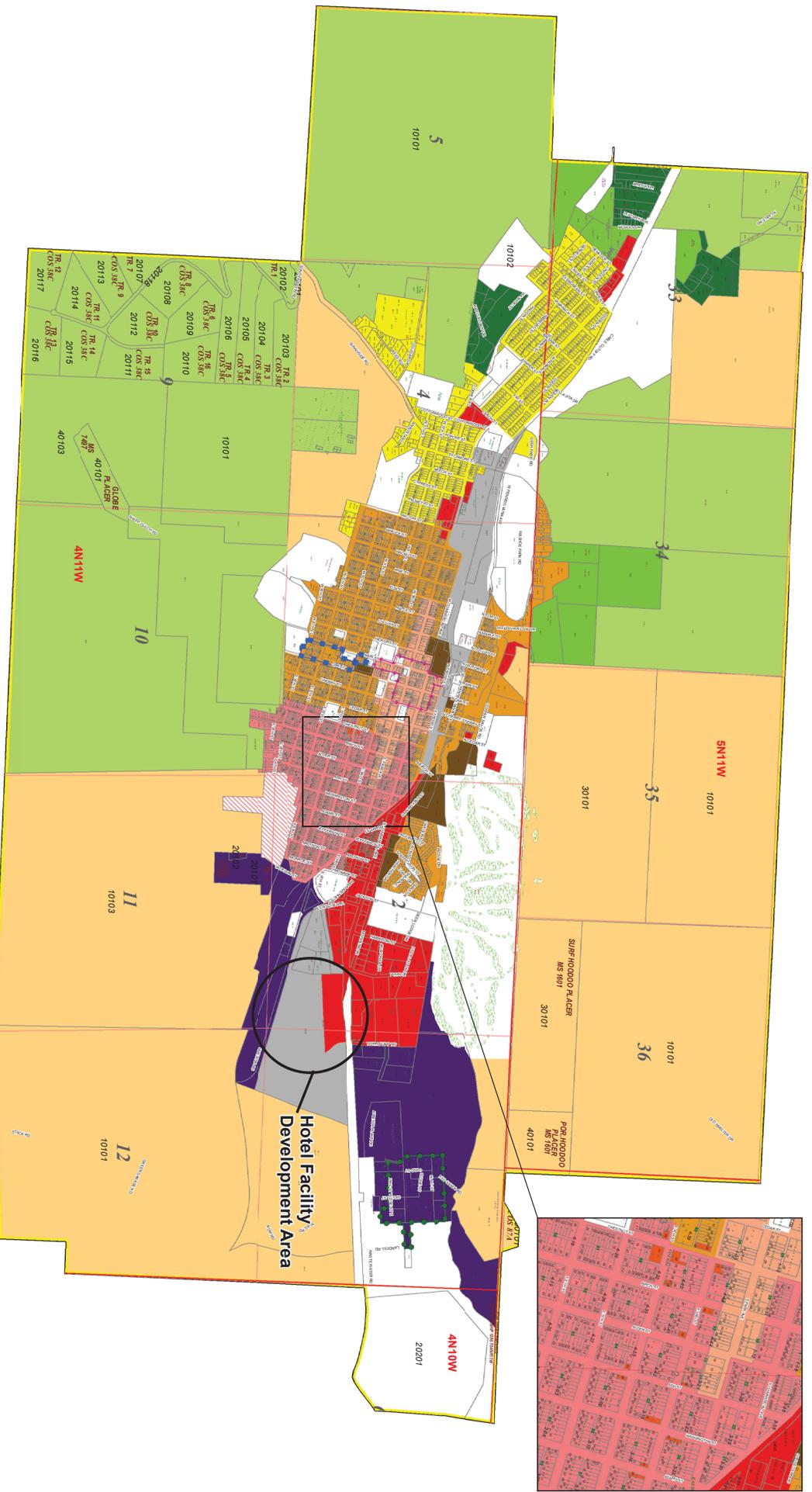
T.4N., R.11W.,	S2	S1
	S11	S12

T. MOODRY
 SOUTHWESTERN
 TECHNICAL
 SURVEYING

TOM J. MOODRY, PLS
 921 W. 4TH ST.
 ANACONDA, MONTANA 59711
 406.563.4782
 SURVEYING SOUTHWEST MONTANA FOR 41 YEARS

Attachment D
Anaconda Development Districts Map

Anaconda Development Districts



- Anaconda Urban Planning Area
- Anaconda Residential Estate District - 10.0
- Anaconda Residential Estate District - 2.5
- Anaconda Residential Estate District - 1.0
- Highway Commercial Development District
- Central Business Development District
- Neighborhood Commercial Revitalization District
- Public/Semi-Public Development District
- Heavy Industrial Development District
- Light Industrial Development District
- Railroad Transitional Development District
- High Density Residential Development District
- Medium Density Residential Development District
- Low Density Residential Development District
- Covenant Controlled Development District
- Gosstown Neighborhood Conservation District
- Adult Use Overlay
- Main Street Overlay
- Institutional Overlay
- Cadastrial Boundaries

Boundaries on this figure DO NOT represent a legal survey. These boundaries are to be used for general reference only, and are not intended to be used for the recording of these boundaries in Deer Lodge County for the recording of these boundaries.



Attachment E Parcel Covenants

The parcel covenants are located on Pages 8-10 in the attached deed.

QUIT CLAIM DEED

(East Anaconda Yards Parcel)

THIS DEED is made effective as of May __, 1994, between ATLANTIC RICHFIELD COMPANY ("Grantor"), a Delaware corporation duly authorized to do business in the State of Montana, with offices at 555 Seventeenth Street, Denver, Colorado 80202, and Anaconda-Deer Lodge County, a consolidated governmental entity organized under the Constitution and laws of the State of Montana ("Grantee"), whose address is 800 South Main, Anaconda, MT 59711.

WITNESSETH:

GRANTOR has remised, released and QUITCLAIMED and hereby remises, releases and QUITCLAIMS to Grantee, its successors and assigns forever, all right, title and interest of Grantor in and to the real property situated in Deer-Lodge County, State of Montana, described on Attachment 1 attached hereto and incorporated herein by this reference together with any and all right, title and interest of said Grantor in and to all mineral rights (including without limitation, oil and gas rights and sand and gravel rights) and Mining Wastes located on the Property, together with the improvements, buildings, structures and fixtures located on the Property, together with all rights-of-way, easements, water and water rights, ditch and ditch rights, situated on or appurtenant to the Property, or owned or used in connection therewith, and the right to use the same together with, all and singular, the tenements, hereditaments, privileges, appurtenances and appropriations of every kind and nature ("Property").

Grantor's conveyance of the Property to Grantee is made as a charitable contribution by Grantor to Grantee pursuant to the terms and conditions of that certain Real Property Transfer/Conveyance Agreement dated May __, 1994, a Memorandum of which was recorded on May __, 1994 in Book _____ at Page _____ of the Deer Lodge County real property records. In addition, Grantee has agreed to (i) take the Property subject to certain restrictive covenants, and (ii) assume certain obligations as more particularly described in the Memorandum and in the Additional Provisions set forth below.

This Property is within a Superfund site. A permit must be obtained before any development or construction.

ADDITIONAL PROVISIONS

The following provisions are an integral part of the conveyance of the Property from Grantor to Grantee. By execution of this deed and acceptance of the conveyance of the Property, Grantee acknowledges that (i) the conveyance of the Property subject to these Additional Provisions was specifically bargained for in the transaction; (ii) the Additional Provisions are a

material part of the consideration to Grantor in making the conveyance; and (iii) Grantor would not have conveyed the Property to Grantee if the Additional Provisions were not included as a part of the conveyance transaction.

A. DEFINED TERMS.

For purposes of this Quit Claim Deed, the following capitalized terms shall have the meanings ascribed to them below.

Administrative Record shall mean all factual and legal information, documents, data, analyses, reports, correspondence, calculations, opinions, statements, maps, charts, logs, documents, tapes, disks and other information of all types and description whatsoever that EPA has established as the administrative record with respect to the Anaconda Smelter Site, the OW/EADA OU, or any other operable units of the Anaconda Smelter Site, as specified herein.

Applicable Law shall mean all applicable laws, statutes, regulations, ordinances, decrees or orders of Federal, State or local governmental or judicial entities, as the same may change from time to time.

Conveyance Agreement shall mean that certain Real Property Transfer/Conveyance Agreement dated May __, 1994 among Grantor, Grantee and the Old Works Golf Course Authority.

Development Permit System shall mean the Anaconda-Deer Lodge Development Permit System adopted on December 2, 1992 by the Anaconda-Deer Lodge Board of Commissioners as the same may be amended from time to time.

EPA shall mean the United States Environmental Protection Agency.

Environmental Conditions shall mean any condition, quality, quantity or other state of the land, subsurface strata, air, surface water, ground water, fish, wildlife, biota, Hazardous Materials or Mining Wastes, including without limitation any condition, circumstance, quality, quantity or other state of the land, subsurface strata, air, surface water, ground water, fish, wildlife, biota, Hazardous Materials or Mining Wastes arising out of, related to or resulting from: 1) the Release or threatened Release, generation, transport, handling, treatment, storage, disposal, management, presence of or exposure to any Hazardous Materials; or 2) any mining, milling, smelting, processing, refining or other operations by Grantor or its predecessors.

Environmental Laws shall mean any past, present or future federal, state or local laws, regulations, ordinances, permits, approvals or authorizations pertaining to natural resources,

Environmental Conditions, protection of human health, welfare or the environment or historic, archeological or cultural preservation, including without limitation CERCLA; the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.); the Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.); the National Historic Preservation Act (16 U.S.C. § 470); the Comprehensive Environmental Cleanup and Responsibility Act, as amended ("CECRA"), M.C.A. §§ 75-10-701 et seq.; the Montana Water Quality Act (M.C.A. §§ 75-10-701 et seq.); the Clean Air Act of Montana (M.C.A. §§ 75-2-101 et seq.); the Natural Streambed and Land Preservation Act (M.C.A. §§ 75-7-101 et seq.); and the Montana Floodplain and Floodway Management Act (M.C.A. §§ 76-5-101 et seq.); all as amended and as may change from time to time; and Applicable or Relevant and Appropriate Requirements (ARARS) for the OW/EADA Remedy; and any provisions or theories of common law providing for any cause of action remedy or right of recovery with respect to, arising from or related to Environmental Conditions, as any such provisions or theories may change from time to time.

Future Development shall mean any and all development on, about, beneath, or otherwise affecting the Property.

Hazardous Materials shall mean any substance (i) the presence of which requires investigation of or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or (ii) which is defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or hazardous; or (iv) the presence of which causes or threatens to cause a nuisance or poses or threatens to pose a threat to human health, safety or the environment; or (v) without limitation which contains gasoline, diesel fuel or other petroleum hydrocarbons; or which contains polychlorinated biphenols (PCBs), asbestos or urea formaldehyde foam insulation.

Memorandum of Conveyance Agreement shall mean that certain Memorandum of Real Property Transfer/Conveyance Agreement which was recorded on May __, 1994 in Book ____ at Page ____ of the Deer Lodge County real property records.

Mining Waste shall mean a solid, liquid or gaseous waste materials and their constituents resulting from or related to mining, milling, smelting, processing or refining operations, and any structures and debris associated with such operations,

including without limitation the following waste materials and their constituents resulting from or related to the extraction, beneficiation, or processing of ores and minerals: waste rock, overburden, tailings, slag, flue dust, Red Sands, Arbiter waste materials and Old Works Waste Piles.

O&M Obligations shall mean those Operation and Maintenance measures set forth in the O&M Plan for the Property.

O&M Plan shall mean the Operations and Maintenance plans and procedures described in Exhibits A-1 and A-2 to the Memorandum of Conveyance Agreement.

OW/EADA Administrative Order shall mean the Administrative Order issued by EPA to ARCO on April 7, 1994, EPA Docket No. CERCLA VIII-94-08, and all attachments thereto and deliverables submitted thereunder, with respect to implementation of the OW/EADA Remedy, a copy of which is attached as Exhibit B to the Memorandum of Conveyance Agreement.

OW/EADA OU shall mean the Old Works/East Anaconda Development Area Operable Unit, which is one of several Operable Units at the Anaconda Smelter NPL Site in or near Anaconda, Montana.

OW/EADA ROD shall mean the Record of Decision issued by EPA on March 8, 1994, with respect to selection of the remedy of the OW/EADA OU, and any attachments thereto.

OW/EADA Remedy shall mean the remedy selected by EPA in the Record of Decision issued March 8, 1994, as more specifically described in the OW/EADA Administrative Order and attachments thereto, including any operation and maintenance requirements of such remedy.

Open Space shall have the meaning as set forth in the Development Permit System.

Operation and Maintenance or O&M shall mean those measures required to maintain the effectiveness of the OW/EADA Remedy and shall include without limitation those measures set forth in the O&M Plan for the Property.

Proposed Plan shall mean the Anaconda Smelter Superfund Site, Old Works/East Anaconda Development Area Operable Unit Proposed Plan issued by EPA in September 1993 and announcing a preferred alternative for the OW/EADA OU.

Release shall mean any spilling, leaking, pumping, pouring, emitting, leaching, emptying, discharging, injecting, escaping, dumping, burying, disposal or emanation whatsoever;

Remedial Action shall mean any response, removal, or remedial action within the meaning of those terms under CERCLA, regardless of whether such actions are undertaken pursuant to CERCLA authority, and any reclamation, restoration, or rehabilitation actions undertaken pursuant to or required by any Environmental Laws.

Residential shall have the same meaning as set forth in the Development Permit System.

Small Quantity Generator shall mean a generator of hazardous waste as defined under RCRA who: 1) generates less than 100 kilograms of hazardous waste in a calendar month; 2) never accumulates on site more than 600 kilograms of hazardous waste; and 3) manages such hazardous waste strictly in accordance with the requirements of RCRA, Environmental Laws and any other applicable laws.

State shall mean the State of Montana.

Successor in Interest and Assigns shall mean any "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), who is granted, acquires or receives right title or interest, including through sale or lease, to (i) the Property, or any portion thereof, subsequent to the execution of this Quit Claim Deed, or (ii) any of the rights, duties and obligations arising under the Conveyance Agreement.

B. DISCLAIMER OF WARRANTIES.

1. No Warranties by Grantor. Grantee acknowledges and agrees that GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER WHICH ARE NOT SPECIFICALLY AND AFFIRMATIVELY SET FORTH IN THIS QUIT CLAIM DEED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON, OR THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. Specifically, without limiting or abrogating in any way any of the foregoing, Grantor has not made, does not make, and specifically disclaims any representations whatsoever, express or implied, with respect to the following matters:

a. The value, nature, quality or condition of the Property, including, without limitation, the Environmental Conditions of the Property;

b. The income, if any, to be derived from the Property;

c. The truth, accuracy, completeness or representative nature of the information provided to Grantee as described in the Property Disclosures in paragraph C. below;

d. Compliance of any past or present operations or conditions with any Applicable Law, permits, regulations, ordinances, court orders, or contract provisions, including without limitation Environmental Laws and those pertaining to protection of cultural or historic resources or sites, land use or the public health, safety and welfare;

e. The disposal or presence of any Hazardous Materials or Mining Wastes on, at, under or associated with the Property, or the occurrence or existence of any past or present Release of any Hazardous Materials at, to, or from the Property into the environment;

f. The ability to obtain any permits (if required) or any regulatory approvals with respect to any of Grantee's activities or obligations under this Quit Claim Deed.

2. Grantee's Inspection of the Property. Grantee acknowledges and agrees that Grantee has been given the opportunity to inspect the Property. By accepting conveyance of this Property, Grantee assumes the responsibility for, and has relied and will rely upon, Grantee's own review, analysis, and opinions, including without limitation their own review, analysis, and opinions of the following:

a. Documents of record and provided by ARCO relating to the title to the Property including without limitation documents evidencing easements, restrictions, rights-of-way liens and other encumbrances affecting the Property.

b. The information described in the Property Disclosures in paragraph C. below, subject to the disclaimers set forth above with respect to the truth, accuracy, completeness or representative nature of such information;

c. Grantee's own inspection of the Property and the Environmental Conditions on the Property; and

d. Documents concerning the Anaconda Smelter Site and the OW/EADA OU contained in the Administrative Record or otherwise publicly available.

3. No Other Representation. Grantor is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any representative, real estate broker, agent, employee, servant or other person.

4. "As Is" Nature of Transfer of the Property. GRANTEE ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE TRANSFER OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS.

C. PROPERTY DISCLOSURES.

1. Grantor's Disclosures. Grantor hereby makes the following disclosures to Grantee and Grantee hereby acknowledges receipt of such disclosures and any documents more particularly described below concerning the Environmental Conditions of the Property and the existence of any easements, restrictive covenants or other title matters burdening the Property:

a. EPA has listed the Anaconda Smelter Site on the National Priorities List under CERCLA. The Property is located within the OW/EADA OU on the Anaconda Smelter Site.

b. Grantor and others have performed investigations or evaluations under CERCLA at the Anaconda Smelter Site or the OW/EADA OU which have been fully disclosed to Grantee.

c. EPA has selected the OW/EADA Remedy based upon the remedial alternatives evaluated in the remedial investigation/feasibility study conducted by Grantor at the OW/EADA OU, the Proposed Plan, public comments received on the Proposed Plan, and in accordance with the requirements of CERCLA and the National Contingency Plan, 40 C.F.R. Part 300 and has confirmed and approved the selection of the OW/EADA Remedy in the OW/EADA ROD. Grantor hereby discloses the OW/EADA Remedy as it may affect the Property.

2. Other Matters. The Grantor and Grantee acknowledge that other matters and documents may exist with respect to the Property that are not identified above. Grantee assumes the responsibility to identify, review, analyze, and form their own opinions with respect to such other matters and records.

D. RELEASE AND COVENANT NOT TO SUE.

Grantee, for itself and its Successors in Interest and Assigns, hereby releases and covenants not to sue Grantor, its affiliates, subsidiaries, officers, directors, agents, representatives, contractors, and employees in any private cost recovery suit, contribution action, or any other action under CERCLA, Environmental Laws or the common law arising out of or related to: (1) any Environmental Conditions on, about, beneath, from or related to the Property; and (2) implementation and operation and maintenance of the OW/EADA Remedy or other Remedial Action on, about, beneath or related to the Property. Grantee, for itself and its Successors in Interest and Assigns, hereby fully and irrevocably releases and covenants not to sue Grantor, its

affiliates, subsidiaries, officers, directors, agents, representatives, contractors, and employees for any and all claims, causes of action or liabilities that it may now have or hereafter acquire against such individuals or entities for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any errors, omissions or other conditions, including information disclosed pursuant to paragraph C. above entitled "Property Disclosures."

E. RESTRICTIVE COVENANTS.

1. Purpose. The following Restrictive Covenants are made pursuant to and in accordance with the Conveyance Agreement.

2. Covenants Running With the Land. The following Restrictive Covenants shall burden the Property and are intended to be and shall be construed as, covenants of Grantee and its Successors in Interest and Assigns which run with the land:

- a. The Property owner shall not take, authorize or allow any direct or indirect action which interferes with, is inconsistent with, hinders, delays, diminishes, or frustrates the implementation, effectiveness, purposes, integrity, or O&M of the OW/EADA Remedy, or any Remedial Action required under Applicable Law or by any federal, state or local governmental entity, or any other actions that Grantor deems necessary or advisable to address Environmental Conditions on or related to the Property;
- b. The Property owner shall maintain the Property in accordance with and in a manner consistent with the requirements of the OW/EADA Remedy including the O&M Plan for the Property;
- c. The Property may only be used for development for Commercial, or Light Industrial purposes, as such terms are defined in the Development Permit System, and for those Open Space uses associated with Benny Goodman Park;
- d. Any fencing erected by Grantor in accordance with the requirements of the OW/EADA Remedy shall be maintained by the Property owner in good condition and repair as described more specifically in the O&M Plan for the Property;
- e. All use, construction and/or drilling of water wells for any purposes (except for any testing, sampling or monitoring wells which are required by or in conjunction with the OW/EADA Remedy or any other Remedial Action and which are approved by any governmental entities with jurisdiction over such matters (including without limitation EPA and the State)) shall be prohibited;

- f. The Property owner shall maintain all caps and drainage control structures installed by Grantor or its agents on the Property in good condition and repair and shall not interfere with their operation as described more specifically in the O&M Plan for the Property;
- g. Residential development shall be prohibited on the Property;
- h. Unlined pond systems shall be prohibited. No liquid storage or disposal of any kind shall be permitted on the Property unless the liquids are containerized or contained within lined storage areas in accordance with the requirements of Applicable Laws and Environmental Laws;
- i. The Property owner shall be solely responsible for any additional remediation which may be necessary to accommodate Future Development of the Property. For purposes of this provision, the phrase "additional remediation which may be necessary to accommodate Future Development" shall mean any and all Remedial Action beyond that which Grantor is required to implement at the OW/EADA OU under the OW/EADA Administrative Order as part of the OW/EADA Remedy in the absence of Future Development. Any such additional remediation must be undertaken in accordance with and in a manner consistent with the requirements of the OW/EADA Remedy, the Development Permit System, Environmental Laws and other Applicable Laws;
- j. Exploration for, mining, milling, processing, drilling, and/or any other method of development and/or production of any minerals, sand, gravel, clay or other naturally occurring substances or mineral rights shall be prohibited;
- k. Any Commercial or Industrial activities (as such terms are defined in the Development Permit System) if otherwise permitted by the Restrictive Covenants set forth herein, which require or allow Hazardous Materials to be brought upon, generated, treated, stored, handled or disposed upon, about or beneath the Property shall be prohibited, except for those Commercial or Industrial activities which would qualify as a Small Quantity Generator. Notwithstanding the foregoing, this section "k" shall not be applicable to those areas of the Property identified on Attachment 2 attached hereto and incorporated herein; and
- l. Irrigation shall be permitted only on those portions of the Property shown on the map attached hereto as

Attachment 2 indicating permissible irrigation areas. Irrigation of such areas shall be permitted so long as such irrigation (i) is permitted by the OW/EADA Remedy, (ii) is in compliance with the O&M Plan, and (iii) does not exacerbate the existing Environmental Conditions on the Property.

3. Benefitted Properties. The Restrictive Covenants shall be for the benefit of the properties described below, their current owners and their Successors in Interest and Assigns:

- a. The adjacent real property described on Attachment 3 attached hereto which is presently owned by Grantor; and
- b. All other real properties which are adjacent to the Property.
- c. All other real property located in Anaconda-Deer Lodge County, Montana.

4. Benefits to Benefitted Properties. Grantor and Grantee acknowledge that the benefits to the Benefitted Properties by reason of the Restrictive Covenants include without limitation the following:

- a. The reduction or minimization of potential risk to human health and the environment from the release of hazardous substances from the Property on, or in the vicinity of, the Benefitted Properties; and
- b. The maintenance, use and potential development of the Property in such a manner as to allow economic, cultural and historic benefits to accrue to adjacent property owners and other property owners located in Anaconda-Deer Lodge County while protecting human health and the environment.

F. TRANSFERS OF PROPERTY.

If Grantee transfers or conveys all or any part of its interest in the Property or any interest in the Property to a third party, then Grantee shall be required to include in its transfer or conveyance documents to such third party the foregoing Restrictive Covenants, releases and covenants not to sue. Grantee shall strictly enforce against such third party each and every Restrictive Covenant release and covenant not to sue with respect to the property which has been transferred to such third party. No grant, transfer, lease or conveyance of title, easement or other form of conveyance or transfer of any interest in all or any portion of the Property shall be made or effected without a provision restricting the use of the Property set forth herein and all such conveyances of title, grants, leases, transfers or

conveyance of any interest in all or any of the Property shall contain the restriction set forth in this section except that each subsequent transferee's name shall be substituted in each subsequent document as the person or entity to be charged with compliance herewith.

G. ENFORCEMENT RIGHTS - RESTRICTIVE COVENANTS.

1. Enforcement of Restrictive Covenants. Grantor and Grantee hereby agree that each Restrictive Covenant set forth above is intended to and shall be a covenant running with the land binding upon any and all persons or entities who acquire any interest or interests in any or all of the Property, including without limitation all Successors in Interest and Assigns of Grantee.

2. Parties Eligible to Enforce Restrictive Covenants. Each of the Restrictive Covenants set forth in this Quit Claim Deed shall be enforceable in perpetuity as follows:

- a. In Contract. Grantor shall be entitled to enforce the provisions of the Restrictive Covenants against Grantee pursuant to the terms and conditions of this Quit Claim Deed. Grantor and Grantee hereby agree that the remedy of "specific performance" shall be available to Grantor in such proceedings.
- b. Adjacent Property Owners. All adjacent property owners shall be entitled to enforce the Restrictive Covenants to the fullest extent permitted by Montana law. Grantee hereby specifically agrees that the remedy of "specific performance" shall be available to adjacent property owners in such proceedings.
- c. Property Owners in ADL. All owners of real property located in Anaconda-Deer Lodge County, Montana shall be entitled to enforce the Restrictive Covenants to the fullest extent permitted by Montana law. Grantee hereby specifically agrees that the remedy of "specific performance" shall be available to such property owners in such proceedings.
- d. Waiver of Defenses. Grantee hereby waives, to the fullest extent permitted by Montana law, any rights which it may have to argue that specific performance is an inappropriate remedy.

H. MODIFICATION OF RESTRICTIVE COVENANTS.

The Restrictive Covenant may be modified from time to time as follows:

- a. Required Approvals. Any proposed modification must be approved in writing by ARCO, ADL and the owner of the Parcel burdened by the Restrictive Covenant to be modified. EPA and the State shall be provided prior written notice of such proposed modifications. If EPA and the State do not object to such modifications in writing within twenty-one (21) days of delivery of such notice, the modifications shall be deemed accepted by EPA and the State. Such written approval by ARCO, ADL and the parcel owner may be evidenced by execution of the instrument created to amend the Restrictive Covenants.
- b. Recordation of Modification. In order to be effective, any modification of the Restrictive Covenants must be (i) in writing, (ii) executed by each of the persons described in paragraph a. above, with such signature duly notarized (to the extent required by Montana law), and (iii) duly recorded in the Deer Lodge County real property records.

Any modification which complies with the foregoing requirements shall be deemed duly created and enforceable from and after the effective date thereof to the same extent as the original Restrictive Covenants. For purposes of these provisions, a modification of the Restrictive Covenants may include (i) the imposition of new restrictive covenants, or (ii) the termination of all or part of the existing Restrictive Covenants.

The parties have executed this Quit Claim Deed effective for all purposes as of the date first above written.

GRANTOR:

ATLANTIC RICHFIELD COMPANY, a
Delaware corporation.

By: _____
Sandra M. Stash
Attorney-in-Fact

ATTACHMENT 1

(to Quit Claim Deed)

PROPERTY DESCRIPTION
Parcel E - East Anaconda Yards Parcel

That certain real property described in Certificate of Survey No. 99-A recorded on April 25, 1994 in the real property records of Deer Lodge County, Montana.

ATTACHMENT 3

(to Quit Claim Deed for East Anaconda Yards Parcel)

**(ARCO PROPERTY DESCRIPTION FOR ENFORCEMENT OF
RESTRICTIVE COVENANTS - Parcels A, B, C, D, E, F, H and I)**

Real property located in Deer Lodge County, Montana and more particularly described as follows:

Township 4 North, Range 11 West

Section 12: All, less and except that portion of Section 12 which is included in Certificate of Survey No. 99-A, filed of record in the real property records of Deer Lodge County, Montana on April 25, 1994 and less and except easements of record, if any.