

After Recording, Return to:
Anaconda-Deer Lodge County
Attn: Carl Nyman
800 Main Street
Anaconda, MT 59711

**PARCEL RECONFIGURATION AND
MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT**

(Red Sands/Arbiter Parcel)

This PARCEL RECONFIGURATION AND MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT (this “Modification Agreement”) is made effective as of _____, 2019, between Atlantic Richfield Company (“AR” or “Grantor”), a Delaware corporation duly authorized to do business in the State of Montana, whose address is 317 Anaconda Road, Butte, Montana 59701, and Anaconda-Deer Lodge County, a consolidated governmental entity organized under the Constitution and laws of the State of Montana (“ADLC” or “Grantee”), whose address is 800 Main, Anaconda, MT 59711.

RECITALS

- A. By Quitclaim Deed dated May 5, 1994 and recorded on May 5, 1994 in Book 96 at Page 230 of the ADLC real property records (the “Red Sands/Arbiter Parcel Deed”), AR previously conveyed to ADLC certain real property situated in Deer Lodge County, Montana, which property is commonly known as the “Red Sands/Arbiter Parcel.”
- B. Following AR’s conveyance of the Drag Strip Parcel to ADLC, ADLC conveyed portions of the Red Sands/Arbiter Parcel to third parties.
- C. The portion of the Red Sands/Arbiter Parcel still owned by ADLC as of the effective date of this Modification Agreement is referred to herein as the “ADLC Portion of the Red Sands/Arbiter Parcel.”
- D. AR and ADLC now desire to reconfigure the dimensions and legal description of the ADLC Portion of the Red Sands/Arbiter Parcel, as it was conveyed by and defined in the Red Sands/Arbiter Parcel Deed.

- E. To accomplish this purpose, AR and ADLC have completed the resurvey of the ADLC Portion of the Red Sands/Arbiter Parcel and portions of certain adjacent properties owned by ADLC. The resulting “Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel” is displayed and more particularly described as Tract B in that certain Certificate of Survey No. 474-B recorded on December 12, 2019 at Reception No. 206448 in the real property records of the ADLC Clerk and Recorder.
- F. In addition to reconfiguring the dimensions and legal description of the ADLC Portion of the Red Sands/Arbiter Parcel so that the entire Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel is subject to the Additional Provisions of the Red Sands/Arbiter Parcel Deed, AR and ADLC also now desire to modify the Restrictive Covenants and certain other Additional Provisions of the Red Sands/Arbiter Parcel Deed insofar as they apply to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel
- G. Except as specifically modified herein, the parties intend that all other Additional Provisions set forth in the Red Sands/Arbiter Parcel Deed shall remain unaltered.

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

AGREEMENT

1. Incorporation of Recitals; Purpose; Meaning of Terms. The foregoing recitals are hereby incorporated into and made a part of this Modification Agreement. This Modification Agreement is for the purpose of modifying certain of the Additional Provisions of the Red Sands/Arbiter Parcel Deed insofar as they apply to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel. To the extent that the provisions of this Modification Agreement conflict with the provisions of the Red Sands/Arbiter Parcel Deed, the provisions of this Modification Agreement shall control with respect to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel. Except as otherwise set forth in this Modification Agreement, all capitalized terms used but not otherwise defined herein will have the respective meanings given to them in the Red Sands/Arbiter Parcel Deed.

2. Property Definition. Wherever the term “Property” is used and appears herein and in the Additional Provisions, including, without limitation, in Section D of the Additional Provisions (“Release and Covenant Not To Sue”), AR and ADLC hereby confirm and agree that such term shall apply to and include the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel. Conversely, any real property previously encompassed by the ADLC Portion of the Red Sands/Arbiter Parcel but excluded from the Reconfigured Red Sands/Arbiter Parcel shall not be considered part of the Property and shall not be subject to the Additional Provisions of the Red Sands Arbiter Parcel Deed.

3. Modification of Defined Terms. Certain capitalized terms in Section A of

the Red Sands/Arbiter Parcel Deed (Defined Terms) shall be deleted insofar as they apply to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel and replaced with the following:

- a. The term “Commercial Land Use” shall have the meaning set forth in the Development Permit System (as defined in the Red Sands/Arbiter Parcel Deed).
- b. The term “Industrial Land Use” shall have the meaning set forth in the Development Permit System (as defined in the Red Sands/Arbiter Parcel Deed).
- c. The term “O&M Obligations” is hereby deleted.
- d. The term “O&M Plan” is hereby deleted.
- e. The term “OW/EADA Administrative Order” shall mean the Administrative Order issued by EPA to AR 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.
- f. The term “OW/EADA Remedy” shall mean the remedy selected by EPA in the Record of Decision issued March 8, 1994, together with any subsequent amendments, modifications, or explanations of significant differences to the Record of Decision adopted by EPA.
- g. The term “Operation and Maintenance or O&M” is hereby deleted.
- h. The term “Property Owner” shall mean the then current owner of all or any portion of the Property as the boundaries thereof may from time to time be adjusted.
- i. The term “Residential Use” shall have the meaning set forth in the Development Permit System (as defined in the Red Sands/Arbiter Parcel Deed).
- j. The term “Successor in Interest and Assigns” shall mean any Property Owner subsequent to ADLC.

4. Modification of Restrictive Covenants. Section E.2 of the Red Sands/Arbiter Parcel Deed (“Restrictive Covenants”) are each hereby deleted in their entirety insofar as they apply to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel and replaced by the following:

E. RESTRICTIVE COVENANTS

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. No Property Owner will take, authorize, or allow any direct or indirect action which interferes with, is inconsistent with or hinders, delays, diminishes, or frustrates the implementation, effectiveness, purposes, integrity, or operations and maintenance of the OW/EADA Remedy, or any Remedial Action required under Applicable Law or by and 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 may only be used for Commercial Land Use and Industrial Land Use purposes including but not limited to the development and operation of a Class III landfill. Development for Residential Use is specifically prohibited on the Property.
- c. Each Property Owner shall maintain the portion of the Property that it owns, and all facilities and improvements related thereto (including, if applicable, the Old Works Historic Trail System), in a manner consistent with the requirements of the OW/EADA Remedy and shall maintain any portion of the Old Works Historic Trail System located on the Property owned by such Property Owner in good condition and repair.
- d. Access to structures along the Old Works Historic Trail System, including but not limited to historic flues and foundations, shall be prohibited.
- e. All use, construction and drilling of water wells on the Property 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. 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 requirements of Applicable Laws and

Environmental Laws.

- g. The Property Owner shall be solely responsible for any additional remediation which may be necessary to accommodate Future Development on 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 as part of the OW/EADA Remedy in the absence of such Future Development. Any such additional remediation must be undertaken in accordance with, and in a manner consistent with, the OW/EADA Remedy, the Development Permit System, Environmental Laws, and other Applicable Laws.
- h. 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 substance or mineral rights shall be prohibited.
- i. Any Commercial Land Use or Industrial Land Use activities, 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 Land Use or Industrial Land Use activities which would qualify as a Small Quantity Generator.

5. Modification of Transfers of Property Provision. Section F of the Red Sands/Arbiter Parcel Deed (“Transfer Provision”) is hereby deleted in its entirety insofar as it applies to the Reconfigured ADLC Portion of the Red Sands/Arbiter Parcel and replaced by the following:

F. Transfers of Property

- 1. Provisions of Subsequent Conveyance Instruments. Grantee hereby agrees that in any subsequent conveyance of all or any part of the Property, or any interest therein, including without limitation grant of an easement burdening the property or grant of a lease of all or any portion thereof, the Property Owner shall include the following provisions in the deed or other conveyance instrument (completed appropriately to refer to this document and modified only as may be necessary to fit appropriately in the context of the conveyance instrument):

Grantee hereby agrees to:

- i. Accept the conveyance subject to the covenants set forth in the Parcel Reconfiguration and Modification of Restrictive Covenants Agreement dated _____, _____ and recorded on _____,

_____ in Book ____, at Page ____ of the Anaconda-Deer Lodge County real property records;

- ii. Abide by and enforce the covenants as owner of the conveyed property interest; and
- iii. Be bound by the release and covenant not to sue provisions set forth in the Quit Claim Deed (Red Sands/Arbiter Parcel) dated May 5, 1994 and recorded on May 5, 1994 in Book 96, at Page 230 of the Anaconda-Deer Lodge County real property records.

Grantee hereby also agrees that in any subsequent deed or other conveyance instrument, Grantee shall require the grantee in such deed or conveyance instrument to either:

- i. Execute the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph; or
- ii. Execute a separate acknowledgment attached to the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph.

2. Notice of Conveyance. At least forty five (45) days prior to any grant, transfer or conveyance of any interest in all or any part of the Property, the owner of the interest intending to make the grant, transfer or conveyance shall notify AR, or its designee, in writing by certified mail or personal delivery of such intent, and of the provisions to be made to ensure the subsequent owner of the conveyed interest will abide by the Restrictive Covenants and provide the releases and covenants not to sue referenced in this document for AR's benefit. Any designation by AR of a person or entity to receive notices under this paragraph shall be in writing, shall refer to this provision, and shall be recorded in the Anaconda-Deer Lodge County real property records. Notice shall be provided to AR at the following address: Anaconda Site Project Manager, Atlantic Richfield Company, 317 Anaconda Road, Butte, MT 59701 or such other address as AR may from time to time designate in compliance with the terms of this paragraph.

3. Binding Effect. Notwithstanding the foregoing, any person or entity who acquired any right, title or interest in all or any part of the Property shall be conclusively deemed to have consented and agreed to the provisions of this Transfer of Property section, whether or not any reference to this document or these provisions is contained in the deed or other conveyance instrument by which such person or entity acquires an interest in such property.

6. Continuing Validity of Other Provisions. Except as modified by this Modification Agreement, the Red Sands/Arbiter Parcel Deed is not altered and shall remain in full force and effect.

7. Approvals. In satisfaction of the requirements in Section H of the Red Sands/Arbiter Parcel Deed, AR and ADLC state that they have provided written notice to and obtained the approval of EPA and the State of Montana for the reconfiguration of the Red Sands/Arbiter Parcel and the modification to the Restrictive Covenants and set forth in this Modification Agreement, as evidenced by the Consent to Parcel Reconfiguration and Modification of Restrictive Covenants attached hereto as Attachment 1.

8. Effective Date. This Modification Agreement shall be effective as of the date recorded in the ADLC real property records.

9. Counterparts. This Modification Agreement may be executed in counterparts.

The remainder of this page has been intentionally left blank.

The parties have executed this Modification Agreement as of the date first written above.

GRANTOR:

ATLANTIC RICHFIELD COMPANY, a
Delaware corporation

By: _____

Name: _____

Title: _____

GRANTEE:

ANACONDA-DEER LODGE COUNTY, a
consolidated governmental entity organized
under the Constitution and laws of the State
of Montana

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of ____, 2020 by _____ as _____ of Atlantic Richfield Company on behalf of Atlantic Richfield Company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF MONTANA)

) ss.

COUNTY OF DEER LODGE)

The foregoing instrument was acknowledged before me this ____ day of ____, 2020 by _____ as _____ of Anaconda-Deer Lodge County on behalf of Anaconda-Deer Lodge County.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ATTACHMENT 1

CONSENT TO PARCEL RECONFIGURATION AND
MODIFICATION OF RESTRICTIVE COVENANTS

The United States Environmental Protection Agency and the State of Montana, acting by and through the Montana Department of Environmental Quality, hereby (i) acknowledge receipt of notice as required by the provisions of the *Quit Claim Deed* (Red Sands/Arbiter Parcel) dated May 5, 1994, (ii) consent to the modification of restrictive covenants set forth in the forgoing instrument, and (iii) approve the modification of the definition of the Property and the reconfiguration of the Red Sands/Arbiter Parcel as set forth in the forgoing instrument.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: By: _____

Name: _____

Title: _____

Date: By: _____

Name: _____

Title: _____

STATE OF MONTANA
Acting by and through the
Montana Department of Environmental Quality

Date: By: _____

Name: _____

Title: _____