

After Recording Return To:

City Clerk
 City of Missoula
 435 Ryman Street
 Missoula, MT 59802

**AMENDED AND RESTATED
 CONSERVATION EASEMENT**

Geocodes: 04-2200-22-3-18-03-0000

THIS AMENDED AND RESTATED CONSERVATION EASEMENT (“**Easement Agreement**”) is made as of the date of its full execution by and between the **Higgins Waterfront, LLC**, with the address of 31401 Via Las Palmas San Juan Capistrano CA 92675 (“**Grantor**”), and the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana, whose address is 435 Ryman Street, Missoula, MT 59802 (“**City**”).

RECITALS:

WHEREAS, Grantor owns certain real property located in Missoula, County, Montana, which is generally located in the City of Missoula’s downtown area, immediately south of and adjacent to the Clark Fork River and immediately east of the Beartracks Bridge and which is legally described as follows: S22, T13 N, R19 W, C.O.S. 3011, PARCEL M, & MONTANA ADDITION BLK 9 LOTS 17A & 18A LESS & BLK 10 LESS LOTS 7A, 8A ,9A ,12A & 13A and incorporated herein by this reference (the “**Property**”);

WHEREAS, Grantor’s predecessor-in-interest granted a Conservation Easement to the City on and over the Property, which Conservation Easement was recorded on August 20, 1984 at Volume 210, Page 505 of the records of Missoula County, Montana; and which Conservation Easement was amended through an Amendment to Deed of Conservation Easement, recorded on May 18, 1988 at Book 277, Page 2,406 of the records of Missoula County, Montana (collectively, the “**Original Conservation Easement**”). The purposes of the Original Conservation Easement are to provide open space for the recreational use and scenic enjoyment of the general public, preserving a natural habitat for fish and plant life along the banks of the Clark Fork River, and, later, to install a lighting system to enhance public safety and encourage use of the river front park system;

WHEREAS, the City maintains a network of trails in order to provide to the public opportunities for active transportation and recreational activities, and that network includes a segment of trail within the Original Conservation Easement, which is commonly referred to as the “Milwaukee Trail;”

WHEREAS, the Parties mutually desire to relocate and widen the Original Conservation Easement and to improve the trail and other public infrastructure within the Original Conservation Easement. The Parties agree that the relocation and widening of the Original Conservation Easement and infrastructure improvements within the Original Conservation Easement will advance the vision of the Great American Rail Trail and will confer a range of positive impacts and benefits to the public;

WHEREAS, the Parties mutually desire to amend and restate the Original Conservation Easement in a single, integrated instrument to clarify the Parties' respective agreements, commitments, and obligations and to promote ease of administration, management, and interpretation of this easements, which work in concert to facilitate the public's use and enjoyment of the Milwaukee Trail on the Property. The new easement shall be the Amended and Restated Conservation Easement, created in this instrument; and

WHEREAS, the Parties desire to set forth in this Easement Agreement their mutual understanding and agreement that the Original Conservation Easement is designated as open-space land under the Montana Open-Space Land and Voluntary Conservation Easement Act, § 76-6-101, et seq., M.C.A. (the "Act"), which authorizes public bodies such as the City to carry out the purposes and provisions of the Act in order to preserve significant open-space land for (a) park or recreational purposes; (b) conservation of land or other natural resources; (c) historic or scenic purposes; or (d) assisting in the shaping of the character direction and timing of community development.

NOW THEREFORE, in exchange for the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT:

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Pursuant to § 70-17-102(5), M.C.A., Grantor grants and conveys to the City, and the City accepts from Grantor, a permanent, non-exclusive Amended and Restated Conservation Easement for the purposes of constructing, maintaining, managing, restoring, and removing a public river front trail and related improvements; providing a means of active transportation for the public; and providing open-space land for public enjoyment and recreational activities, including but not limited to walking, running, and bicycling. The Amended and Restated Conservation Easement is more particularly depicted on **Exhibit A**, which is attached hereto and incorporated herein by reference. When used in this Easement Agreement, the phrase "**active transportation**" refers to walking, biking, and other forms of human-powered transportation, including those modes of transportation with electric assist features, such as bicycles, scooters, and skateboards.

2. Public Use of Easement. The Parties acknowledge that members of the public have used and enjoyed the Original Conservation Easement for decades; that the public currently uses the Original Conservation Easement; and that the City intends to allow the public to continue to use the Amended and Restated Conservation Easement. Grantor hereby expressly consents to public use of the Amended and Restated Conservation Easement. In order to facilitate, manage, protect, inform, and direct the public's use and enjoyment of the Amended and Restated Conservation Easement. Grantor conveys to the City the right to install, maintain, relocate, and remove improvements within the Amended and Restated Conservation Easement consistent with applicable adopted trail plans and design standards for commuter trails, as more particularly provided in Paragraph 3, below.

3. Trail and Infrastructure Construction and Maintenance.

a. City's Obligations.

- i. *Trail Relocation and Reconstruction.* The City agrees to fund, design, construct, relocate, reconstruct, and realign the existing paved trail within the Amended and Restated Conservation Easement, including but not limited to widening the trail, installing lighting, creating landscaping, repairing existing landscaping or sprinkler systems affected by or damaged by the trail relocation and reconstruction, and related improvements or repairs. Trail relocation and reconstruction may include grading, paving, and installation of trail infrastructure such as fencing, gates, or lighting within the Amended and Restated Conservation Easement that is consistent with the rest of the City trail system and that the City desires for the development and management of the trail. If other trail infrastructure is needed, including but not limited to wayfinding signs, interpretive signs, kiosks, or garbage receptacles, the City shall place them within the Amended and Restated Conservation Easement and in areas that reasonably limit impacts to the Property.
- ii. *Maintenance and Management.* The City agrees to provide and perform, and bear all costs of, routine trail maintenance and management of the operation and public use of the trail, including but not limited to trail lighting, snow and ice control, pavement repair, striping, signage, trash control and removal, vegetation control along the adjoining riparian area as provided in subparagraph (iii), and maintenance of any trail infrastructure that the City installs within the Amended and Restated Conservation Easement.
- iii. *Riparian Area Management North of Paved Trail.* The City agrees to provide for the protection, stabilization, repair, and maintenance of the lands and riparian zone located between the northern edge of the paved trail and the Clark Fork River's ordinary high-water mark, up to the northern boundary of the Amended and Restated Conservation

Easement and/or the north boundary of the Property, as applicable. These activities may include, but are not limited to, addressing riverbank erosion, stabilizing riverbanks through riparian vegetation management, and creating and maintaining hardened public access points to the river that minimize or eliminate risks of riverbank erosion and promote safe river entry and exit. Any activities the City conducts pursuant to this paragraph along the Clark Fork River and within the riparian zone of the Amended and Restated Conservation Easement shall not materially reduce the acreage of the Property.

b. Grantor's Responsibilities.

- i. *Land Management South of Paved Trail.* Grantor shall have the right, but not the obligation, to manage and provide routine maintenance and care for the portion of the Amended and Restated Conservation Easement generally located south of the paved trail, including but not limited to watering, landscaping, and sprinkler systems; and trash control and removal for any trash receptacles that Grantor chooses to install.

c. Parties' Obligations.

- i. *AASHTO.* The Parties agree to recognize the most current version of the American Association of State Highway Transportation Officials (AASHTO) bicycle – pedestrian facilities design standards manual and to incorporate its standards into future design, construction, maintenance, and improvement decisions and activities.
- ii. *ADA.* The Parties agree to comply with the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and regulations thereunder (28 C.F.R. § 35.130) (“ADA”) as they pertain to this Amended and Restated Conservation Easement.
- iii. *Review and Amendment of Terms.* The Parties agree to periodically review the terms of this Amended and Restated Conservation Easement and this Easement Agreement, as necessary or appropriate, and to consider mutually acceptable amendments as challenges, opportunities, funding, laws, and changes in technology may require. Any amendments to this Easement Agreement must comply with the amendment provision set forth in Section IV, Paragraph 11.
- iv. *Material Improvements.* The Parties agree not to make material improvements to or alterations within Amended and Restated Conservation Easement without prior consultation with, and express written permission from, the other, except for those improvements associated with the relocation and reconstruction of the river trail that

are expressly permitted in this Section II, Paragraph 3.

- d. Administrative Use. The City shall have the right of access, including but not limited to vehicular access, within the Amended and Restated Conservation Easement to fulfill its construction, maintenance, public access management, and easement administration obligations under this Section II. If the City's access to the Amended and Restated Conservation Easement will significantly impact portions of the Property outside of the Amended and Restated Conservation Easement, the City shall provide reasonable prior written notice to Grantor of such vehicular access and use. The City shall promptly repair any damage to the Property that results from its administrative use of and access to the Property.
- e. Emergency Use. The City, including any City emergency personnel and services, shall have the right of access, including but not limited to vehicular access, within the Amended and Restated Conservation Easement and to and from the Amended and Restated Conservation Easement across the Property for any and all emergency responses. The City shall promptly repair any damage to the Property that results from its emergency use of and access to the Property.

4. Prohibition against Permanent Structures and Impediments. Grantor shall not allow permanent structures, buildings, or other obstructions to encroach into the Amended and Restated Conservation Easement or impede the City or the public's free movement and access over, upon, and through the Amended and Restated Conservation Easement. Notwithstanding the foregoing, the City shall have the right to install appurtenances and infrastructure within the Amended and Restated Conservation Easement, including but not limited to asphalt or concrete pads, benches, drinking fountains, interpretive signs, regulatory signs, and/or other similar amenities, provided that such features are not buildings or other permanent structures; are consistent with the purpose and terms of this Amended and Restated Conservation Easement; and do not prevent or inhibit the public's use of, or access to, the Amended and Restated Conservation Easement. Nothing in this Amended and Restated Conservation Easement shall be interpreted to prevent the City from temporarily closing the trail or preventing public access to a portion or all of the Amended and Restated Conservation Easement to accomplish construction or maintenance activities and/or for public safety.

5 Grantor's Rights. Grantor shall continue to have the right to utilize portions of the Easement for purposes that include but are not limited to routine maintenance and landscaping, so long as they do not unreasonably interfere with the public use or safety of the Amended and Restated Conservation Easement.

6. Prohibition against Permanent Structures. Grantor and Grantee agree that the easement shall be designated as open space pursuant to § 76-6-106, MCA, and may not be converted or diverted from open space except as may be provided herein or pursuant to applicable law. The Grantor shall not allow permanent structures, buildings, or other obstructions to encroach into or sit upon the Amended and Restated Conservation Easement, or

in any way impede the free accessibility of the easement. Notwithstanding the foregoing, the parties acknowledge the City's right to install appurtenances within the areas of the Amended and Restated Conservation Easement such as asphalt or concrete pads, benches, drinking fountains, interpretive signs, regulatory signs, and/or other similar amenities provided said features are not a building or other permanent structure; are done in accordance with this Agreement, and do not prevent or inhibit the purpose and use of, or access to the Amended and Restated Conservation Easement. The parties also acknowledge the City intends to construct a public trail, which may include grading, paving, and constructing trail infrastructure such as fencing, gates, or lighting within the Easement Area that is consistent with the rest of the City trail system and desired by the City for the development and management of the public trail. To the extent any other trail infrastructure is needed, such as signs, kiosks, or garbage receptacles, the City shall place them in areas that reasonably limit impact on Grantor's property.

7. Adjoining Grantor Property. Except as otherwise provided, nothing herein shall be construed as authorizing any egress on, or use of Grantor property not the subject of this Easement. Grantor may use landscaping or other appropriate means to demarcate the boundary line between the granted Easement and its adjoining property to preclude unauthorized use and the Grantor's adjoining property.

8. Legal Effect; Successors and Assigns. All rights, restrictions, and covenants contained in this Agreement binds and inures to the benefit of the Grantor and the City and their respective heirs, administrators, executors, successors, and assigns (including but not limited to occupants and mortgagees).

9. Liabilities. Grantor shall enjoy the limitations on legal liability involving the public's recreational use of the rights granted under this Easement Agreement, as provided in §§ 70-16-301 and 302, M.C.A. Notwithstanding the foregoing statutory liability protections, the City shall hold harmless and indemnify Grantor from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including reasonable attorney's fees and costs of defense, arising from or in any way connected with, injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, occurring as a result of any action or failure to act on the part of the City, its agents or employees, associated with the City's use of the Property under this Easement Agreement.

10. Remedies. In the event of a breach of the terms of this Easement Agreement by any party, the non-breaching party may give the breaching party written notice describing the breach and thirty calendar days in which to cure. Should the breaching party fail to cure such breach within the thirty calendar day cure period, the non-breaching party may enforce all the remedies available to them at law or in equity, including the availability of injunctive relief. In the event suit is brought to enforce the terms of this Easement Agreement or as the result of an alleged default of this Easement Agreement, the venue shall be in the Montana Fourth Judicial District Court, Missoula County, and each party shall be responsible to pay its own attorney's fees.

11. Notices. All notices, demands, and requests required or desired to be given under this Easement Agreement must be in writing and shall be deemed to have been given as of the

date such writing is (i) delivered in person to the party intended with a signed and dated proof of delivery, (ii) delivered to the then-current address of the party intended by United States certified mail or private commercial courier with signed and dated proof of delivery, or (iii) rejected at the then-current address of the party intended, provided such writing was sent prepaid.

- a. City's Address. Any notices to City shall be sent to 435 Ryman Street, Missoula, MT 59802 and copied to the Director of Parks and Recreation, whose address is 600 Cregg Lane, Missoula, MT 59801.
- b. Grantor's Address. Any notices to Grantor shall be sent to:
31401 Via Las Palmas San Juan Capistrano CA 92675

12. Governing Law. This Easement Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana.

13. Counterparts. This Easement Agreement may be executed in counterparts, each part being considered an original document, all parts being but one document.

14. Interpretation to Support Validity. If any provision of this Easement Agreement can be interpreted in two ways, one of which would render the provision valid and the other of which would render the provision invalid, the provision will be interpreted in the manner which would render it valid. If any provision of this Easement Agreement is declared or becomes invalid, unenforceable, or contrary to law, the Parties agree that the provision will be considered severed from the remaining provisions of this Easement Agreement and will not affect the validity, legality, or enforceability of the other provisions of this Easement Agreement, and this Easement Agreement will be interpreted as if it never contained the provision.

15. Negotiation of Agreement. The Parties acknowledge that this Easement Agreement is the result of negotiations between the Parties and should be construed in accordance with the fair intent and meaning of the Easement Agreement's language, considered in its entirety and not for or against either party, regardless of which party prepared this Easement Agreement. Each party acknowledges that it had the opportunity to consult with its own attorney in connection with the negotiation of this Easement Agreement.

16. Amendment. No modification of or amendment to this Easement Agreement will be valid or binding unless it is in writing, signed by both Parties, and recorded in the public records of Missoula County, Montana.

17. Term and Termination. The term of this Easement Agreement is perpetual. This Easement Agreement may be terminated by mutual agreement of the Parties at any time through a written instrument signed by both Parties and recorded in the public records of Missoula County, Montana. If the Restated River Trail Access Easement, the Restated River Trail Easement, or the Restated Stairway Easement ever cease to be used for their respective public purposes as stated herein, the Parties may mutually agree to individually terminate these easements through a termination and modification of this Easement Agreement in accordance with the provisions of this Section IV, or they may terminate the entire Easement Agreement if none of

the easements created and conveyed herein can fulfill their purposes. If the Restated River Trail Easement is terminated and the land ceases to be used as open-space land, the provisions of § 76-6-107, M.C.A. shall apply, as provided in this Section IV, Paragraph 2, and the City shall be responsible for complying with the provisions of this statute.

18. Recording and Effective Date. This Easement Agreement shall be recorded with the Clerk and Recorder’s Office in Missoula County, Montana. This Easement Agreement shall be effective upon its recording.

IN WITNESS WHEREOF, the undersigned have caused this Easement to be executed the day and year first written above.

GRANTOR:

Higgins Waterfront, LLC:

By: _____
signature Professional Capacity

STATE OF _____)
:ss.
County of _____)

This instrument was acknowledged before me on this ___ day of _____, 2025,
by _____, as _____.
Name Professional Capacity

(Notarial Seal)

Printed Name:
Notary Public for the State of: _____
Residing at:
My Commission Expires: _____, 20__

CITY OF MISSOULA ACCEPTANCE:

The City of Missoula, a Municipal Corporation, located in Missoula County, Montana, hereby accepts the grant of real property described herein.

APPROVED: _____
Andrea Davis, Mayor

ATTEST: _____
Claire Trimble
City Clerk

(seal)

EXHIBITS

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Exhibit A

