

## Right of Way Contract

Project Name: **Missoula to Lolo Trail**  
Parcel Owner(s): **Missoula Country Club**  
Parcel ID# : **01**  
Key No: **6078.02**  
County: **Missoula County, Montana**

THIS AGREEMENT, between THE CITY OF MISSOULA, a political subdivision of the state of Montana, by its authorized representatives herein referred to as "CITY", its successors and assigns, and The Missoula Country Club, 3850 Old Highway 93 South, Missoula, MT 59806-3057, called "GRANTOR".

### RECITALS

- A. **WHEREAS**, the CITY has authorized the construction of a multi-use separated path in a location that will be suitable for the path and future widening of Old Highway 93, which requires the acquisition of certain rights of way (the "Project"); and
- B. **WHEREAS**, the use to which the property is to be applied is a public use and the acquisition is desirable to the public; and
- C. **WHEREAS**, the Missoula Country Club own(s) real property along the Project, legally described as follows:

**A tract of land located in the Southeast one-quarter of Section 31, Township 13 North Range 19 West and Northeast one-quarter of Section 1, Township 12 North Range 20 West, P.M.M., Missoula County, Montana**

**As per Exhibit "A" attached hereto and by reference made a part hereof containing an area of 0.05 acres, more or less**

a portion of which is needed by the CITY;

**NOW THEREFORE**, the parties hereto agree as follows:

- 1. Conveyance and Compensation.** GRANTOR agrees to convey certain right of way in fee by deed to the CITY and CITY agrees to pay to the GRANTOR and the lienholder(s), if any, such sums of monies as are set out below for compensation along with the further obligations set forth below. GRANTOR shall execute and deliver to the CITY a notarized instrument of conveyance corresponding to the interests being acquired.
- 2. Allocation of Compensation Owed to GRANTOR.** The Compensation owed to Grantor is

allocated as follows:

0.05 acres of right of way in fee by deed	\$ 5,000.00
Irrigation	\$ 1,600.00
Entry Gate	\$ 5,000.00
Permanent Fence	\$ 52,000.00
Temporary Fence	\$ 3,562.50
Historic Fence (split rail)	\$ 2,800.00
Hedge at Entrance	\$ 1,500.00
Light Pole	\$ 1,800.00
Hedge	\$ 4,000.00
(2) Trees – Scotch Pine, Blue Spruce	\$ 1,600.00
Trees (south of entrance – Ash, Birch, Russian Olive, Plumb)	\$ 1,600.00
Flower Bed	\$ 1,000.00
<u>Drip Line</u>	<u>\$ 1,250.00</u>
Total:	\$ 82,712.50
<b>JUST COMPENSATION (ROUNDED)</b>	<b>\$ 83,000.00</b>

3. **Contract Binding Effect.** This contract shall not be binding unless and until executed by the CITY authorized representative(s).
4. **Future Claims.** The parties have herein set out the whole of their agreement, the performance of which constitutes the entire consideration for the grant of said right of way and shall relieve the CITY of all future claims or obligations on that account or on account of the location, grade and construction of the proposed Project within the acquisition area.
5. **Hazardous Material.** GRANTOR represents that to the best of their knowledge no hazardous materials have been stored or spilled on the subject property during their ownership or during previous ownerships at least insofar as they observed or have been informed. This contract is conditional upon full disclosure of any such information.
6. **Grant of Easements.** GRANTOR grants to the CITY the following right of way in fee by deed:
  - a. **Right of Way in Fee by Deed.** GRANTOR shall grant to the CITY upon execution of this contract, a PUBLIC RIGHT OF WAY IN FEE BY DEED as shown on attached Exhibit A. The purpose of the right of way in fee by deed shall be for the right of public entry upon and occupation of lands, and the right to take therefrom such earth, sand, gravel, stones, and trees as may be necessary in the construction, reconstruction, maintenance, and operation of a public roadway including but not limited to, the right to install construct, maintain and operate, or permit installation, construction, maintenance and operation of public and/or private utilities upon, over, under and across the defined right of way as well as provide regulatory enforcement as may be necessary. Compensation for this right of way is outlined in Section 2 of this

document.

**7. Possession of Right of Way.** GRANTOR grants the CITY possession of the aforementioned right of way as follows:

**a. Right of Way in Fee by Deed.** GRANTOR gives the CITY legal and physical possession of the right of way in fee by deed upon the payment of Compensation as specified in Section 2 of this document.

**8. Fences.** The CITY will provide compensation as outlined in Section 2 of this document for the Grantor to provide permanent and temporary fencing necessary to maintain privacy and security to the Golf Course during and after construction.

**9. Golf Course Security.** The CITY or the assigned contractor for the Project will not be responsible for the security of the golf course during construction. The CITY or the assigned contractor for the Project will be responsible for notifying the GRANTOR a minimum of 30 calendar days in advance of beginning work that involves the removal of shrubs or fences that act as security barriers for the GRANTOR. The GRANTOR will be responsible for maintaining a secure perimeter around the Golf Course at all times during the construction of the project. The City will provide compensation as outlined in Section 2 of this document for the GRANTOR to place and maintain temporary fencing during construction.

**10. Landscaping and Irrigation.** The CITY will provide compensation as outlined in Section 2 of this document for the GRANTOR to replace all vegetation and irrigation impacted by planned construction activities.

**11. Approaches.** The CITY or the assigned contractor for the Project will reconstruct at no expense to the GRANTOR the approaches shown on the construction plans dated September 8, 2014.

**a.** Station 134+56 RT – Construct road approach

**b.** Station 136+01 RT – Construct road approach

**12. Entrance Gate.** The CITY will provide compensation as outlined in Section 2 of this document for the GRANTOR towards the replacement of the entrance gate to the GRANTOR's property.

**13. Mailbox.** The CITY or the assigned contractor will remove and relocate the GRANTOR's existing mailbox to the location shown on the plans dated September 8, 2014. The assigned contractor will provide all hardware, supports and other materials and labor as necessary to accomplish the relocation of the GRANTOR's mailbox.

**14. Trees.** The CITY will provide compensation as outlined in Section 2 of this document for the loss of the GRANTOR's trees at the following locations:

- a. Approximate Station: 5018+41
- b. Approximate Station: 5018+53
- c. Approximate Station: 5018+92
- d. Approximate Station: 5019+63
- e. Approximate Station: 5028+09
- f. Approximate Station: 5029+06

The GRANTOR will be responsible for the removal and disposal of these trees.

**15. Timing of Project Work.** GRANTOR acknowledges that the construction related to the GRANTOR's approach and mailbox previously identified herein will not occur until the Project is constructed upon the right of way granted per this contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year written below.

CITY OF MISSOULA

GRANTOR(S):

Recommended for Approval

By \_\_\_\_\_  
 Christopher R. Anderson  
 Right of Way Agent

\_\_\_\_\_ Missoula Country Club

\_\_\_\_\_ Date

**CITY OF MISSOULA ACCEPTANCE**

This contract is accepted and its terms and conditions agreed to by the City of Missoula on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Martha L. Rehbein, City Clerk

\_\_\_\_\_  
Legal Counsel

**APPROVAL:**

\_\_\_\_\_  
John Engen, Mayor

DRAFT