



# LINCOLN COUNTY MONTANA

## Resolution 2022-04

### RESOLUTION TO VACATE THE RAINY CREEK ROAD

THE BOARD OF COUNTY COMMISSIONERS FOR LINCOLN COUNTY,  
MONTANA FINDS:

WHEREAS, Lincoln County approached Kootenai Development Company (KDC) about taking over management of said road as it has been closed for approximately 19 years.

WHEREAS, KDC as per the attached road maintenance agrees to exclusively maintain said road in a reasonable and prudent manner at the company's expense and liability, while leaving the southern part of the road open to the public allowing access to Tub Gulch.

WHEREAS, The United States Forest Service (USFS) through its representative at the public hearing on November 10, 2021 raised concerns of access. KDC offered to provide an access agreement that would not impede the USFS ability to perform any duties they may have.

WHEREAS, The USFS stated we can agree at some level, but the USFS is thinking long term for public access.

WHEREAS, KDC in response has agreed to a 25 year agreement to be reviewed, and renewed or renounced, returning the road to the County.

WHEREAS, Limiting access on a superfund site would limit liability to the County and KDC, while not impeding public access available through other avenues.

**NOW, THEREFORE BE IT RESOLVED THAT THE LINCOLN COUNTY BOARD OF COMMISSIONERS:**

1. Recognizes the needs and concerns of the aforementioned parties and offers valid consideration of each comment.
2. That Resolution 2022-04 and its attachments reaffirms our commitment to limit liability and provide reasonable access.

298412 BOOK: PF  
 STATE OF MONTANA LINCOLN COUNTY  
 RECORDED: 01/18/2022 1:18 KOI: RESOLUTION  
 ROBIN A. BENSON CLERK AND RECORDER  
 FEE: \$0.00 BY: *Michelle Byrd Deputy*  
 FOR: LINCOLN COUNTY BOARD OF COMMISSIONERS 512 CALIFORNIA AVE.





# LINCOLN COUNTY MONTANA

## THE BOARD FURTHER RESOLVES:

1. If a provision of this resolution conflicts with a provision of a previously adopted resolution, this resolution will prevail.
2. This resolution and its various sections, clauses and paragraphs and attachments are severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the resolution will not be affected.
3. This resolution and its attachments will be effective upon adoption and signatory completion, and entered into the minutes in accordance with 7-5-121 and 7-5-123, MCA.

### END OF RESOLUTION

Approved as to Form:

  
 \_\_\_\_\_  
 Marcia Boris, County Attorney

Date presented to the Board Jan 5<sup>th</sup> 2022 Approved (X) Disapproved ( ) Amended ( )

Adopted this 5<sup>th</sup> day of January, 2022.

LINCOLN COUNTY BOARD OF COMMISSIONERS

  
 \_\_\_\_\_  
 Jerry Bennett, Chair

ATTEST:

  
 \_\_\_\_\_  
 Robin A. Benson, Clerk of the Board

## ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT (this "**Agreement**") is made and entered into on this 5<sup>th</sup> day of January, 2022 (the "**Effective Date**"), by and between KOOTENAI DEVELOPMENT COMPANY, a Montana corporation ("**Company**"), and LINCOLN COUNTY, a political subdivision of the State of Montana ("**County**"). Grantee and Owner are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**".

### RECITALS

WHEREAS, the County has granted to the Company an access easement over, across, and through the South Portion of Rainy Creek Road as more particularly described in that certain Easement Agreement of even date herewith, the terms of such Easement Agreement hereby incorporated herein by this reference ("**Easement Agreement**"). All capitalized terms not defined herein shall have the meanings set forth in the Easement Agreement.

WHEREAS, the Easement Agreement contemplates the entry into this Agreement by the Parties to set forth the terms of the Company's maintenance obligations with respect to the Roadway Easement Area for the duration of the Easement Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. Road Maintenance. During the term of this Agreement, the Company shall have the exclusive responsibility to repair and maintain the Roadway Easement Area in a reasonably prudent manner, at the Company's cost and expense. The Company will undertake to repair and maintain the Roadway Easement Area to the extent that the Company deems reasonable and necessary to keep the Roadway Easement Area in a safe condition. The Company's obligations hereunder include grading, removal of debris and obstructions, and snow removal. Should it arise that the Parties agree to returning said road to Lincoln County, it shall be returned in the state it was received, paved where paved and graded where graded. The Board of County Commissioners or other governmental or quasi-governmental authority having jurisdiction shall be the party responsible for temporarily closing the South Portion of Rainy Creek Road, including any applicable portion of the Roadway Easement Area, when hazardous conditions exist and shall be responsible for the placement and maintenance of any traffic control devices necessary to warn and regulate traffic.

2. Term. The term of this Agreement shall commence on the Effective Date and shall expire and be of no further force and effect at the expiration of the Easement Term, as may be extended pursuant to the Easement Agreement.

3. Compliance With Laws. The Company agrees to conduct any maintenance, repair or similar activities in the Roadway Easement Area in compliance with any applicable laws and regulations. Any permits or authorizations required for such activities will be duly obtained by and in the name of the County, as the owner of the South Portion of Rainy Creek Road, but the

Company shall solely bear all costs of obtaining and complying with any such permits or authorizations.

4. Indemnification. The Company shall indemnify, defend, and hold harmless the County from and against any and all claims, suits, actions, debts, damages, costs, losses, obligations, death, injury to persons or property or liabilities (including reasonable attorney's fees and court costs) (referred to herein collectively as the "**Claims**") asserted against the County and arising from the breach of this Agreement by the Company, other than as a result of the negligence or intentional acts of the County.

5. Insurance. The Company shall obtain and keep in force a policy of public liability insurance (in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate), subject to reasonable deductibles, on an "occurrence" basis covering risks arising out of the performance of the Company's obligations pursuant to this Agreement.

6. Miscellaneous.

6.1 Notice. All notices, requests, claims, demands and other communications under this Agreement will be in writing and will be deemed given if delivered personally, or the next business day if sent by overnight courier (providing proof of delivery), or on the same business day if sent via electronic mail on a business day during normal business hours to the Parties at the following addresses (or at such other address for a party as specified by like notice), provided that any notice sent via electronic mail must also be sent by another method of delivery as set forth herein:

If to the County, to:

Lincoln County Commission  
512 California Avenue  
Libby, MT 59923  
Attn: County Commissioner, District 1  
Email: [Bteske@libby.org](mailto:Bteske@libby.org)

If to the Company, to:

Kootenai Development Company  
7500 Grace Drive  
Columbia, MD 21044  
Attn: Tony Penfold  
Email: [tony.penfold@grace.com](mailto:tony.penfold@grace.com)

6.2 Governing Law. The validity, performance and enforcement of this Agreement shall be governed by the laws of the State of Montana without giving effect to the principles of conflicts of law of such state.

6.3 Headings. The heading references herein are for convenience purposes only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

6.4 Entire Agreement; Amendment. This Agreement contains the entire agreement of the Parties and supersedes any and all prior agreements between the Parties relating to the subject matter hereof. This Agreement may be amended only by mutual consent of the Parties.

6.5 Waiver. The failure of any Party to require performance of any provision of this Agreement shall not be construed as a waiver of its rights to insist on performance of that same provision, or any other provision, at some other time. No right or breach may be waived except in writing signed by the Parties. The waiver by any party of any right created by this Agreement in one or more instances shall not be construed as a further continuing waiver of such right or any other rights created by this Agreement.

6.6 Severability. Any term or provision of this Agreement which is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining rights of the person intended to be benefited by such provision or any other provisions of this Agreement.

6.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which shall constitute one and the same agreement.

6.8 Further Assurances. Subject to the terms and conditions hereof, each Party agrees to use its best efforts to do, or cause to be done, all things necessary, proper, or advisable under applicable laws and regulations to consummate the transactions contemplated by this Agreement as expeditiously as practicable, including without limitation the performance of such further acts or the execution and delivery of any additional instruments or documents as any Party may reasonably request in order to carry out the purposes of this Agreement and the transactions contemplated hereby.

6.9 Assignment; Successors. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. This Agreement and the Company's rights hereunder may be assigned by the Company to any successor as owner of the Grantee Property, subsidiary, affiliate, partner or joint venturer of the Company, but the Company may not assign this Agreement to any other person or entity without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.10 Attorneys' Fees. If any litigation between the County and the Company with respect to this Agreement shall be resolved or adjudicated by a judgment of any court, the Party prevailing or substantially prevailing under such judgment shall be entitled, as part of such judgment, to recover from the other Party its reasonable attorneys' fees and costs and expenses of litigation from the other Party.

6.11 Entire Agreement. This Agreement, including any exhibits attached hereto, constitute the final and complete expression of the Parties' agreements with respect to the rights

and obligations with respect to the terms hereof. Each Party agrees that it has not relied upon or regarded as binding any prior agreements, negotiations, representations or understandings, whether oral or written, except as expressly set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**Company**

KOOTENAI DEVELOPMENT  
COMPANY, a Montana corporation

By: *Kathy Cole*  
Name: *Kathy Cole*  
Title: *Vice President*

**County**

LINCOLN COUNTY, a political  
subdivision of the State of Montana

By: *Jerry Bennett*  
Name: *Jerry Bennett*  
Title: *Chairman*