

## RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT ("Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Tollefson Enterprises, LLC, a Montana limited liability company, ("Grantor"), and the City of Missoula, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802 ("City").

### RECITALS

WHEREAS, the City, in partnership with Missoula County, intends to construct transportation improvements and public utility improvements with a federal BUILD Grant and other local funding sources in the Mullan Road area (the "BUILD Project");

WHEREAS, the Grantor owns and intends to develop certain real property described as:

**Tract 8A of Certificate of Survey No. 6109, located in the South one-half of Section 12, Township 13 North, Range 20 West, P.M.M., Missoula County, Montana**

(the "Property"), subject to City regulations which require public infrastructure improvements, and construction of the Project benefits the Grantor by reducing the cost of development;

WHEREAS, the BUILD Grant and other existing local funding sources will cover approximately 50% of the cost of the Project, and the City intends to create a special transportation impact fee and a special district utility development fee, subject to the approval of City Council, to fund the remainder of the cost of the Project; and

WHEREAS, the City and County are required to follow the federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (the "Uniform Act") for acquisition of right-of-way for the portions of the Project that are federally funded.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is acknowledged by the parties, the Grantor and the City hereby agree as follows:

**1. Donation of Right-of-Way.** In exchange for the benefits resulting from the BUILD Project and commitments made by the City herein, the Grantor shall donate right-of-way to the City, in the form of permanent easements, necessary to construct the portions of the BUILD Project as shown on Exhibit A.

**2. Construction of the Project.** The City shall coordinate the design and construction of both Primary Improvements and Secondary Improvements within the granted easements and/or right of way, consisting of:

**a. Primary Improvements:** earthwork, asphalt street paving, street signage and striping, curb and gutter all drywells except those located at the southwest and northwest corners of George Elmer and Abby Lane, all drywell storage chambers except located on the west

side of George Elmer at approximately GE Sta 43+00, curb openings, and bioretention basins.

**b. Secondary Improvements:** sidewalks, and bike facilities;

Excluded from Primary Improvements and Secondary Improvements are street trees, landscaping, dry utilities, street lights, Rectangular Rapid Flashing Beacon trail crossing feature (approximate GE Sta 41+60 which includes electrical, signing, and pavement markings), storm drainage piping, drywells located at the southwest and northwest corners of George Elmer and Abby Lane, drywell storage chambers located on the west side of George Elmer at approximately GE Sta 43+00, storm manholes, curb inlets, sanitary sewer main piping and manholes, water main piping, valves, and appurtenances, 2-inch domestic water service stub-outs, 4-inch fire protection service stub-outs, and 6-inch sanitary sewer service stub-outs; and irrigation which shall be the responsibility of the Grantor when the Property is developed. All utility construction will be installed in accordance with the 100% Build Grant Plans and will be installed by December 31, 2021. The City shall complete construction of the Primary Improvements no later than December 31, 2022, unless otherwise agreed in writing. The City shall complete the construction of the Secondary Improvements as funding becomes available. Both Grantor and City will work in good faith on the timing of construction of Secondary Improvements so as not to impact the Grantor's plans for future development. In the event that construction of the BUILD Project prevents completion of the right-of-way improvements that are the responsibility of the Grantor, the City shall not withhold Building Permits or Certificate of Occupancy so long as life/safety conditions are met and the Subdivision Improvements Agreement remains in place until the Grantor's obligations have been completed.

**3. Special District Transportation Impact Fee.** The Grantor agrees to participate in good faith in the process to develop funding mechanisms to recover the remaining costs of the BUILD Project that are not covered by the BUILD grant. This funding mechanism may include, without limiting the suite of possibilities: an impact fee, latecomers fee, or other cost share agreements that allow the City of Missoula to recover the cost of constructing infrastructure from the properties that benefit from the Mullan BUILD Project.

Grantor acknowledges that a commitment to such a cost recovery tool is required by the City as necessary for the City to enter into this Agreement and commit to construct the Primary and Secondary Improvements benefiting their property. The total amount of cost to be recaptured via an impact fee, or other mechanism shall not exceed 50% of the actual costs expended by the City and County to complete the Mullan BUILD Project. To the extent that such special improvement or impact fee district is created in accordance with applicable state and local law, as well as in accordance with the applicable principles of land use law, Grantor agrees to be bound by the fees assessed and not oppose the creation of such a cost recovery mechanism. For informational purposes only, a preliminary fee schedule is included as Exhibit B for reference, subject to City Council approval.

**4. Utility Development Fee.** Grantor, through development of the Property, agrees to be bound by and pay all regular utility connection fees

**5. Temporary Construction Easement.** The Grantor grants unto the City a temporary construction easement, as shown in Exhibit D, for the purpose of constructing the Primary and Secondary Improvements. In exercising such easement rights, the City shall indemnify and defend the Grantor from any claim, loss, damage, liability or expense in any way resulting from the City's or the City's agent's use of the temporary construction easement and shall restore the land within the temporary construction easement and any improvements thereon to their original condition upon the completion of the Primary and Secondary Improvements. This temporary construction easement shall terminate at the completion of the Primary and Secondary Improvements.

**6. Uniform Act.** The Grantor fully understands that certain rights are provided under the Uniform Act that may be applicable to this agreement. The Grantor agrees to sign any necessary waivers relative to the donation of right-of-way to satisfy any relevant requirements of the Federal Highway Administration (FHWA). This waiver of rights is contingent upon the City/County receiving federal funds to construct the Project within the rights-of-way granted by the Grantor.

**7. Appraisal.** The Grantor acknowledges that in accordance with 49 CFR § 24.108 that they have been fully informed by the City of the right to receive just compensation for the donated permanent and temporary easements as described in Sections 1 and 6. The Grantor hereby releases the City from its obligation to obtain an appraisal of the donated property in accordance with 49 CFR § 24.102 (c)(2)(i).

**8. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

**9. Amendment.** This Agreement shall not be amended or otherwise modified except via an instrument executed in writing by the parties or their successors and assigns.

**10. Enforcement.** In enforcing any rights hereunder, the parties shall be entitled to the remedies of specific performance and injunctive relief. In the event of any litigation to enforce this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees from the non-prevailing party or parties.

**11. Entire Agreement.** This Agreement shall constitute the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

Tollefson Enterprises, LLC

Nate Tollefson

By: Nate Tollefson, Member  
Authorized Agent of Tollefson Enterprises, LLC.

State of Montana     )  
                                  ) ss.  
County of Missoula    )

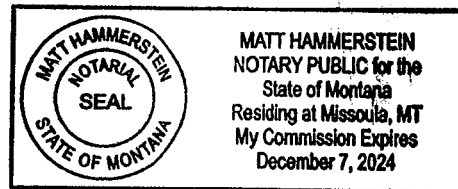
On this 22<sup>nd</sup> day of June, 2021, before me the undersigned, a Notary Public for the State of Montana, personally appeared Nate Tollefson, a member and authorized agent of Tollefson Enterprises, LLC., known to me personally to be the persons whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Official Seal on the day, month, and year in this certificate first above written.

Matt Hammerstein

Matt Hammerstein

Notary Public for the State of Montana  
Residing at Missoula, MT  
My Commission Expires: 12/07/2024



City of Missoula

By: John Engen, Mayor

Attest: \_\_\_\_\_  
City Clerk