

**FIRST AMENDMENT TO  
RIGHT-OF-WAY AGREEMENT**

**THIS AMENDMENT** ("Amendment"), signed this 2<sup>nd</sup> day of Sept., 2021, is intended to amend the Right-of-Way Agreement ("Original Agreement") entered into between HEH, LLC, a Montana limited liability company ("HEH"), and the City of Missoula, a Montana political subdivision ("City") on May 11, 2021.

**RECITALS**

**Whereas**, the Parties previously entered into the Original Agreement with the understanding that the City would be able to complete the construction of all the right-of-way improvements identified in Section 2 of the Original Agreement on a timeline that worked for both Parties; and

**Whereas**, due to a variety of factors the City's construction timeline for the right-of-way improvements described in Section 2 of the Original Agreement have been delayed; and

**Whereas**, HEH desires to construct a portion of the right-of-way improvements in order to serve a development HEH is constructing in the area.

**Now therefore**, in consideration for the promises and covenants contained below, the Parties agree to amend the Original Agreement as follows:

1. Section 2 in the Original Agreement is replaced in its entirety with the following language:

2. Construction of the Improvements. HEH shall construct Mary Jane Boulevard through the Property, from the northern terminus of the existing Mary Jane Boulevard to the southern boundary of the Property to the plans and specifications provided by the City. HEH agrees to complete construction of the Improvements no later than December 31, 2022. The parties agree that the cost of these Improvements is \$364,922, which shall be applied as a credit toward future development impact fees paid by HEH.

Excluded from the Improvements are: street trees, landscaping, dry utilities, street lights, and irrigation which shall be the responsibility of HEH when the Property is developed ("Grantor's Obligations" in the Original Agreement).

The City shall participate in construction of the Improvements by paying for the cost of City construction permits, construction staking, and materials testing for quality assurance. In addition, the City agrees to issue a credit in the amount of \$364,922 for the estimated future development impact fees for the Hellgate Villages Subdivision to HEH within 45 days after completion and acceptance of the work by the City, which shall satisfy the City's obligations described in the Original Agreement.

The City shall not delay the issuance of any Building Permit or a Certificate of Occupancy for completed structures on the basis that the Improvements have not been

completed, provided that access for emergency vehicles is available at all times during construction of the Improvements or adjacent buildings.

The costs of construction reflected in the credit and contribution set forth above are based, in part, on the City's representation that the construction contract is a private contract not subject to local, state, or Federal public works contract requirements, including a requirement to pay prevailing wages. In the event the City's representation is not accurate, the City agrees to increase the amount of its contribution by an amount equal to the costs of complying with local, state, or Federal contract requirements, including prevailing wages, along with the time and expense of retroactively achieving such compliance.

No changes in the agreed cost of construction shall be made without a mutually agreed change order to the plans or specifications. The cost of any change orders will be reflected in the credit amount issued by the City.

2. All other terms and conditions of the Original Agreement remain in full force and effect. This Amendment is effective upon execution by all of the parties.

**IN WITNESS WHEREOF** the parties have executed this Amendment on the date referenced beside each signature below.

HEH, LLC  
a Montana Limited Liability Company



By: Wade D Hoyt, authorized member

City of Missoula

\_\_\_\_\_  
By: John Engen, Mayor

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