

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT ("Agreement"), is made this 14th day of April, 2022, by and between Dougherty Ranch, LLC, ("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" or "Project");

WHEREAS, the Grantor owns certain real property which may be developed and is described as:

Tract F of Certificate of Survey No. 6850, located in the NW¼ & SW¼ of Section 7, Township 13 North, Range 19 West and the NE¼ & SE¼ of Section 12, Township 13 North, Range 20 West, P.M.M., Missoula County, Montana

(the "Property"), and is subject to City regulations which require public infrastructure improvements, and construction of the Project benefits the Grantor and/or its successors and assigns by reducing the cost of future 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.

AGREEMENT

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 (the "Project"):

Primary Improvements: the street, the curb/gutter, storm drainage, utility main extensions, utility service stub-outs for England Boulevard through the Property and:

- i. 4 ea. 10" diameter irrigation casings at locations to be specified by Grantor to permit Grantor to transmit irrigation water from one side of England Boulevard to the other;
- ii. an approach to and across England Boulevard at a location to be specified by Grantor of sufficient width and design to allow Grantor to drive and transport farm equipment from one side of the roadway to the other; and

(the "Improvements.") **b. Secondary Improvements:** sidewalks, bike facilities.

Excluded from Primary Improvements and Secondary Improvements are street trees, landscaping, dry utilities, street lights, and landscape irrigation which shall be the responsibility of the party developing the property at some future date. The City shall complete construction of the Primary Improvements no later than December 31, 2023, 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 the City is unable to complete the Primary and Secondary Improvements by December 31, 2023, and the parties do not agree to a written extension of time, Grantor or Grantor's successors in interest may construct the Primary Improvements pursuant to the specifications set by the City for the Project and the City shall credit and/or refund Grantor the costs of constructing the Primary Improvements against past and future Special Transportation Impact Fees described in Section 4 or such other fees as shall ensure Grantor receives full credit for the costs of constructing the Primary Improvements. The City will pay the cost of the Grantor for Secondary Improvements only if it first has development impact fees to offset that cost.

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. Nothing herein shall obligate the City of Missoula to create or apply such a cost recovery tool, nor shall anything herein be considered a waiver by Grantor, or Grantor's successors and assigns, of Grantor's right to ensure any cost recovery tool is created in accordance with Montana law and applicable principles of land use law, including the requirements for rational nexus and rough proportionality between the impact created by any future development, the extent of the improvements required by any permit

approval, and the existing conditions which currently demand road network improvements. 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. Special District Utility Development Fee. Grantor, through development of the Property, agrees to be bound by and pay all regular utility connection fees and a special district utility development fee (or "latecomers fee"), subject to approval of City Council, for the actual costs expended by the City for the utility infrastructure that directly benefits the Property. For informational purposes only, a preliminary fee schedule is attached as Exhibit C for reference, subject to City Council approval and actual construction costs.

5. Temporary Construction Easement. Via separate agreement, Grantor agrees to grant to the City a right of temporary construction access providing access to Grantor's property along the boundaries of the right-of-way specified in Section 1 as a convenience for installing the Improvements in the width and locations as specified in such agreement; provided, however, that no such grant of access shall prohibit Grantor from constructing structures or other improvements within the temporary construction easement area or otherwise interfere with Grantor's development activities, and at all times such a grant of access shall be subordinate to Grantor's rights to construct structures or other improvements within the specified area of construction access. 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 or as specified in the separate agreement.

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. Utility Connections. The locations of water and sewer connections and stub-outs to provide service to the Grantor's property as provided by the City in Section 2a, will be supplied by the Grantor a minimum of six weeks prior to the beginning of construction of water

and sewer utility mains within the BUILD Project. A maximum of [4] 1-inch diameter water service stub-outs and [2] 4-inch diameter sewer service stub-outs will be constructed by the City as part of the BUILD Project. Limits of construction will extend from the main utility line to the Grantor's right-of-way line at an approximate 90-degree angle to the main. If the Grantor fails to provide the locations within the timeframe specified in this section, as referenced by a utility station location as shown on the final stamped set of Mullan BUILD Project plans, the City will not be responsible for constructing the utility connections and stub-outs. The Grantor will then be responsible for all future costs associated with connecting to the utility mains, including any asphalt penalties imposed by the City that are in effect at the time a permit for construction is granted.

9. 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.

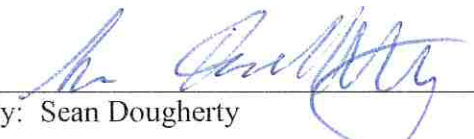
10. Amendment. This Agreement shall not be amended or otherwise modified except via an instrument executed in writing by the parties or their successors and assigns.

11. 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.

12. 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.

IN WITNESS WHEREOF the parties have executed this Agreement on the date referenced above.

Dougherty Ranch, LLC


By: Sean Dougherty


By: Brian Dougherty

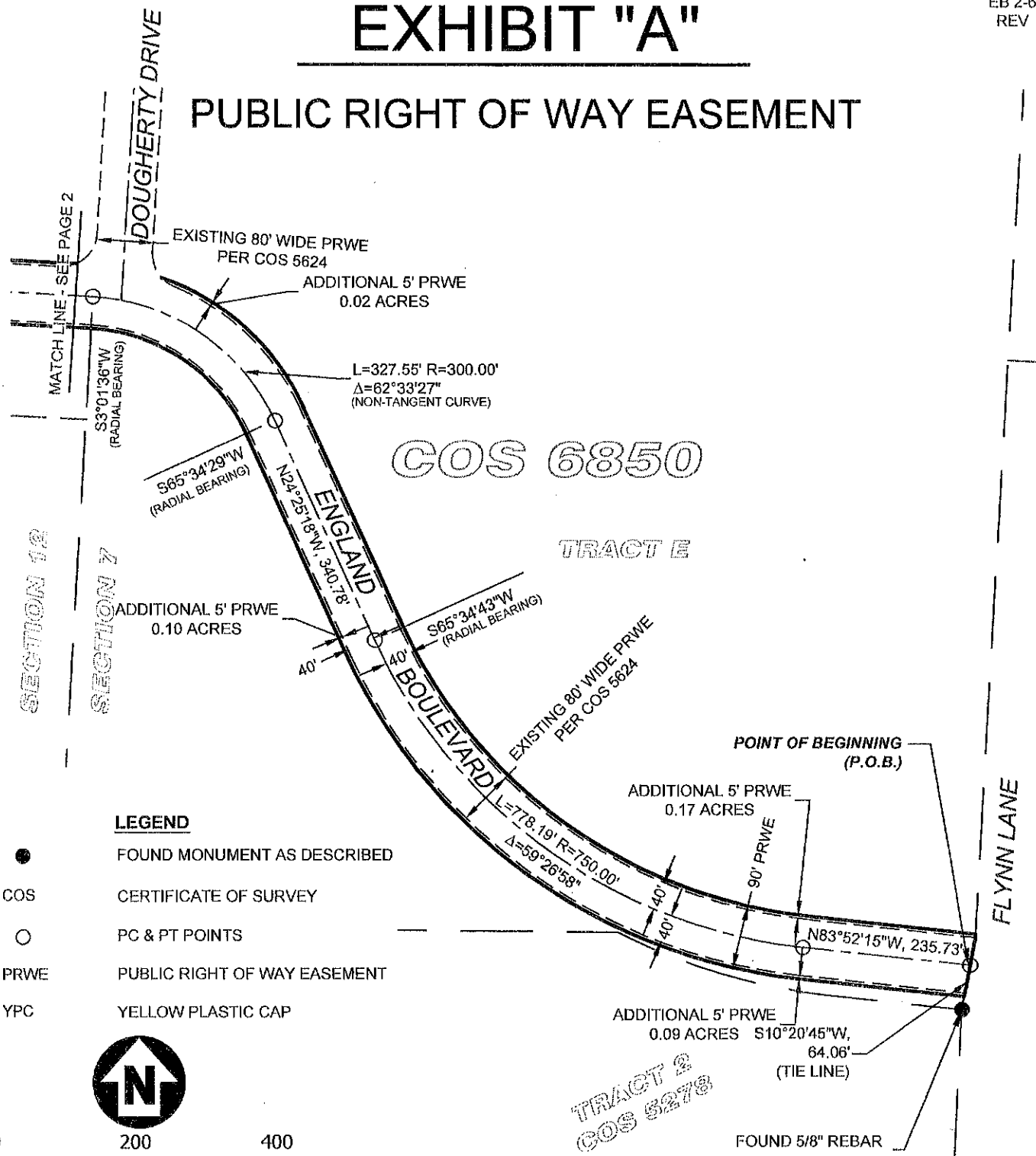
City of Missoula

By: John Engen, Mayor

Attest: _____
City Clerk

EXHIBIT "A"

PUBLIC RIGHT OF WAY EASEMENT



LEGEND

- FOUND MONUMENT AS DESCRIBED
- COS CERTIFICATE OF SURVEY
- PC & PT POINTS
- PRWE PUBLIC RIGHT OF WAY EASEMENT
- YPC YELLOW PLASTIC CAP



0 200 400

SCALE IN FEET
(PLOT SIZE = 8.5" x 11")

LOCATED IN THE SW 1/4, SECTION 7,
T. 13 N., R. 19 W., P.M.
MISSOULA COUNTY, MONTANA



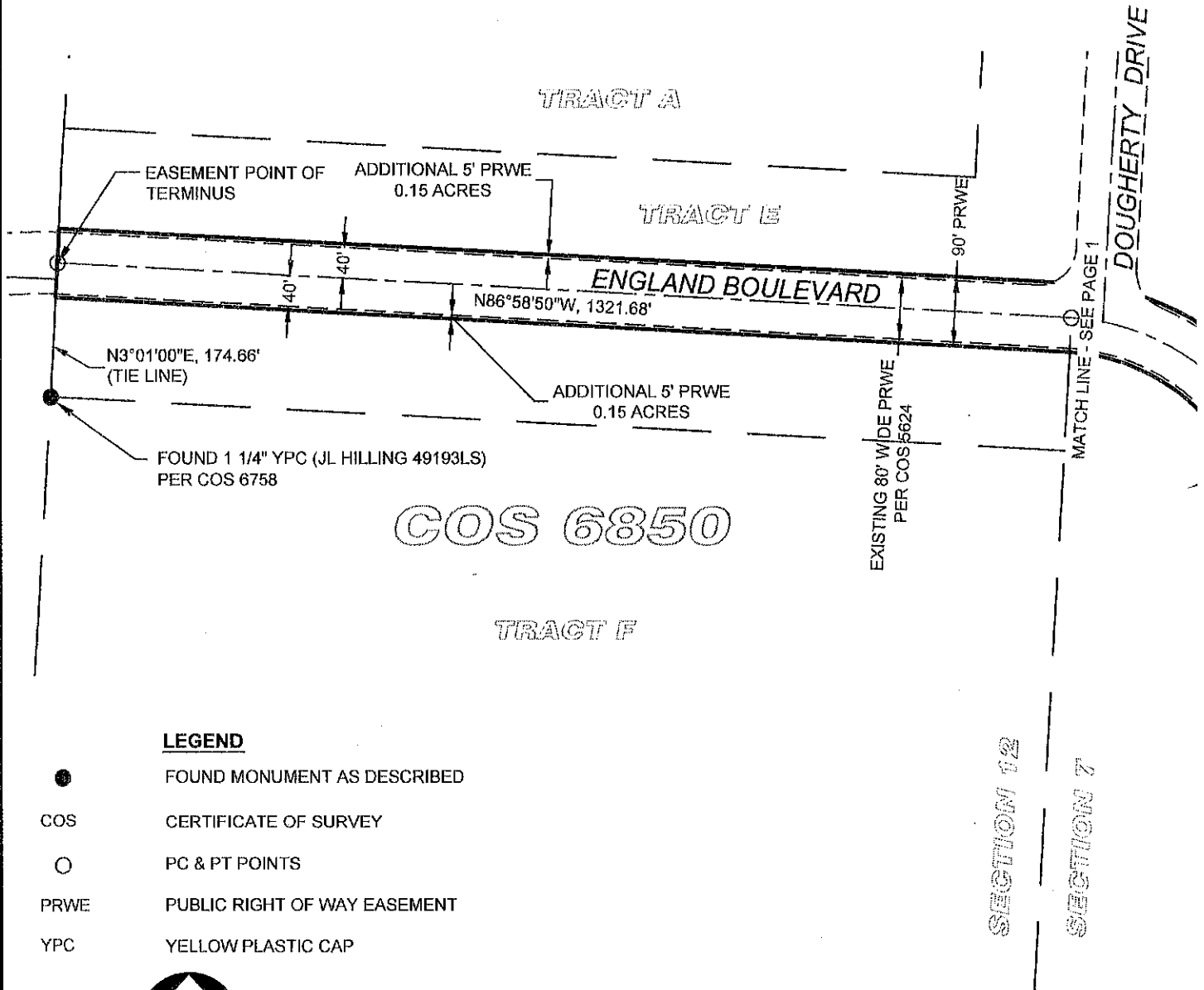
ENGINEERS
PLANNERS
SURVEYORS

BASIS OF BEARING: MONTANA STATE PLANE
GRID NORTH BASED ON GNSS OBSERVATION

APRIL, 2022

EXHIBIT "A"

PUBLIC RIGHT OF WAY EASEMENT



COS 6850

LEGEND

- FOUND MONUMENT AS DESCRIBED
- COS CERTIFICATE OF SURVEY
- PC & PT POINTS
- PRWE PUBLIC RIGHT OF WAY EASEMENT
- YPC YELLOW PLASTIC CAP



0 200 400

SCALE IN FEET
(PLOT SIZE = 8.5" x 11")

LOCATED IN THE SE 1/4 AND NE 1/4,
SECTION 12, T. 13 N., R. 20 W., P.M.
MISSOULA COUNTY, MONTANA



ENGINEERS
PLANNERS
SURVEYORS

BASIS OF BEARING: MONTANA STATE PLANE
GRID NORTH BASED ON GNSS OBSERVATION

APRIL, 2022

EXHIBIT "A"

PUBLIC RIGHT OF WAY EASEMENT

LEGAL DESCRIPTION:

A 90 FOOT WIDE PUBLIC RIGHT OF WAY EASEMENT FOR RIGHT OF WAY AND UTILITY PURPOSES, OVER AND ACROSS TRACT E, CERTIFICATE OF SURVEY NO. 6850, AS RECORDED IN MISSOULA COUNTY, MT. RECORDS, LOCATED IN THE SOUTHWEST ONE-QUARTER AND THE NORTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 13 NORTH., RANGE 19 WEST, AND THE SOUTHEAST ONE-QUARTER AND THE NORTHEAST ONE-QUARTER OF SECTION 12, TOWNSHIP 13 NORTH., RANGE 20 WEST, P. M., M. AND MORE PARTICULARLY DESCRIBED AS BEING A STRIP OF LAND 90.00 FEET WIDE, 45 FEET WIDE ON EACH SIDE OF THE FOLLOWING CENTERLINE:

BEGINNING AT A POINT ON THE WEST BOUNDARY OF SAID TRACT E AND FROM WHICH THE SOUTHEAST CORNER OF SAID TRACT E BEARS SOUTH 10°20'45" WEST 64.06 FEET; THENCE, ALONG THE EXISTING CENTERLINE OF ENGLAND BOULEVARD THE FOLLOWING FIVE (5) COURSES:

1. NORTH 83°52'15" WEST 235.73 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE RIGHT.
2. ALONG A TANGENT CURVE TO THE RIGHT, 778.19 FEET THROUGH A CENTRAL ANGLE OF 59°26'58" AND HAVING A RADIUS OF 750.00 FEET TO A POINT ON A NON-TANGENT LINE.
3. NORTH 24°25'18" WEST 340.78 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE TO THE LEFT.
4. ALONG A NON-TANGENT CURVE TO THE LEFT, 327.55 FEET THROUGH A CENTRAL ANGLE OF 62°33'27" AND HAVING A RADIUS OF 300.00 FEET TO A POINT ON A NON-TANGENT LINE.
5. NORTH 86°58'50" WEST 1321.68 FEET, MORE OR LESS, TO THE POINT OF TERMINUS ON THE WEST BOUNDARY OF SAID TRACT E.

FROM WHICH POINT THE WEST CORNER COMMON TO TRACTS E AND F, CERTIFICATE OF SURVEY NO. 6850, BEARS SOUTH 3°01'00" WEST 174.66 FEET.

THE SIDELINES OF THIS EASEMENT LENGTHEN OR SHORTEN TO INTERSECT THE WEST AND THE EAST BOUNDARIES OF SAID TRACT E, CERTIFICATE OF SURVEY NO. 6850.

EXCEPTING THEREFROM THAT PORTION OF SAID TRACT E, CERTIFICATE OF SURVEY NO. 6850 PREVIOUSLY DEDICATED TO THE PUBLIC AS ENGLAND BOULEVARD AND DOUGHERTY DRIVE.

CONTAINING 0.68 ACRE OF LAND, MORE OR LESS.

I HEREBY STATE THAT THIS EASEMENT EXHIBIT HAS BEEN PREPARED BY ME OR UNDER MY DIRECT SUPERVISION DURING THE MONTH OF APRIL, 2022.

THIS WAS PREPARED TO UPDATE THE CALL OUTS FOR PARCELS TO REFLECT THE CHANGES SHOWN ON CERTIFICATE OF SURVEY NO. 6850, FILED JAN 5, 2022, AND WITH CONCURRENCE OF SIGNATORIES OF THE RW AGREEMENT.

NO CHANGES WERE MADE TO AFFECT THE AREAS OR THE PHYSICAL LOCATION OF THE EASEMENT.

SIGNED Donald M. Roedel
DONALD M. ROEDEL, P.L.S. 10999LS

DATE 04/06/2022



BASIS OF BEARING: MONTANA STATE PLANE
GRID NORTH BASED ON GNSS OBSERVATION

APRIL, 2022

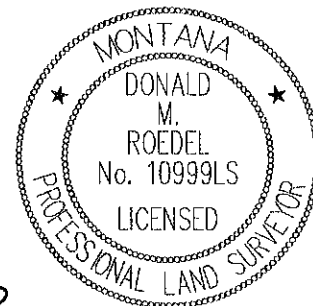


EXHIBIT B – Preliminary Transportation Fee Schedule

Proposed Special District Transportation Impact Fee Schedule Preliminary

Residential

| Size of Unit (square feet) | Vehicle Trip Ends | Trip Adj. Factor | Average Trip Length | Trip Length Wgt. Factor | Maximum Supportable Fee per Unit |
|-------------------------------|----------------------|---------------------|------------------------|----------------------------|--|
| 750 or Less | 4.37 | 54% | 13.09 | 121% | \$1,035 |
| 751 to 1,000 | 5.50 | 54% | 13.09 | 121% | \$1,303 |
| 1,001 to 1,250 | 6.37 | 54% | 13.09 | 121% | \$1,509 |
| 1,251 to 1,500 | 7.09 | 54% | 13.09 | 121% | \$1,680 |
| 1,501 to 1,750 | 7.69 | 54% | 13.09 | 121% | \$1,822 |
| 1,751 to 2,000 | 8.22 | 54% | 13.09 | 121% | \$1,948 |
| 2,001 to 2,250 | 8.68 | 54% | 13.09 | 121% | \$2,057 |
| 2,251 to 2,500 | 9.09 | 54% | 13.09 | 121% | \$2,154 |
| 2,501 to 2,750 | 9.47 | 54% | 13.09 | 121% | \$2,244 |
| 2,751 to 3,000 | 9.81 | 54% | 13.09 | 121% | \$2,324 |
| 3,001 to 3,250 | 10.12 | 54% | 13.09 | 121% | \$2,398 |
| 3,251 to 3,500 | 10.41 | 54% | 13.09 | 121% | \$2,466 |
| 3,501 to 3,750 | 10.68 | 54% | 13.09 | 121% | \$2,530 |
| 3,751 to 4,000 | 10.93 | 54% | 13.09 | 121% | \$2,590 |
| 4,000 or More | 11.17 | 54% | 13.09 | 121% | \$2,647 |

Nonresidential

| Development Type | Vehicle Trip Ends | Trip Adj. Factor | Average Trip Length | Trip Length Wgt. Factor | Maximum Supportable Fee per 1,000 Sq. Ft. |
|---------------------|----------------------|---------------------|------------------------|----------------------------|---|
| Retail | 37.75 | 38% | 8.39 | 66% | \$2,201 |
| Office | 9.74 | 50% | 8.18 | 73% | \$806 |
| Industrial | 4.96 | 50% | 8.18 | 73% | \$410 |
| Institutional | 10.72 | 50% | 8.18 | 73% | \$887 |

EXHIBIT C – Preliminary Utility Fee Schedule

Utility Development Cost Breakdown

| BUILD Utility Fee Summary | | | | |
|----------------------------------|----------------------------------|--------------------|--------------------|--------------------|
| PRELIMINARY * | | | | |
| Owner | Segment | Water Cost | Sewer Cost | Total Cost |
| Flynn Family LP | 5. England | \$110,386 | \$100,441 | \$210,827 |
| Dougherty Properties | 5. England | \$552,980 | \$522,978 | \$1,075,958 |
| Mullan ROW (City) | 4-1. George Elmer | \$15,258 | \$0 | \$15,258 |
| Kathryn Flynn Family LTD | 4-1. George Elmer | \$82,395 | \$100,269 | \$182,664 |
| Heron's | 4-1. George Elmer | \$199,884 | \$118,212 | \$318,096 |
| McNett | 4-2. George Elmer | \$103,757 | \$119,619 | \$223,376 |
| Flynn Family LP | 4-2. George Elmer | \$103,299 | \$239,238 | \$342,537 |
| Dougherty Properties | 4-2. George Elmer | \$28,991 | \$54,532 | \$83,523 |
| City Upsize | 4.1 & 4.2 George Elmer | \$95,822 | \$0 | \$95,822 |
| Kathryn Flynn Family LTD | 1. Mary Jane South | \$268,979 | \$0 | \$268,979 |
| City upsize | 1. Mary Jane South | \$23,386 | \$0 | \$23,386 |
| Lulkart | 2. Mary Jane (Camden to Flynn) | \$0 | \$158,759 | \$158,759 |
| James D Dougherty Family LLC | 2. Mary Jane (Camden to Flynn) | \$0 | \$17,749 | \$17,749 |
| Edgell 1 LLC | 2. Mary Jane (Flynn to Broadway) | \$0 | \$17,749 | \$17,749 |
| Total | | \$1,585,138 | \$1,449,547 | \$3,034,685 |

* Final costs will be based on actual construction quantities and costs.