

**MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF MISSOULA AND  
SPARK1, LLC**

This Memorandum of Agreement (hereinafter referred to as “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Missoula, Montana, hereinafter referred to as “City,” a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, Montana 59802, and the Spark1, LLC, referred to hereinafter as “Spark1,” a Montana Limited Liability Company, with a mailing address of 1225 Clark Fork Lane, collectively referred to as the “Parties.”

The purpose of this Agreement is to outline the Parties’ individual and collective objectives, roles, and responsibilities associated with a water main project within the right-of-way along Concrete Way to Clark fork Lane.

**WHEREAS**, Spark1 is expanding their business at 1225 Clark Fork Lane, located on Lot 1A of Boyd Addition Lots 1A & 2A, a platted subdivision in Missoula County, Montana, and is in need of City water service;

**WHEREAS**, Spark1 desires to enter into an Agreement with the City for the purpose of constructing a water main extension within the public right-of-way along Concrete Way to Clark Fork Lane;

**WHEREAS**, the plans and specifications for said water main extension have been previously reviewed and approved for construction by the City and the Montana Department of Environmental Quality (MDEQ) per City project number 2019-067 and DEQ EQ number 20-2116 for construction;

**NOW, THEREFORE** based on the above recitals, and the mutual covenants and conditions detailed below, the parties agree to the following:

**I. SPARK1 OBLIGATIONS**

1. Spark1 will construct the water main per the plans and specifications previously developed and approved by the City per project number 2019-067 and DEQ EQ number 20-2116 for construction. Spark1 will also install two one-inch diameter water service line stub-outs on Lot 2A.
2. Spark1 will contract with IMEG Corp to prepare contract documents and assist with bidding and contractor selection. Spark1 will contract with a qualified contractor for construction of said water main.
3. Spark1 will pay for civil engineering services required for construction administration, construction oversight, and as-built certification for said water main. Spark1 will pay for construction traffic control through project completion. Spark1 will pay for all

construction costs associated with water main extension except for the asphalt replacement. Spark1 will pay for material testing costs associated with construction of said water main.

4. Spark 1 will prep the trench for paving to current City of Missoula Standards, including cutting the asphalt 12” beyond the edge of the trench. They will bring the road base course up to existing asphalt. Spark1 will maintain the condition of the gravel trench in Clark Fork Lane in good condition until paved.
5. Spark1 will replace curb, gutter, or sidewalk damaged or removed during the construction of the water main
6. Spark1 will complete the project in the Summer of 2022. Spark1 will coordinate with the City regarding construction schedule and paving prior to construction. A minimum of two-week notice of when the site is ready for paving shall be provided to the City.
7. After construction, as part of the water main acceptance, Spark 1 will grant a 20-foot-wide water main easement across Lot 1A, centered over said water main alignment with 20-foot-wide extension back to the Clark Fork Lane right-of-way as shown on “Exhibit A”.

## **II. CITY OBLIGATIONS**

1. The City will pay for and facilitate re-paving of the water main trench segment of Concrete Way and Clark Fork Lane that are removed during construction of the water main. This does not include concrete replacement such as curb, gutter, or sidewalk.

## **III. GENERAL PROVISIONS**

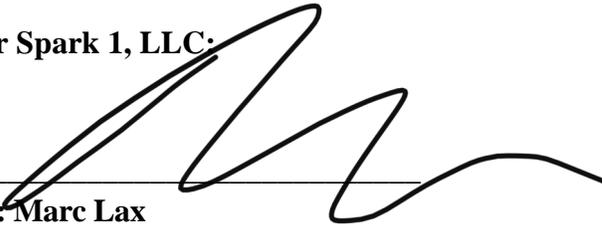
1. Modification and Amendment. This Agreement represents the complete agreement upon the Parties on the issues covered herewith and may only be modified or amended in writing by the mutual agreement of both Parties.
2. Termination. Unless otherwise amended by the Parties, this MOA terminates on the date the water main certified as-builts are approved and accepted by the City or December 31, 2023, whichever comes first.
3. Governing Law. This Agreement shall be governed by the laws of the State of Montana. Venue for any litigation in any way arising out of this Agreement will be in Missoula County, State of Montana.
4. Binding Effect. The obligations set forth in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

5. Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any joint venture or other association between the Parties.
6. Duration of Agreement. This Agreement is executed as of the date of the last signature and is effective until December 31, 2023, at which time it will expire unless otherwise extended by mutual written agreement of the Parties.
7. Counterparts. This Agreement may be executed in one or more counterparts and each counterpart shall have the same force and effect as an original document, fully executed by the Parties. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signatures page(s).

In witness whereof, the parties hereto have executed this Agreement as of the date written below.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2022

**For Spark 1, LLC:**



**By: Marc Lax**

**Title: CEO**

**For City of Missoula:**

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

**ATTEST:**

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

(SEAL)