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City of Missoula
435 Ryman Street
Missoula MT 59802-4297

Resolution Number _____

A resolution declaring it to be the intention of the City Council of the City of Missoula, Montana, to close and vacate a portion of Lower Miller Creek Road public right-of-way in Tract 2 of C.O.S. 6355 subject to six (6) conditions of approval and set a public hearing on August 28, 2023.

Be it resolved by the City Council of the City of Missoula, Montana.

SECTION I. THAT it is the intention of the City Council of the City of Missoula, Montana, to close and vacate:

“That portion of public street right-of-way known as the "Lower Miller Creek Road" as delineated on Exhibit "A" currently bisecting the future Linda Vista Estates Subdivision, a portion of Tract 2 of Certificate of Survey No. 6355, located in the Southwest One-Quarter (SW 1/4) of S13, T12N, R20W, P.M.M. City of Missoula, Missoula County, Montana.”

SECTION II. THAT the vacated right-of-way will revert to and combine with the adjacent private property upon vacation approval and shall attach to the adjacent properties and the titled owner in accordance with Section 70-16-202 of the Montana Code Annotated as follows:

S13, T12 N, R20 W, C.O.S. 6355, ACRES 94.568, TRACT 2 - LESS LINDA VISTA
ESTATES PH1

FURTHER, All easements must be prepared and signed by the property owner in accordance with the timelines identified below. The City will not finalize the vacation by recording the vacation resolution with the Missoula County Clerk and Recorder until all the conditions are met. In the event the conditions are not met within two years from the date the vacation resolution is passed by this Council, this vacation approval shall be withdrawn, the vacation will be declared null and void and the right-of-way shall be returned to public use.

FURTHER, For any condition of this vacation requiring the City, or a department thereof, to review and approve a submittal, the City shall have discretion to deny approval of the submittal because of concerns related to public health, welfare, safety, and benefit. In the event the City determines public health, welfare, safety, and benefit require disapproval of the submittal, the City shall identify changes that would mitigate the issues identified and allow the submittal to be approved.

FURTHER, that the vacation is contingent upon the following:

- 1) The applicant shall prepare and file a temporary 60' public access and utility easement on the existing Lower Miller Creek Road through the property, subject to review and approval of City Engineering, within 90 days of this Resolution being approved by City Council. This temporary easement shall terminate upon the application meeting the below conditions.
- 2) The applicant shall prepare and file an 80' public road easement for the proposed Lower Miller Creek Road alignment through the property, subject to review and approval of City Engineering, prior to

City acceptance of the Lower Miller Creek Road improvements and prior to the new road being placed into service.

3) The applicant shall relocate existing private utilities or provide utility easements for the private utilities that will remain, subject to review and approval of City Engineering, prior to City acceptance of the Lower Miller Creek Road improvements and prior to the new road being placed into service.

4) The applicant shall design and construct Lower Miller Creek Road improvements according to the approved released for construction infrastructure plans for Linda Vista Estates Phase II dated April 18, 2023, prior to City acceptance of the Lower Miller Creek Road improvements and prior to the new road being placed into service.

5) The applicant shall provide proof of approval to alter the location of Lower Miller Creek Road in Missoula County adjacent to this property, meeting the same alignment though the property prior to City acceptance of the Lower Miller Creek Road improvements and prior to the new road being placed into service.

6) The applicant shall provide proof of acceptance of the portions of Lower Miller Creek Road improvements located in Missoula County, as shown on the approved released for construction infrastructure plans for Linda Vista Estates Phase II dated April 18, 2023, prior to City acceptance of the Lower Miller Creek Road improvements and prior to the new road being placed into service.

SECTION III. THAT the City Council will, at its regular meeting to be held on the 14th day of August, 2023 at the hour of 6:00 P.M., in the Council Chambers of the City Hall Building at 140 West Pine Street, Missoula Montana, hear all matters pertaining to the proposed vacation as set out in Section I above.

THAT the property intended to be vacated is subject to any and all utility easements over and across said property in accordance with Section 7-14-4115 of the Montana Code Annotated to continue the installation, maintenance, and repair of any and all public utilities. The property owners benefiting from the vacated right-of-way assume all risk for the installation, placement or construction of any improvement over any easement in which a municipal utility is located and the City shall in no way be liable for any damage to those improvements occasioned by the repair and maintenance of any utilities.

SECTION IV. THAT this resolution be noticed and notice of the hearing concerning the vacation of the public right-of-way as described herein be given as provided by law.

PASSED by the City Council of Missoula, Montana, and approved by the Mayor this 14th day of August, 2023.

ATTEST:

APPROVED:

Martha L. Rehbein, CMC
City Clerk

Jordan Hess
Mayor

(SEAL)