

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MISSOULA AND THE REED LLC for Engineering,
Grant of an Underground Power Line Easement, Trail Realignment and Widening at
John Toole Park

This Development Agreement (Agreement) is entered into this _____ day of _____, 2021, by and between CITY OF MISSOULA, MONTANA (CITY), a municipal corporation, 435 Ryman, Missoula, Montana 59802 and THE REED LLC, (collectively herein DEVELOPER), whose offices are located at 101 Railroad St W., Missoula, Montana concerning the construction of improvements to include trail realignment and widening at John Toole Park

WHEREAS, on _____2020, Developer received approval of the proposed development commonly referred to as the “Reed Project,” and located at 219 S. Fourth St W; and

WHEREAS, the Developer is seeking to relocate existing power distribution lines that are located along their project’s S. Fourth St W. frontage; and

WHEREAS, the City owns public parkland, known as John Toole Park that has frontage on S. Fourth St W.

WHEREAS, a paved section of the Milwaukee Trail runs through John Toole Park. This section of trail is classified as a Class I, Primary Trail per the 2004 Master Parks and Recreation Plan for the Greater Missoula Area. The adopted Long Range Transportation Plan designates the section of trail as a “commuter route;” and

WHEREAS the subject existing trail segment is paved to a ten foot (10’) width and the City’s adopted standard for the paved width of Commuter trails is fourteen feet (14’); and

WHEREAS, the Milwaukee Trail and Toole Park are of benefit to the residents of the Reed Project and all residents of the City; and

WHEREAS, Developer is desirous of relocating existing power distribution lines on S. 4th St W to John Toole Park in the vicinity of the existing paved commuter trail; and

WHEREAS, City and Developer agree to use a phased process for the final trail project design; project bonding; grant of easements for underground relocation of the power distribution lines, and trail realignment to include widening, new trail lighting, and site restoration.

WHEREAS, upon meeting all applicable standards and conditions existing as of the date of this Agreement and upon acceptance of each component of the

project as outlined in this document, for which acceptance cannot be unreasonably withheld, the City agrees to convey an underground power utility easement (Exhibit B) to Northwestern Energy as provided for by this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions of this agreement, the CITY and DEVELOPER agree as follows:

- A. The City and Developer mutually acknowledge and agree as follows:
1. The above recitals are incorporated herein and become a part of this Agreement.
 2. The City will obtain a cost from a qualified independent engineering firm to provide a professionally engineered, stamped, bid ready plan to realign and widen a section of paved pathway through John Toole Park, to a fourteen foot (14') paved section with two foot (2') shoulders on each side; inclusive of grading, compaction, asphalt, paved width, lighting power supply, new trail lighting, shade shelter relocation, traffic control, site restoration and a construction cost estimate.
- B. Developer agrees to:
1. Deposit funds with the City in the full amount required for the City to contract with an independent engineering services necessary to determine the design and costs of proposed trail project as described in Section A.2, above.
 2. Subsequent to receipt of the City approved, engineer stamped trail widening and lighting construction plans and the engineer's cost estimate; the developer shall have 10 business days to present an improvements bond to the City in the amount of 110% of the independent engineer's cost estimate.
 3. Contingent on submittal of an improvements guarantee, supply to the City a professionally prepared, stamped, legal description and map exhibit for the proposed underground power line easement (Exhibit B) to be conveyed to Northwestern Energy by the City.
 4. Subsequent to posting bond and City recordation of a permanent underground power easement, provide for the timely development and construction of the power line and trail improvements using licensed, insured and bonded contractors.
 5. Advance and complete construction of the approved trail improvements project inclusive of fully restoring the parklands by July 1, 2021.
 6. Timely notify the City's project liaison for required inspection(s) and approval(s) in adherence to the approved construction plans and specifications.

7. Notify the assigned Parks Department Representative in writing of any delays in construction of the improvements and the reason for the delays.

C. The City agrees to:

1. Secure a scope of services and cost proposal from a qualified independent engineering firm to provide stamped, bid ready construction plans and engineer's cost estimate to realign and widen the paved commuter trail as described in Section A.2 herein..
2. Contingently approve grant of a permanent underground power easement to Northwestern Energy.
3. Subsequent to receipt of the developer's improvements bond and underground power easement legal description, provide for signing and recordation of an underground easement to be granted to Northwestern Energy (Exhibit B);
4. Inspect and accept the constructed underground power line and trail projects respectively, upon satisfactory completion and subject to meeting all plan, specifications, and materials requirements, for which acceptance shall not be unreasonably withheld.
5. To release the developer's improvements bond upon satisfactory completion of the project per approved plans and specifications.

D. General Provisions

5. Independent Contractor Status: The parties agree that Developer is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Developer is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Developer is not authorized to represent the City or otherwise bind the City in any dealings between Developer and any third parties.

6. Worker's Compensation Insurance: Developer shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Developer shall maintain workers' compensation coverage for all members and employees of Developer's business, except for those members who are exempted by law.

Developer shall furnish the City with copies showing one of the following: **(1)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(2)** proof of exemption from workers' compensation granted by law for independent Developers.

7. Indemnity and Liability Insurance: Developer agrees to indemnify, defend and save the City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Developer or Developer's agents or employees. For this purpose, Developer shall provide City with proof of Developer's general liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 for each claim and \$1.5 million for each occurrence. The insurance must be in a form suitable to City.

8. Professional Service: Developer agrees that all services and work performed hereunder will be accomplished in a professional manner.

9. Compliance with Laws: Developer agrees to comply with all federal, state and local laws, ordinances, rules and regulations. Developer agrees to purchase a City business license.

10. Nondiscrimination: Contractor will not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, political ideas, sexual orientation, gender identity, or gender expression, or national origin, or because of age, physical or mental disability or marital status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, religion, color, sex, national origin or because of age, physical or mental disability or marital status. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

11. AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

**The City's Affirmative Action Policy
Statement is:**

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression or marital status. In keeping with this commitment, we are

assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.

12. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

13. Modification and Assignability: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The

Developer may not subcontract or assign Developer's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

14. **Liaison:** City's designated liaison with Developer is:

Phone: 406-552-62xx: E-mail: [@ci.missoula.mt.us](mailto:_____@ci.missoula.mt.us)
Mailing address: Missoula Parks & Recreation; 100 Hickory St; Missoula, MT 59801

Developer's designated liaison with City is:

Phone: 406-xxx-xxxx: E-mail: [@hotmail.com](mailto:_____@hotmail.com)
Mailing Address: _____, Missoula, MT 59801

15. **Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

16. This agreement constitutes the entire agreement between the Developer and City.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF MISSOULA, MONTANA

The REED, LLC

By _____
JOHN ENGEN, Mayor

By _____
Print Name:

ATTEST:

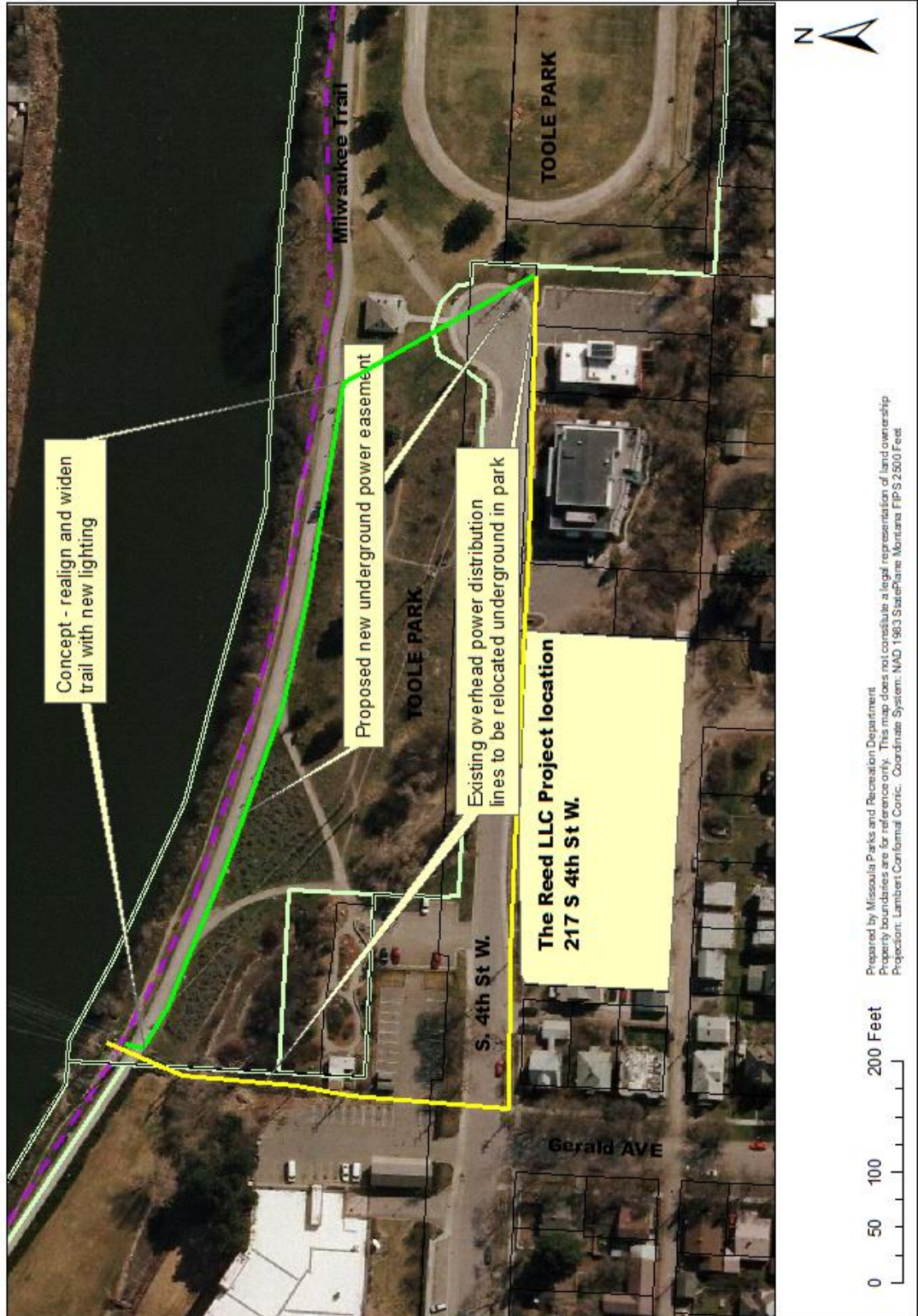
Print Title: _____

By _____
MARTHA L. REHBEIN, CMC
Legislative Services Director/City Clerk

APPROVED AS TO FORM

By _____
JIM NUGENT, City Attorney

EXHIBIT A
Concept relocation of underground power, trail realignment and widening at John Toole Park, Missoula, MT



Return to: City Clerk
City of Missoula
435 Ryman Street
Missoula, MT 59802

CITY GRANT OF UNDERGROUND UTILITY EASEMENT

Geocode:

SUID:

THIS CONVEYANCE made this _____ day of _____, 2021 by and between the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana, referred to as "Grantor" or "City", and Northwestern Energy, 1903 S Russell St, Missoula, MT 59801, referred to as "Grantee".

WITNESSETH

That the Grantor, for and in consideration of \$1.00 and other good and valuable consideration to him/her by the Grantee, receipt of which is hereby acknowledged, The Grantor hereby grants, conveys and warrants to the Grantee, its successors and assigns, a permanent ten foot wide (10') easement across real property, for the purpose of constructing, maintaining, altering, reconstructing and/or removing underground power distribution lines and related appurtenances under, along, and across that certain real property located in Missoula County, Montana, and more particularly described as follows and by reference incorporated into and made part of this instrument. Said Underground Power Easement being located over and across a portion of the following described real property:

[Legal Description], as recorded in the office of the Clerk and Recorder, Missoula County, Montana.

Said easement over and across said portion being more particularly described as follows:

[Easement Description or the description can be on Exhibit A] and being more particularly described and shown on Exhibit A by this reference made a part hereof.

TERMS Grantor does hereby designate, grant, and convey a ten foot (10') wide underground power easement for the purpose of constructing, maintaining, improving, repairing, and removing said utilities and related appurtenances as described on the attached Exhibit "A". This conveyance shall be subject to the conditions that the Grantee or its assigns shall have the right of reasonable access to said public underground power easement and to enter upon such

easement for the purpose of constructing, maintaining, improving, repairing, or removing the utility and related appurtenances, and shall have the right to reasonable entry upon and temporary use of the property immediately adjacent of said easement for necessary activities related to constructing, maintaining, improving, repairing, or removing the utility and related appurtenances, provided, however, that the Grantee or its assigns shall make only such excavation as is reasonably necessary for the installation, maintenance, improvements, repair, or removal of said utilities, that said utilities shall be placed only within said easement, and that each time it is necessary to enter upon said premises for the above described purposes the grantee shall coordinate and schedule access using the City's Park Access Permit process (except in event of an emergency repair), fences shall be removed and replaced and the surface of the property shall be restored as close as reasonably possible to its original condition by the Grantee as promptly as possible. Together with reasonable right of access to and from the easement area over lands of the Grantor using existing roads and trails where practicable; the right to use and keep the easement area free and clear of any and all obstructions or structures, except fences, lighting, irrigation, and paving; and the right to clear and remove all trees from the easement area that may, in the Grantee's sole opinion, endanger the Grantee's underground power, or necessary appurtenances.

Grantee shall be solely responsible for restoring the real property and repairing any damage to City facilities, such as the irrigation system, trail surface, trail lighting, sod, and/or native vegetation, to as near its original condition as reasonably possible, after any usage of the easement, whether original construction, maintenance, replacement, reconstruction, or removal.

Grantor agrees not to build any kind of a permanent structure within the easement or that will prevent access to the easement for maintenance purposes. If Grantee or a successor in interest ever no longer needs this easement or abandons use of this easement for more than one year, this easement shall be deemed abandoned.

Grantee acknowledges that it will participate in a utility location program such as the One Call Notification Center as set forth in sections 69-4-520 through 69-4-530 MCA entitled "EXCAVATION NEAR UNDERGROUND FACILITIES".

Grantor does hereby covenant with the Grantee that the Grantor is lawfully seized and possessed of the real estate above described, and that the Grantor has a good and lawful right to convey it, or any part hereof.

BINDING EFFECT. This grant of Underground Utility Easement, which shall be recorded at the Missoula County Clerk and Recorder's Office, is binding upon the heirs, executors, personal representatives, assigns, and successors of the parties hereto and shall run with the land.

ACCEPTANCE

This easement is accepted and its terms and conditions agreed to by the City of Missoula on this

_____ day of _____, 2021.

ATTEST:

APPROVAL:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(SEAL)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _
_____ day of _____, 2021.

Grantee Name

Grantee Name

STATE OF _____)
County of _____) ss.

This instrument was acknowledged before me on the _____ day of _____
_____, 2021 by _____

Grantee Name

Notary

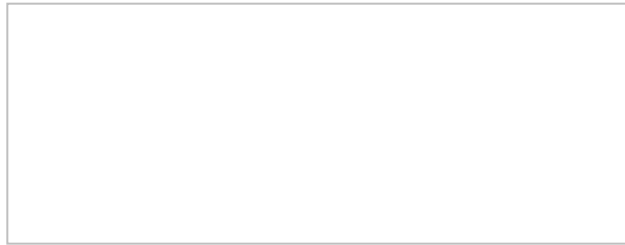


EXHIBIT A
Map of the underground power easement