

## AGREEMENT TO DEDICATE RIGHT-OF-WAY

THIS AGREEMENT TO DEDICATE RIGHT-OF-WAY (“Agreement”), is made this 9th day of April 2021, by and between Rocky Mountain Beverage of Montana, LLC, a Montana limited liability company (“RMB”), and the City of Missoula, a Montana political subdivision (“City”).

### RECITALS

WHEREAS, on June 8, 2020, the Missoula City Council approved the RMB Minor Subdivision, subject to certain conditions of approval, which included requirements to dedicate certain right-of-way to mitigate impacts of the development;

WHEREAS, since approving the RMB Minor Subdivision the City has further defined how it intends to fund and construct the entire stretch of Mary Jane Boulevard, including the portion required to be dedicated pursuant to the subdivision condition discussed above, via a federal BUILD Grant;

WHEREAS, the Parties do not believe that the federal Uniform Relocation Assistance and Real Property Acquisition Act applies to the right-of-way dedicated for the portion of the Mullan Build Project discussed in this Agreement; but to the extent that it does, the Parties agree that the acquisition of right-of-way meets the conditions found in 49 CFR § 24.101(b)(1)(i)-(iv);

WHEREAS, for the purpose of complying with 49 CFR § 24.101(b)(1)(iv), the Parties agree that the approximate value of the right-of-way to be dedicated to the City by RMB is \$4.78 per square foot; and

WHEREAS, RMB has satisfied the conditions of preliminary plat approval for the RMB Minor Subdivision, including recording the final plat and executing a subdivision improvements agreement corresponding to the conditions of preliminary plat approval.

NOW, THEREFORE, for valuable consideration, the sufficiency of which is acknowledged by the parties, the City and RMB hereby agree as follows:

**1. Grant of Right-of-Way.** From its real property, pursuant to the City Council approved subdivision conditions RMB has dedicated right-of-way for the intersection of Mary Jane Boulevard and West Broadway and otherwise for Mary Jane Boulevard to the City in the location set forth on the final plat of the RMB Minor Subdivision.

**2. Construction of Mary Jane Boulevard by RMB.** RMB shall construct Mary Jane Boulevard from the southern boundary of the subdivision to a point 240 feet to the north, in the location as approximately shown on Exhibit A, to the specifications and elevations (grades) provided by the City, using specifications supplemental to the Montana Public Works Standard Specifications 2010 (MPWSS) and applicable City of Missoula Standards. The City shall provide RMB specifications and elevations (grades) for such construction within 30 days of

executing this Agreement.

**3. Construction of Mary Jane Boulevard by City.** The City shall design and construct the remaining portions of Mary Jane Boulevard, including intersection improvements for the intersection of Mary Jane Boulevard and West Broadway, and all other associated improvements, to the City's standards for an Urban Collector Road. The parties acknowledge a portion of such improvements shall be constructed over and across those installed by RMB. Construction is anticipated to begin in the second quarter of 2021. The parties agree RMB shall have no obligation to construct any improvements to Mary Jane Boulevard beyond those specified in Section 2, regardless of the timing and extent of construction, or lack thereof, by the City as specified in this Section 3.

**4. Costs of Construction; Credit for Expenses.** The parties agree the estimated costs for RMB to construct improvements to Mary Jane Boulevard and the intersection with West Broadway as required by the conditions of approval for the RMB Minor Subdivision and in the associated Subdivision Improvements Agreement is \$268,596.30, with such amount being owed by RMB to the City pursuant to the conditions of approval. As consideration for the promises and covenants contained in this Agreement and because the City in partnership with Missoula County obtained federal funding that will cover approximately 50% of the cost of the Mullan BUILD Project, the City agrees to credit RMB 50% of the cost of the construction improvements to Mary Jane Boulevard as required by the conditions of approval for the RMB Minor Subdivision, or \$134,293. The City shall further credit RMB for all costs expended by RMB to install the improvements required under Section 2. If a balance remains after applying all credits to the original amount of \$268,586.30, RMB shall pay the remaining balance to the City within 45 days after completing the improvements required under Section 2 (as evidenced by the City's acceptance of such improvements).

**5. Reduction of Security for Subdivision Improvements Agreement.** In exchange for executing this Agreement, and upon completion of the improvements required in Section 2 by RMB, the City shall reduce the amount of security required pursuant to the subdivision improvements agreement for the RMB Minor Subdivision in the amount of \$268,596.30 upon the completion of all improvements required by Section 2 by RMB and the credits and payment of any remaining balance required by Section 4.

**6. Access to Parcels.** Upon completion of the improvements required in Section 2 by RMB, the City agrees Parcel 1 of the RMB Minor Subdivision shall be deemed to have sufficient legal and physical access for purposes of issuing a certificate of occupancy for the facility currently under construction on Parcel 1. The City further acknowledges a US Department of Veterans Affairs clinic is under construction on Parcel 2 of the RMB Minor Subdivision. In the event the City has not completed the improvements the City is responsible for completing under Section 3 by the time the facility is ready for occupancy, estimated to be November of 2021, the City shall construct and provide temporary access to Parcel 2 and shall not deny a certificate of occupancy or otherwise refuse to allow occupancy of the facility on Parcel 2 (if the facility would otherwise be entitled to a certificate of occupancy) on the basis of failing to comply with any City access requirement.

**7. No Further Contribution.** The City anticipates creating an impact fee, special improvement district, or other cost recapture mechanism to recover costs expended by the City and/or Missoula County to construct the Mullan BUILD Grant project. However, upon completion of the improvements required in Section 2 by RMB and the payment of any remaining balance due under Section 4, the City acknowledges RMB has satisfied all necessary contributions to the construction of Mary Jane Boulevard and otherwise pertaining to the Mullan BUILD Grant project, and the City agrees not to include the real property within the RMB Minor Subdivision in any such cost recapture mechanism.

**8. Temporary Construction Easement.** RMB grants unto the City a temporary construction easement ten feet in width running along the west boundary of the right-of-way granted to the City for Mary Jane Boulevard for the purpose of constructing the improvements set forth in Section 3. In exercising such easement rights, the City shall indemnify and defend RMB 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 improvements set for in Section 3. This temporary construction easement shall terminate at the earlier of completion of the improvements set forth in Section 3 by the City, or two years from the date of execution of this Agreement.

**9. Uniform Act of 1970.** RMB fully understands the rights afforded to it under the Uniform Act of 1970. In consideration of the benefits the City will receive for granting certain rights-of-way, the Grantor agrees to waive any rights associated with the acquisition of right-of-way for federally-funded projects. The Grantor agrees to work with the Grantee to sign any necessary paperwork to legitimize the donation of right-of-way to satisfy any relevant requirements of the Federal Government. This waiver of rights will be contingent upon receiving federal funds to construct proposed improvements within the rights-of-way granted by the Grantor.

**10. 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.

**11. 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.

**12. 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.

**13. 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 beside each signature below.

Rocky Mountain Beverage of Montana, LLC  
a Montana Limited Liability Company

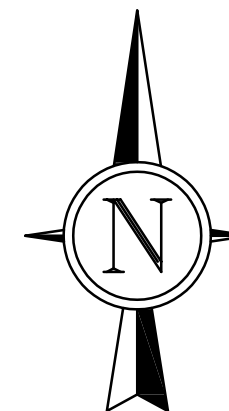
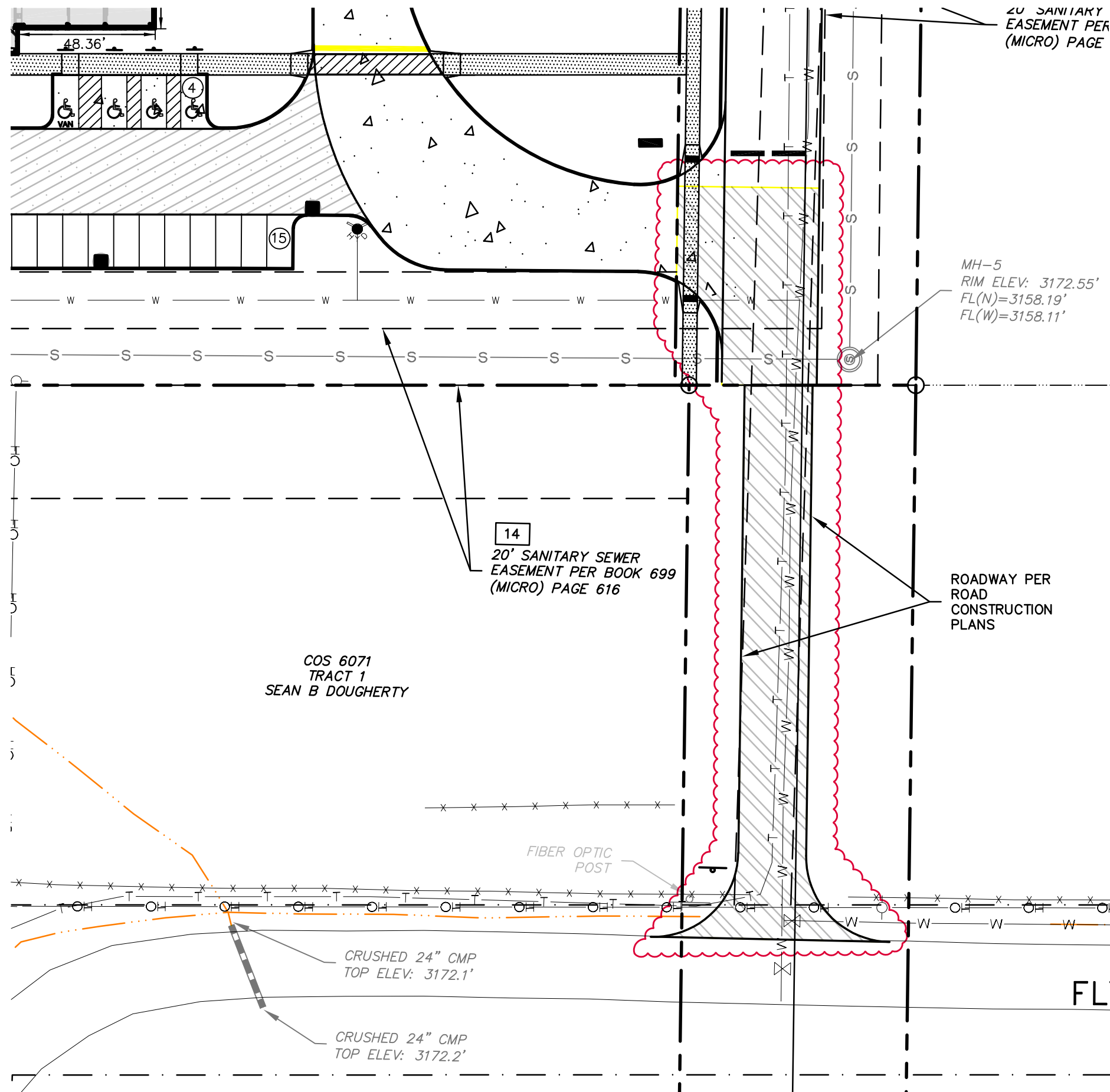
*Greg Markovich*  
By: Greg Markovich, authorized member

City of Missoula

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

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

J:\3085\3085A\Drawings\Engineering\Construction Plans\3085A Site.dwg\10/14/2020 8:06 AM\Jacob Brockmeyer



GRAPHIC SCALE



( IN FEET )  
1 inch = 40 ft.



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DRAWN BY:	DATE:
JRB	10/14/20
CHECKED BY:	DATE:
JLW	10/14/20
JOB NUMBER:	3085A
SHEET:	EXHIBIT A