

RIGHT-OF-WAY AGREEMENT

THIS AGREEMENT ("Agreement"), is made this ____ day of _____, 2021, by and between Shannon R. Luikart ("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");

WHEREAS, the Grantor owns and intends to develop certain real property described as:

**Tract 1 of Certificate of Survey No. 5527, located in
Section 7, Township 13 North, Range 19 West, P.M.M., Missoula County, Montana**

(the "Property"), subject to City regulations which require public infrastructure improvements, and construction of the Project benefits the Grantor by reducing the cost of 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.

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:

a. Primary Improvements: the street, curb/gutter, storm drainage, sewer utility main extension, and utility service stub-out;

b. Secondary Improvements: sidewalks, bike facilities.

Excluded from Primary Improvements and Secondary Improvements are street trees, landscaping, dry utilities, street lights, and irrigation which shall be the responsibility of the Grantor when the Property is developed. The City shall complete construction of the Primary Improvements no later than December 31, 2022, 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.

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. 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. The Grantor grants unto the City a temporary construction easement, as shown in Exhibit D, for the purpose of constructing the Primary and Secondary Improvements. 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.

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 [1] 1-inch diameter water service stub-outs and [4] 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.

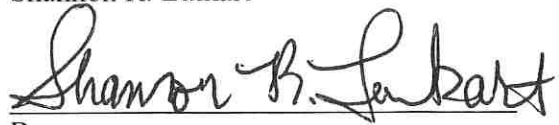
10. **Amendment.** This Agreement shall not be amended or otherwise modified except via an instrument executed in writing by the parties or their successors and assigns.

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.

Shannon R. Luikart

A handwritten signature in cursive script, appearing to read "Shannon R. Luikart", written over a horizontal line.

By:

City of Missoula

By: John Engen, Mayor

Attest: _____
City Clerk