

**LICENSE AGREEMENT  
ACCESS TO WATER TANK SITE**

This Agreement made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between the **P M & M, LLC**, of 2060 Rimrock Road, Billings, Montana, **MAX E. THORNTON**, individually, of 11842 Pryor Road, Billings, MT, and the **KATHERINE K. THORNTON TESTAMENTARY TRUST**, of P.O. Box 30918, Billings, MT 59116-0918, (all of whom are hereinafter referred to as ‘Licensor’), and the **CITY OF BILLINGS**, a Montana Municipal Corporation, of P.O. Box 1178, Billings, Montana 59103 (hereinafter referred to as ‘Licensee’).

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

**SECTION ONE  
GRANT OF LICENSE AND DESCRIPTION OF PREMISES**

Licensor grants to Licensee a license, *nunc pro tunc*, to occupy and use, subject to all of the terms and conditions of this Agreement, a strip of land, which is sixty (60) feet wide for one thousand five hundred ninety-two and 64/100 (1592.64) feet, and thirty (30) feet wide for seven hundred thirty-nine and 50/100 (739.50) feet, in all, two thousand three hundred thirty-two and 14/100 (2332.14) feet long, across, over and through certain real property located in the NW ¼ Section 26 and the NE ¼ Section 27, Township 1 South, Range, 26 East, P.M.M. Yellowstone County, Montana, more particularly described as follows:

Commencing at the SE corner of Tract 46A, Certificate of Survey 2165, of Amended Plat Of Tracts 35, 36, 45, and 46, of Certificate of Survey 2165, Recorded January 9, 2003, Under Document No. 3209200, Records of Yellowstone County, Montana; thence N 00°

01' 13" W for a distance of 425.25 feet to the True Point of Beginning, being also the beginning of the centerline of a 60.00 foot wide access easement being 30.00 feet on each side of the following described centerline: N55°03'46"E for a distance of 369.99 feet; thence on a curve to the left with a radius of 295.00 feet and an arc length of 347.58 feet (chord bearing N21°18'32"E and a chord length of 327.82 feet); thence N12°26'44"W for a distance of 97.35 feet; thence on a curve to the left with a radius of 60.00 feet and an arc length of 97.47 feet (chord bearing N58°58'56"W and a chord length of 87.10 feet); thence S74°28'52"W for a distance of 344.98 feet; thence on a curve to the right with a radius of 1000.00 feet and an arc length of 265.83 feet (chord bearing S82°05'47"W and a chord length of 265.04 feet); thence S89°42'43"W for a distance of 69.44 feet, to the beginning of a 30.00 foot wide access easement being 15.00 feet on each side of the following described centerline; thence N31°31'53"W for a distance of 88.62 feet, along the centerline of the 30.00 foot wide access easement; thence on a curve to the left with a radius of 100 feet and an arc length of 40.83 feet (chord bearing N43°13'41"W and a chord length of 40.55 feet); thence N54°55'29"W for a distance of 221.77 feet; thence N47°49'12"W for a distance of 77.76 feet; thence N69°55'48"W for a distance of 39.05 feet; thence N72°18'30"W for a distance of 76.95 feet; thence N80°13'26"W for a distance of 124.90 feet; thence N66°57'42"W for a distance of 69.62 feet to a point on the north line of Certificate of Survey 2165, Tract 34A of Amended Tracts 34, 35A, 36A, 37-44, 45A, 68-77 of Certificate of Survey 2165, Recorded August 12, 2004, Under Document No. 3300403, Records of Yellowstone County, Montana.

See Exhibit "A" Attached

## **SECTION TWO LIMITATION TO DESCRIBED PURPOSE AND TERM**

The above-described property may be occupied and used by Licensee solely for the purpose of providing Licensee ingress and egress to the utility site in the NE ¼ NE ¼ Section 27, Township 1 South, Range, 26 East, P.M.M. Yellowstone County, Montana on which Licensee will construct and/or operate a municipal water tank or tanks, and for incidental purposes related to such purpose during the period beginning the 6<sup>th</sup> day of February, 2013, and continuing for a period of four (4) years from that date, until the 6<sup>th</sup> day of February, 2017. No major construction or repair shall be accomplished by the Licensee during the term of this agreement without the express written consent of the Licensor. Licensee may perform minor road repairs such as graveling or grading, or repairs that are necessary to maintain Licensee's access to the water tank site. Licensor may lock any gate or gates upon the premises, provided that Licensor provides Licensee with duplicate keys for any such locks. Licensee shall close and re-lock all gates immediately upon passing through them. No gates shall be left standing open, and no locked gates shall be left unlocked.

## **SECTION THREE RENEWAL**

This license may be renewed at the conclusion of the term of this agreement for additional three (3) year periods upon such terms and conditions as the parties may then agree, in writing. Licensor will cooperate with Licensee in identifying and securing permission to use an alternative route for ingress and egress to Licensee's

water tank site in the event the route secured by this agreement becomes unavailable for any reason.

#### **SECTION FOUR CONSIDERATION**

The parties agree that the consideration given by Licensee to Licensor shall be the construction, operation and maintenance of water tanks with which the Licensee shall provide a supply of municipal water to privately-owned parcels of property in the Briarwood area. The parties further agree that Licensor will receive a benefit from this activity by Licensee when municipal water is supplied to privately-owned parcels of property in the area.

#### **SECTION FIVE TERMINATION**

If Licensee fails to comply with any condition of this Agreement at the time or in the manner provided for, the Licensor may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within sixty (60) calendar days after written notice is provided to the Licensee. Said notice shall set forth the items to be cured. 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.

#### **SECTION SIX LICENSOR AS AN ADDITIONAL INSURED**

Licensee shall name Licensor as a “non-municipal” additional covered party under its Memorandum of Coverage with the Montana Municipal Insurance Authority so that Licensor is an additional covered party for any damages caused by Licensee’s actions, activities, or infrastructure.

#### **SECTION SEVEN GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

#### **SECTION EIGHT ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications or amendments of this agreement, including the

appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

**SECTION NINE  
NOTICES**

Any notice provided for or concerning this agreement shall be in writing and shall be deemed sufficiently given when sent by United States Mail, First Class postage prepaid, if sent to the respective address of each party as set forth at the beginning of this agreement.

**SECTION TEN  
ASSIGNMENTS**

The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior written consent of the other party, which consent shall not be unreasonably denied.

**SECTION ELEVEN  
LICENSE RUNS WITH THE LAND**

This license shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement, their respective heirs, successors, or assigns.

*IN WITNESS WHEREOF* the parties have hereunto affixed their hands and seals the date first hereinabove written.

**PM & M LLC**

\_\_\_\_\_  
**By: RICHARD W. PAASCH, Manager**

STATE OF MONTANA)  
  :ss  
County of Yellowstone )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, personally appeared **RICHARD W PAASCH**, known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same as the Manager of the **PM & M LLC**.

*IN WITNESS WHEREOF*, I have hereunto set my hand and affixed my Notarial seal the day and year first above written.

Notarial Seal

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at Billings, Montana  
My Commission Expires: \_\_\_\_\_





LICENSEE:

**ACKNOWLEDGMENT AND ACCEPTANCE**  
**OF INTEREST IN PROPERTY**

The Mayor and City Council of the City of Billings acknowledge receipt of this license agreement and hereby accept the property interest conveyed through this instrument.

**CITY OF BILLINGS, a Montana  
Municipal Corporation**

By: \_\_\_\_\_  
**THOMAS W. HANEL, Mayor**

ATTEST:

By: \_\_\_\_\_  
**CARI MARTIN, City Clerk**

STATE OF MONTANA)

: ss.  
County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015 before me, a Notary Public for the State of Montana, personally appeared **THOMAS W. HANEL** and **CARI MARTIN**, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, and acknowledged to me that they executed the foregoing instrument.

*IN WITNESS WHEREOF*, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_ (Signature)

(NOTARIAL SEAL)

\_\_\_\_\_ (Printed Name)

Notary Public for the State of Montana

Residing in Billings, Montana

My Commission Expires: \_\_\_\_\_