

RESOLUTION NO. 15-

A RESOLUTION OF THE BILLINGS, MONTANA CITY COUNCIL ADOPTING A POLICY FOR MANAGING EXISTING AND FUTURE UTILITY EASEMENTS IN CITY PARKS AND AUTHORIZING THE CITY ADMINISTRATOR TO ENACT RULES AND PROCEDURES IMPLEMENTING THE POLICY.

WHEREAS, it is essential to the public that the use of parkland include a variety of purposes and recreational opportunities and the use of parkland by the general public has doubled within the past 5 years, for a variety of outdoor recreation, event and sport purposes that are frequently unscheduled; and

WHEREAS, the expectation of park users is that the parks and facilities are safe and in a usable condition for the recreational use and enjoyment of the general public; and,

WHEREAS, City parks currently contain significant numbers of utility easements including but not limited to above or below surface facilities that are used to generate, transmit and/or distribute electricity, water, natural gas and petroleum products such as oil and automotive fuel which require periodic maintenance, upgrades and occasional relocation that often impacts the use and physical character of the specific park involved; and

WHEREAS, Utility companies from time to time may request to acquire easements in City-owned parkland; and

WHEREAS, the Billings City Council desires to adopt a policy together with appropriate procedures allowing for the management of existing and future utility easements located in City parks and thereby establish a more structured, uniform and consistent management of existing and future utility easements across or in parklands in the City of Billings; and

WHEREAS, the Billings City Council desires for City staff to communicate and work with utility companies to minimize damage and ensure parkland is restored to a safe and useable condition as existing and future easements are used by utility companies; and

WHEREAS, the Billings City Council desires to recover all City staff and restoration costs associated with utility easement operations in parkland, and

WHEREAS, the Billings City Council desires to direct the City Administrator to construct an efficient process for the granting and management of future utility easements in City parks and management of existing utility easements located in City parks;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA AS FOLLOWS:

That the City of Billings hereby adopts the *City Utility Right-of-Way Easement Policy for parkland and a Utility Right-Of-Way Easement* which are provided in Attachments “A” and “B”.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this 27th day of April, 2015.

THE CITY OF BILLINGS:

By: _____
Thomas W. Hanel, MAYOR

ATTEST:

BY: _____
Cari Martin, CITY CLERK

ATTACHMENT "A"

POLICY ON UTILITY EASEMENTS IN CITY PARKS

I. PURPOSE:

To establish a guide for the granting of easements for utility installations across or in parklands in the City of Billings by utility companies or their contractors, subcontractors, agents or employees.

II. TYPES OF EASEMENTS:

This policy applies to all requests for easements in City owned parklands by utility companies. Two kinds of easements are recognized for the purpose of this policy:

1. Service Easement – is an agreement to provide a utility service for a park facility or area.
2. Non-Service Easement - is an agreement for a utility to cross, but does not provide any service to a park area.

III. POLICY:

- A. A Service Easement, to bring a utility to a park facility or area to be served, shall be located on construction drawings and approved by the Parks, Recreation and Public Lands (PRPL) staff.
- B. A Non-Service Easement may be granted in the event there are no other possible routes outside parklands available. The utility company shall ~~fill-out~~ complete an Easement Request Form for review and recommendation by PRPL Staff.
- C. Requests for easements will be submitted to the City Council for approval or disapproval.
- D. All easements shall be executed on a City of Billings easement document form.
- E. Indemnification, Insurance, and Excavation Bond. Any person or entity (Grantee) provided an easement shall indemnify, defend and save the City, its officers, agents and employees harmless from any and all losses, damages, judgments, causes of action and liability, including reasonable attorney's fees occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission on the part of Grantee or its agents or employees in the exercise and use of an easement granted by the City. A Grantee shall provide City with proof of Commercial General Liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$1.5 million per occurrence and naming the City as an additional insured. The insurance must be in a form suitable to and approved by City. Grantee shall also obtain an Excavation Bond as required by City ordinance.
- F. Dedicated parks in new Subdivision Plats shall not contain easements for non-service utility locations without prior staff approval during the plat development process.

- G. All easements shall be non-exclusive; and at its discretion, the City may permit additional utilities to co-locate within the same easement. However, existing Grantee/Utility may not charge any fee of any type for such co-location. Additional utilities desiring co-location are subject to all easement policies and procedures.
- H. Utility easement may be granted to a utility firm and its successors. The easement shall not be assignable by the Grantee to any other utility for any use other than that specifically described in the easement.
- I. Compensation to the City shall be charged for all Non-Service Easements.
- J. All approved easements shall follow a route through the affected park that will minimize conflicts with current and future park facilities, trees, and features.
- K. Location of any necessary surface equipment shall be approved by the Parks, Recreation and Public Lands Department. All surface equipment such as, but not limited to, pedestals and vaults, shall be located, installed, and maintained in such a manner as to preserve and enhance the safety and aesthetics of the surrounding park area and adjacent private housing lots as approved by the City of Billings.
- L. All easements shall guarantee the repair and restoration to City specifications of all areas and facilities disturbed by activities to install, repair, maintain, or remove the utility.
- M. Appropriate measures as approved by the City of Billings shall be implemented to protect park trees and facilities in the vicinity of the utility during installation and repairs.
- N. All cable installation shall be underground and in conduit.
- O. No repair, upgrade, or any other activity within the easement shall take place until the City has been notified and has coordinated with other park uses and maintenance operations scheduled or in progress.
- P. Pre and post operations inspections and on-site coordination may be required in the sole discretion of PRPL personnel. If such inspections and coordination are required Grantee shall pay Grantor for these services on a per hour basis at the current established billing rates as set by PRPL.
- Q. If an existing easement conflicts with park development or re-development , the City will cooperate with the utility company (Grantee) to relocate the existing easement to a mutually acceptable location.

IV. TERMINATION OF EASEMENT:

Noncompliance with any of the conditions and terms of any easement ~~shall~~ may, upon discovery and notification of the utility company, cause the easement to be terminated in its entirety. The utility company shall, in that event, vacate the premises immediately. City shall send written notification to Grantee of any noncompliance with any of the conditions and terms of this agreement and Grantee shall have fifteen (15) calendar days to cure and eliminate such noncompliance unless both City and Grantee agree to an extension. If Grantee fails or refuses to respond to the City's notification of noncompliance or fails to remediate the noncompliance after written notification from City as described above, City shall have the right and option to declare this easement terminated in its entirety. The **Grantee** shall, in that event,

vacate the premises immediately and restore the park grounds to their original condition.

ATTACHMENT "B"

Return to:
City of Billings
PO Box 1178
Billings, MT 59103

CITY OF BILLINGS
DEPARTMENT OF PARKS, RECREATION AND PUBLIC LANDS

UTILITY RIGHT-OF-WAY EASEMENT

The **City of Billings**, for and in consideration of One Hundred Dollars \$ 100.00 in hand paid by the **Grantee**, the receipt whereof is hereby acknowledged, as agreed, hereby grants and conveys to _____, **Grantee**, a **Utility Right-of Way Easement** on the following described City property:

A tract of land _____ located in _____ Park, _____, of _____, Situated in the _____ and the _____ of Section _____, Township _____, Range _____ P.M.M., Yellowstone County, Montana. Said tract and easement strip located as shown on Exhibit "A" attached hereto and made a part hereof.

This easement to _____, **Grantee**, is for the purpose of constructing, operating, maintaining, replacing and removing utility systems as described in attached Exhibit(s) concerning the above-described property, together with the right of free ingress and egress over and across said property for the above stated purpose subject to the conditions provided below. However, the **City of Billings** reserves the right to occupy and/or use the property in question for all purposes not inconsistent with the rights herein granted.

It is understood and agreed that the following conditions shall apply to this easement:

1. All utility installation located within this easement shall be located as required in the **Policy and Procedures on Utility Easements in City Parks** of the City of Billings.
2. **Grantee** shall install the underground utility and restore the lot to its original condition as approved by the **City of Billings**. Installation and restoration shall be completed within 45 days after construction.
3. **Grantee** shall notify the PRPL offices 48 hours in advance of any construction, maintenance or repairs. In the event of an emergency **Grantee** shall provide notice within 24 hours after access. ~~For any pre and post operations inspections and all on site coordination requiring PRPL personnel, Grantee shall pay Grantor for these services on a per hour basis at current billing rates as set by PRPL.~~
4. During operations in the easement **Grantee** shall keep site clear of any debris. The area shall be left in a condition equal to or better than the existing condition prior to access satisfactory to the Parks, Recreation and Public Lands (PRPL). **Grantee** shall coordinate all access routes with Grantor's Park Superintendent or designee.

5. **Grantee** shall take all necessary precautions to protect existing infrastructure including but not limited to structures, vegetation, utilities, irrigation, fencing, sidewalks and paths. Any and all damage shall be repaired at **Grantee's** expense to the satisfaction of PRPL. Damage not repaired in a reasonable time period shall be undertaken by PRPL and all expenses shall be billed to the **Grantee**.
6. To allow travel over and across the park by **Grantee**, linear portions of the utility installation shall be ten (10) feet in width (sufficient to allow access to necessary equipment for installation and repair purposes).
7. Protection of trees and facilities in the vicinity of the utility during installation and during any replacement, maintenance, or repairs shall comply with the **Policy and Procedures on Utility Easements in City Parks**.
8. **Grantee** shall maintain any surface equipment in such a manner as to preserve or enhance the safety and aesthetics of the surrounding park area and private housing lots as approved by the City of Billings.
9. All underground wire and cable installation shall be in conduit.
10. The easement shall not be assignable by the Grantee to any other utility for any use other than that specifically described in the easement.
11. The **City of Billings** shall be notified at least five (5) calendar days in advance of any maintenance or repairs.
12. Subject to the condition in # 10 above, ~~T~~his easement shall run with the land and be binding upon successors in interest should ownership of said described tract change in the future.
13. **Indemnity and Insurance:** As partial consideration for the permission to obtain this easement across City parkland, **Grantee** agrees to indemnify, defend and save the City, its officers, agents and employees harmless from any and all losses, damages, judgments, causes of action and liability, including reasonable attorney's fees occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act or omission on the part of **Grantee** or its contractors, subcontractors, agents or employees. For this purpose, Contractor shall provide City with proof of Commercial General Liability insurance issued by a reliable company or companies for personal injury and property damage, in an amount not less than \$750,000 per claim, and in an amount not less than \$1.5 million per occurrence, and naming the City as an additional insured. The insurance must be in a form suitable to and approved by City.
14. Noncompliance with any of the above terms and conditions, may result in the City exercising any or all available remedies up to and including termination of this easement if **Grantee** fails to initiate action to remedy the non-compliance after fifteen (15) calendar days written notice from the City.

Dated this _____ day of _____, 20_____.

By: _____
Thomas W. Hanel, Mayor

Attest:

By: _____
Cari Martin, City Clerk

State of Montana)
) ss.
County of Yellowstone)

On this ____ day of _____ 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they duly executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Notary Public for the State of Montana

Printed Name

Residing at _____

My commission expires _____