

Yellowstone Kelly Interpretive Site
Campaign Pledge Agreement

THIS AGREEMENT is made this 3rd day of December, 2015, by and between **JAMES P. ROSCOE and LINDA W. ROSCOE**, husband and wife, of 3628 Timberline Drive, Billings, Montana 59102 (“Donor”) and **BILLINGS PARKS, RECREATION AND PRESERVATION FOUNDATION** (the “Foundation”) with mailing address c/o Wipfli-Galusha, Attn: John Fekety, 303 N. 28th Street, Suite 503, Billings, Montana 59101 and the **CITY OF BILLINGS** (the “City”) with mailing address of 210 N. 27th Street, Billings, Montana 59101.

RECITALS:

A. The Foundation is conducting a Capital Campaign (“Capital Campaign”) to raise funds for the preservation and enhancement of the Yellowstone Kelly grave and interpretive site overlooking the Yellowstone Valley in Billings, Montana (“Yellowstone Kelly Interpretive Site”).

B. The Yellowstone Interpretive Site is located in Swords Rimrock Park, which is owned by the City, and the City is the party that will ultimately construct the site using, in part, funds provided by the Foundation.

C. Donor desires to make a pledge to contribute to the Capital Campaign and the Foundation and the City desire to accept Donor’s pledge upon the terms and conditions specified in this Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, IT IS HEREBY AGREED:

1. **Recitals.** The foregoing Recitals are true and correct and by this reference are incorporated into the terms and conditions of this Agreement.

2. **Foundation Tax Status.** The Foundation is organized exclusively for religious, charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended (the “Code”). The Foundation is a charitable organization as described in sections 170(c), 2055(a) and 2522(a) of the Code and has provided Donor with a copy of its current IRS exemption letter reflecting its tax exempt status under the Code. Thus, all of Donor’s contributions pursuant to this Agreement shall be deductible as a charitable contribution under the Code.

3. **Roscoe Gift.** In order to help the Foundation pay for the preservation and improvement of the Yellowstone Kelly Interpretive Site, Donor will give \$25,000 to the Capital Campaign on the following schedule:

- a. \$5,000 in calendar year 2015, payment to be made no later than December 31, 2015.
- b. \$5,000 in calendar year 2016, payment to be made no later than December 31, 2016.
- c. \$5,000 in calendar year 2017, payment to be made no later than December 31, 2017.

- d. \$5,000 in calendar year 2018, payment to be made no later than December 31, 2018.
- e. \$5,000 in calendar year 2019, payment to be made no later than December 31, 2019.

Donor will cause these gift payments to be made by making the payments individually or by entities through which their family makes charitable gifts, or by some combination of gift payments made by these parties.

4. Donor Pledge Conditions/Mutual Reliance. The parties acknowledge their mutual reliance upon each other in completing this Agreement:

- a. The Foundation and the City are expending significant resources and relying on Donor's gift to help fund and the Yellowstone Kelly Interpretive Site project; and
- b. Donor is committing to contribute substantial funds in reliance upon the representations of the Foundation and its plans for the preservation and enhancement of the Yellowstone Kelly Interpretive Site.

The Foundation has provided Donor with the Capital Campaign materials for the preservation and enhancement of the Yellowstone Kelly Interpretive Site project estimating a cost of \$500,000 (collectively referred to herein as the "Plans"). Timely commencement and completion of the project consistent with the Plans is an essential consideration in the pledge being made by Donor under this Agreement.

The parties agree that if the project has not commenced, is not progressing in a timely manner consistent with the Plans, or the scope and purpose of the project changes from the Plans, Donor, in Donor's sole discretion, shall not be obligated to make the future scheduled payments under paragraph 3.

The determination of the inability or failure of the Foundation and the City to satisfy Donor's intent under this paragraph 4 shall be made by Donor, after consultation with the Foundation and the City, recognizing the mutual reliance of all of the parties in performing their responsibilities under this Agreement. The purpose of the condition placed on Donor's gift under this paragraph 4 is to assure that the purpose and intent of Donor's gift under this Agreement are satisfied.

5. Recognition of Gift. In consideration of Donor's gift, the Foundation and the City will recognize Donor's gift in consultation with the Donor. The nature and extent of this recognition shall be agreed to in writing on or before the completion of the Yellowstone Kelly Interpretive Site project by Donor and the Foundation and the City, which agreement shall incorporate the specific terms for recognition of the Donor's gift.

6. Facsimiles and Counterparts. A facsimile copy of this Agreement containing the signature of any of the parties shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.

7. **Time and Binding Effect.** Time shall be of the essence of this Agreement. The terms and conditions hereof shall inure to the benefit of, and be binding upon, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

8. **Entire Agreement.** This Agreement embodies the entire Agreement between the parties, and supersedes all prior negotiations, understandings and agreements. This Agreement may be amended, modified, or supplemented only by an instrument in writing duly executed by both parties hereto.

9. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the day and year first above written.



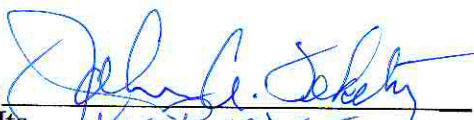
JAMES P. ROSCOE



LINDA W. ROSCOE

“Donor”

**BILLINGS PARKS, RECREATION AND
PRESERVATION FOUNDATION**

By: 
Its VICE PRESIDENT

“Foundation”

CITY OF BILLINGS

By: _____
Thomas W. Hanel, Mayor

“City”

Attest: _____