

**CITY OF BILLINGS  
SANITARY SEWER SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into by and between Meadowlark Capital LLC, hereinafter "Meadowlark", as owner and operator of the Meadowlark Mobile Home Park, and the City of Billings, a Montana incorporated City, hereinafter called the City.

**WITNESSETH THAT:**

**THE PURPOSE OF THIS AGREEMENT IS TO SET FORTH THE RESPONSIBILITIES AND DUTIES OF MEADOWLARK AND THE CITY WITH RESPECT TO THE CITY PROVIDING SANITARY SEWER SERVICE TO MEADOWLARK.**

I. WHEREAS, Meadowlark proposes to receive sanitary sewer service from the City but the City desires Meadowlark remain in Yellowstone County and not be annexed to the City of Billings at this time, and

WHEREAS, the construction of a new sanitary sewer main and appurtenances (hereinafter, the Project) will be located over and upon the easements to be provided by Meadowlark for Jellison Road in Yellowstone County, Montana and within Montana Department of Transportation right of way beginning at or near the intersection of Jellison Road and Blue Creek Road extending along Jellison Road to the Road leading to the landfill for the City of Billings, for the permanent construction of the Project, and

WHEREAS, this Agreement must be duly executed and on record with the City Clerk's office for the City of Billings before Meadowlark begins receiving sanitary sewer service from the City and the work contemplated begins, and

WHEREAS, the City desires that Meadowlark receive the sanitary sewer service and have the construction done, the City deeming it to be a valuable and beneficial consideration.

**II. NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

AT MEADOWLARK'S EXPENSE, MEADOWLARK AGREES TO DESIGN THE PROJECT, LET IT TO CONTRACT AND ADMINISTER THE CONTRACT FOR CONSTRUCTION AND WILL PERFORM ALL THE REMAINING FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH HEREIN IN EXCHANGE FOR WHICH THE CITY AGREES THAT UPON COMPLETION OF THE PROJECT, DEEMING THE CONSTRUCTION A GOOD AND VALUABLE CONSIDERATION, IT WILL PERFORM ALL OF THE FUNCTIONS AND DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT. THE DUTIES AND RESPONSIBILITIES OF EACH PARTY TO THIS AGREEMENT ARE SET FORTH IN THIS AGREEMENT.

THIS AGREEMENT SHALL RUN WITH THE LAND OWNED BY MEADOWLARK CAPITAL LLC AND OCCUPIED BY THE MEADOWLARK MOBILE HOME PARK, AND NOTICE THEREOF SHOWING THE LEGAL DESCRIPTION OF LAND SHALL BE FILED WITH THE YELLOWSTONE COUNTY CLERK AND RECORDER IN FORM SO THAT ANY SUCCESSOR AND ASSIGNS OF MEADOWLARK CAPITAL LLC SHALL BE BOUND BY THE TERMS OF THIS AGREEMENT.

THE EXISTING AND ANY FUTURE SANITARY SEWER COLLECTION SYSTEM ON MEADOWLARK'S PROPERTY AND APPURTENANCES INCLUDING BUT NOT LIMITED TO LIFT STATIONS AND FORCE MAIN(S) SHALL REMAIN PRIVATELY OWNED, OPERATED AND MAINTAINED BY MEADOWLARK AND ITS ASSIGNEES AND SUCCESSORS IN INTEREST.

IN THE EVENT THAT THE CITY'S PUBLIC WORKS DIRECTOR OR DESIGNEE DETERMINES THAT MEADOWLARK'S COLLECTION SYSTEM IS NOT MAINTAINED AND OPERATED IN GOOD WORKING ORDER THE CITY SHALL PROVIDE WRITTEN NOTICE OF FAILURE TO MAINTAIN AND OPERATE THE COLLECTION SYSTEM AND REQUIRED CURES; SUCH NOTICE SHALL DESCRIBE IN DETAIL THE DEFICIENCIES IN MAINTENANCE AND OPERATION AND REQUIRED CURES. UPON RECEIPT OF SUCH NOTICE, MEADOWLARK AND ITS ASSIGNEES AND SUCCESSORS IN INTEREST SHALL PERFORM THE REQUIRED CURES WITHIN 30 DAYS. ANY DEFICIENCIES IN MAINTENANCE AND OPERATION NOT CURED AS REQUIRED BY THE CITY'S PUBLIC WORKS DIRECTOR OR DESIGNEE WITHIN THE 30-DAY CURE PERIOD SHALL CAUSE THE CITY TO CEASE SANITARY SEWER SERVICE TO MEADOWLARK.

(A) In addition to the responsibilities set forth above,

(i) Meadowlark shall:

- a. Meet all requirements for the City's Public Works Department "Policy for Private Contract, Approval, Inspection and Warranty Requirements" using the most current private contract fee.
- b. Complete and submit for approval the City's "Private Contract Submittal General Information" packet.
- c. Complete and submit for approval the City's "Consent for Annexation" form.
- d. Cooperate fully with and submit all information necessary for the City to obtain an "Encroachment License" from Yellowstone County and the Montana Department of Transportation.
- e. Specify and submit the firm name(s) for construction to the City Engineer for approval prior to construction work commencing.
- f. Grant the City all rights, title and interest in the proposed public sanitary sewer line and appurtenances in return for the City accepting and agreeing to maintain the foregoing public sanitary sewer lines and appurtenances, as part of the City's wastewater collection system. This shall not include the aforementioned existing and any future sanitary sewer collection system on Meadowlark's property.
- g. Provide adequate information to the City Engineer showing that inflow and infiltration from the Meadowlark's private sanitary sewer system is minimal prior to connection to the City's sanitary sewer system.

- h. Pay all fees to the City as referenced in this agreement and supplemental forms in addition to the City's System Development Fee (SDF) and a monthly fee. The SDF is the fee set by Council at the time of connection to the system and will also include the franchise fee at the time of connection. Currently this franchise fee is 4% and is subject to change. The monthly fee is the Minimum Monthly Wastewater Charge for customers outside the City set by Council and the franchise fee and a surcharge for areas outside of the City. The items included in the total monthly fee will be the current fees in effect for that month and are subject to change. The surcharge fee is currently at 6%.

(ii) The City shall:

- a) Approve or disapprove Meadowlark's submittal of the City's "Private Contract Submittal General Information" packet.
- b) Approve or disapprove the City's "Consent for Annexation" form.
- c) Obtain an "Encroachment License" from Yellowstone County and/or the Montana Department of Transportation to allow the new main and appurtenances to be installed in the Jellison Road easements after Meadowlark has successfully met all the requirements for this license.
- d) Accept all rights, title and interest in the proposed public sanitary sewer line and appurtenances constructed as per this agreement along Jellison Road as property of the City after all items in this agreement have been successfully completed and the work has been accepted by the City. This shall not include the aforementioned existing and any future sanitary sewer collection system on Meadowlark's property.
- e) Maintain the sanitary sewer main and appurtenances constructed as per this agreement as part of the City's wastewater collection system. This shall not include the aforementioned existing and any future sanitary sewer collection system on Meadowlark's property.
- f) Provide sanitary sewer service to Meadowlark in accordance with this agreement.

(B) Furthermore,

- (i) Meadowlark agrees to protect, indemnify, defend and save harmless the City against and from all claims, liabilities, demands, causes of action, judgments, and losses (including costs and attorney's fees incurred by the City in the defense thereof) to them arising in favor of or asserted by any person or entity on account of personal injury, death or damage to property arising solely out of, or in connection with, a defect in the Meadowlark's construction of the project (including, but not limited to, a defect in the Meadowlark's construction of the project as described above or from the negligent or intentional act of Meadowlark's employees that in any way interfere with or damage the maintenance work of the City.
- (ii) The City agrees to protect, indemnify, defend and save harmless Meadowlark against and from all claims, liabilities, demands, causes of action, judgments, and losses

(including costs and attorney's fees incurred by Meadowlark in the defense thereof) to them arising in favor of or asserted by any person or entity (including, but not limited to, Meadowlark) on account of personal injury, death or damage to property arising entirely out of the negligence or willful and intentional acts of the City in connection with the operation or maintenance of the subject project.

- (iii) This section does not supersede, discharge, or extinguish any prior agreement between the parties, nor will any future agreement between the parties supersede, discharge, or extinguish this agreement, unless by specific reference and in clear terms.

**III. DURING THE PERFORMANCE OF THIS AGREEMENT, MEADOWLARK, FOR ITSELF, ITS ASSIGNEES AND SUCCESSORS IN INTEREST, AGREES AS FOLLOWS:**

**A) Compliance with Title VI of the Civil Rights Act of 1964**

(1) Compliance with Regulations: Meadowlark shall comply with all Regulations relative to nondiscrimination as related to this agreement.

(2) Nondiscrimination: Meadowlark, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Meadowlark shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by Meadowlark for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subcontractor or supplier shall be notified by Meadowlark of Meadowlark's obligations under this Agreement and the Regulations relative to nondiscrimination.

(4) Information and Reports: Meadowlark will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with Regulations or directives. Where any information required of Meadowlark is in the exclusive possession of another who fails or refuses to furnish this information, Meadowlark shall so certify to the City as requested, setting forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of Meadowlark's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose sanctions as it determines appropriate, including, but not limited to, cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: Meadowlark will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Meadowlark will take such action with respect to any subcontract or procurement as the City may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Meadowlark is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, Meadowlark may request the City to enter into the litigation to protect the interests of City, and, in addition, Meadowlark or the City may request the United States to enter into such litigation to protect the interests of the United States.

**B) Compliance with the Montana Governmental Code of Fair Practices, §49-3-207, MCA**

In accordance with §49-3-207, MCA, Meadowlark agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) Compliance with Americans with Disabilities Act (ADA)**

(1) Meadowlark will comply with all regulations relative to implementation of the Americans with Disabilities Act.

**D) Compliance With Participation By Disadvantaged Business Enterprises In Department Of Transportation Financial Assistance Programs, 49 CFR PART 26**

**E) Laws and Regulations**: Meadowlark and its Contractors and Subcontractors shall comply fully with all applicable state and federal laws, regulations, and municipal ordinances including, but not limited to, all workers' compensation laws, all environmental laws including, but not limited to, the generation and disposal of hazardous waste, the Occupational Safety and Health Act (OSHA), all applicable City, County, and State building and electrical codes, the Americans with Disabilities Act, and all non-discrimination, affirmative action, and utilization of minority and small business statutes and regulations.

**F) Non-discrimination in Hiring**: All hiring by Meadowlark and its Contractors and Subcontractors of persons performing work for Meadowlark will be on the basis of merit and qualification and will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

**G) Labor Relations**:

a. Meadowlark and its Contractors and Subcontractors shall post a legible statement of all wages and fringe benefits to be paid to any of Contractor's employees and the frequency of such payments (i.e., hourly wage employees shall be paid weekly). Such posting shall be made in a prominent and accessible location at the site of the Construction Project and shall be made no later than the first day of work. Such posting shall be removed only upon the final completion of the Construction Project and the

termination of this Agreement.

b. In performing the terms and conditions of this Agreement and the work on the Construction Project, Meadowlark and its Contractors and Subcontractors shall give preference to the employment of bona fide residents of Montana, as required by §18-2-403, MCA, and as such, term is defined by §18-2-401(1), MCA. When making assignments of work, Meadowlark and its Contractors and Subcontractors shall use workers both skilled in their trade and specialized in their field of work for all work to which they are assigned.

c. Pursuant to §§18-2-403 and 18-2-422, MCA, Meadowlark and its Contractors and Subcontractors shall pay wages, benefits, and expenses as set forth on Exhibit A, Contractor's Rates of Wages, Benefits, and Expenses, attached hereto. Meadowlark and its Contractors and Subcontractors shall pay all hourly wage employees on a weekly basis. Violation of the requirements set forth on Exhibit A may subject the Meadowlark and its Contractors and Subcontractors to the penalties set forth in §18-2-407, MCA. Meadowlark and its Contractors and Subcontractors shall maintain payroll records and provide certified copies to the City. Meadowlark and its Contractors and Subcontractors shall maintain such payroll records during the term of this Agreement, the course of the work on the Construction Project, and for a period of three (3) years following the date of final completion of the Construction Project and termination of this Agreement.

d. In the event that, during the term of this Agreement and throughout the course of Contractor's performance of the Construction Project, any labor problems or disputes of any type arise or materialize which in turn cause any work on the Construction Project to cease for any period of time, Meadowlark and its Contractors and Subcontractors specifically agrees to take immediate steps, at its own expense and without expectation of reimbursement from City, to alleviate or resolve all such labor problems or disputes. The specific steps Meadowlark and its Contractors and Subcontractors shall take to resume work on the Construction Project shall be left to the discretion of Meadowlark and its Contractors and Subcontractors; provided, however, that Meadowlark and its Contractors and Subcontractors shall bear all costs of any related legal action. Meadowlark and its Contractors and Subcontractors shall provide immediate relief to the City so as to permit the work on the Construction Project to resume and be completed within the time frames set forth in the Construction Schedule at no additional cost to City.

e. Meadowlark shall indemnify, defend, and hold the City harmless from any and all claims, demands, costs, expenses, damages, and liabilities arising out of, resulting from, or occurring in connection with any labor problems or disputes or any delays or stoppages of work associated with such problems or disputes.

**H) Accounts and Records:** During the term of this Agreement and for two (2) years following the City's final acceptance of the Construction Project, Meadowlark and its Contractors and Subcontractors shall maintain accounts and records related to

the Construction Project. Upon reasonable notice, City shall have the right to inspect all such accounts and records, including but not limited to, Contractor's records, books, correspondence, instructions, drawings, specifications, field and site notes, receipts, invoices, bills, contracts, or other documents relating to the Construction Project.

**I) Applicable Law:** The parties agree that this Agreement is governed in all respects by the laws of the State of Montana and the parties expressly agree that venue will be in Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

**J) Binding Effect:** This Agreement is binding upon and inures to the benefit of the heirs, legal representatives, successors, and assigns of the parties.

**K) Amendments:** This Agreement may not be modified, amended, or changed in any respect except by a written document signed by all parties.

**L) No Third-Party Beneficiary:** This Agreement is for the exclusive benefit of the parties, does not constitute a third-party beneficiary agreement, and may not be relied upon or enforced by a third party.

**M) Counterparts:** This Agreement may be executed in counterparts, which together constitute one instrument.

**N) Assignment:** Meadowlark may not assign this Agreement in whole or in part without the prior written consent of the City. No assignment will relieve Meadowlark or its Contractors and Subcontractors of its responsibility for the performance of the Agreement and the completion of the Construction Project. Meadowlark and its Contractors and Subcontractors may not assign to any third party other than Contractor's subcontractors on the Construction Project, the right to receive monies due from City without the prior written consent of City.

**O) Authority:** Each party represents that it has full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

**P) Independent Contractor:** The parties agree and acknowledge that in the performance of this Agreement and the completion of the Construction Project, Meadowlark and its Contractors and Subcontractors shall render services as an independent contractor and not as the agent, representative, subcontractor, or employee of the City. The parties further agree that all individuals and companies retained by Meadowlark and its Contractors and Subcontractors at all times will be considered the agents, employees, or independent contractors of Meadowlark and at no time will they be the employees, agents, or representatives of the City.

THE PARTIES UNDERSTAND AND AGREE THAT THE FAILURE OF EITHER PARTY TO PERFORM THE DUTIES AND RESPONSIBILITIES SET FORTH IN THIS AGREEMENT MAY

BE DEEMED A MATERIAL BREACH OF THE CONTRACT FOR WHICH ANY AVAILABLE REMEDY PROVIDED BY LAW MAY BE ASSERTED IN THE DISTRICT COURT. IN ANY LEGAL PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR FOR BREACH OF THIS AGREEMENT, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS COSTS AND ATTORNEY'S FEES.

IN WITNESS WHEREOF, the Meadowlark authorized representative has signed and the City Clerk of the City of Billings, on behalf of the City, has signed and affixed hereto the seal of the City.

CITY OF BILLINGS, MONTANA

By \_\_\_\_\_, 2016  
Meadowlark Capital LLC

ATTEST:

CITY OF BILLINGS

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Mayor Thomas W. Hanel

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Clerk