

## Pretreatment Service Agreement

THIS PRETREATMENT SERVICE AGREEMENT (“Agreement”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”), by and between the CITY OF BILLINGS, MONTANA, a municipal corporation (“CITY”) and the EXXONMOBIL CORPORATION, located at 700 ExxonMobil Road, Billings, Montana 59101 (“EXXONMOBIL”). (The CITY and EXXONMOBIL may each, hereinafter, be referred to individually as a “Party,” or collectively as the “Parties”.)

### WITNESSETH

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility;

WHEREAS, EXXONMOBIL requests to discharge process wastewater and limited stormwater, herein referred to as “Industrial Wastewater,” into the CITY’S wastewater collection and treatment system;

WHEREAS, the CITY has determined that it has sufficient capacity in its wastewater system to treat and dispose of EXXONMOBIL’s Industrial Wastewater in a manner that meets all effluent limitations set forth in the CITY’S current Montana Pollutant Discharge Elimination System Permit, MT-0022586, and Article 26-600 Industrial Waste Discharge, Section 26-604 Prohibited Discharges and Limitations, Billings, Montana City Code (“BMCC”); and

WHEREAS, EXXONMOBIL is an outside CITY contract customer and Significant Industrial Discharger subject to a wholesale rate fee schedule;

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the Parties, it is hereby agreed as follows, inclusive of the referenced attachments:

**1. Contractual Relationship:** Approval of this Agreement does not create on behalf of EXXONMOBIL any ownership rights of the CITY’S collection and treatment system, nor any joint venture, partnership, cooperative or other legal relationship between the CITY and EXXONMOBIL. The only relationship established by this Agreement shall be that of municipal utility (Public Works Department) and contractual customer (EXXONMOBIL), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either Party.

**2. Contractual Conditions:** This Agreement establishes the provisions and submittals for the acceptance of treated Industrial Wastewater from EXXONMOBIL. Per Article 26-600, BMCC, EXXONMOBIL shall apply and must obtain an Industrial Discharge Permit (“Permit”) and remit all fees prior to discharge. Conditions specific to the Permit shall be addressed in Pretreatment Application

(Part A) and Industrial Discharge Permit (Part B). The CITY shall be unable to serve ExxonMobil as a contractual customer pursuant to this Agreement until EXXONMOBIL can convey its Industrial Wastewater from the point of compliance to the CITY'S wastewater system.

EXXONMOBIL shall be responsible for (i) the conveyance and costs of conveyance of all Industrial Wastewater from the point of compliance (as set forth in Section 3 below) to the CITY'S wastewater system and (ii) the execution of any necessary conveyance agreement (or similar agreement) with the Lockwood Area/Yellowstone County Water and Sewer District ("District"). The CITY shall give notice to EXXONMOBIL of any change or proposed change to, or termination or expiration of, its conveyance agreement with the District.

**3. Point of Compliance:** Under this Agreement, EXXONMOBIL shall be limited to one industrial wastewater discharge lateral further described as the location of the continuous monitoring equipment and lift station on EXXONMOBIL's property ("Point of Compliance"). EXXONMOBIL shall bear all costs associated with construction, operation, maintenance and replacement of all the appurtenances associated with the lateral discharge to the point of connection with the Lockwood Area/Yellowstone County Water and Sewer District facilities. The Industrial Wastewater discharge shall not be purposefully diluted with the intent of meeting CITY of Billings/EPA industrial pretreatment limits. Any domestic discharge upstream of the Point of Compliance shall be identified and quantified.

**4. Capacity Limits:** EXXONMOBIL's maximum daily mass limits for discharge shall be based on the % of the CITY'S Maximum Allowable Industrial Load (MAIL) for selenium and arsenic in the first EXXONMOBIL permit cycle. The % shall be equivalent to 0.28 #/day of arsenic and 1.27 #/day of selenium for the first permit cycle. EXXONMOBIL acknowledges and accepts a maximum daily discharge flow set by the CITY of 2.0 million gallons per day (mgd). Each renewal of the Permit shall list and set both pounds per day (lbs/day) and/or concentration and the maximum daily discharge flow. EXXONMOBIL acknowledges that mass limits, concentration limits, and number of specific pollutants shall either remain the same, increase, or decrease with each renewal of the Industrial Discharge Permit as determined by the CITY. EXXONMOBIL may request a variance to the daily maximum flow rate of 2.0 MGD in the event that it anticipates the flow limit might be exceeded. The variance shall be requested forty-eight (48) hours prior to the day on which the flow is expected to exceed 2.0 MGD. The volume shall be based on the CITY'S and the District's ability to hydraulically treat the additional loading from EXXONMOBIL. Increased sampling may be required with the CITY'S approval. Twenty-four (24) months after the commencement of the EXXONMOBIL industrial discharge, the CITY shall conduct a review of the EXXONMOBIL industrial discharge monitoring data and the CITY wastewater treatment plant operating data. The CITY, at its sole discretion, shall determine if revisions of the Local Limits, the Maximum Allowable Headworks Loading (MAHL), the Maximum Allowable Industrial Load (MAIL), the EXXONMOBIL Industrial Discharge Permit effluent limitations is needed.

Permit effluent limit revisions shall be made in accordance with the CITY'S pretreatment program and the reopener provisions of the Permit, which allow for Permit revisions for the following (without limitation): local limits re-evaluation, modification to the CITY'S MPDES permit, or the application of an industry within the CITY limits. Exxon Mobil's compliance schedule shall comply with the CITY'S compliance schedule to prevent permit violations or plant upsets.

The CITY and EXXONMOBIL shall initiate discussions no less than 90 days prior to the end of the first Permit cycle and all subsequent permit cycles to anticipate impacts to the Permit effluent limitations based upon, but not limited to, the MAHL, MAIL and the CITY'S MPDES permit limits. Discussions may include alternative approaches to direct reductions of specific pollutants to the EXXONMOBIL Industrial Wastewater discharge. The CITY shall determine if these alternative approaches are acceptable. The CITY shall determine the permit limits for each subsequent Permit cycle.

Notwithstanding anything to the contrary herein, if EXXONMOBIL's maximum daily mass limits for discharge pursuant to this Agreement are at any point less than 1.27 lbs/day of selenium or less than 0.28 lbs/day of arsenic, or if ExxonMobil is required to accept any other water quality parameter for the Industrial Wastewater, then EXXONMOBIL may terminate this Agreement with immediate effect without further cost or penalty by giving written notice to CITY pursuant to the requirements of Section 16 of this Agreement.

**5. Compliance with Regulations:** EXXONMOBIL agrees to accept and shall abide by the following regulations governing pretreatment service (the "Legal Requirements"):

- A. All applicable provisions of the BMCC and the CITY'S Rules and Regulations governing pretreatment service or any future amendments thereto;
- B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes and any future amendments thereto;
- C. Any special conditions set forth in this Agreement and/or Permit, and
- D. All policies and procedures in the Enforcement Response Plan (ERP).

**6. Flow Measurement:** EXXONMOBIL, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the CITY'S Public Works Director ("Director"), for the purpose of measuring the flow of the EXXONMOBIL industrial wastewater discharge being conveyed to the Point of Compliance described in Section 3. EXXONMOBIL shall keep said facilities in good operating condition at all times. The flow measuring facilities shall accurately and continuously indicate and transmit to the CITY'S wastewater treatment plant the rate of flow and volume of all Industrial Wastewater discharge at the Point of Compliance.

**7. Testing and Sampling:** EXXONMOBIL, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director for the purpose of testing and sampling the Industrial Wastewater being conveyed at the Point of Compliance. EXXONMOBIL shall install sampling and testing facilities in a location which allows representative samples to be collected of the discharge to the Lockwood wastewater system. The CITY shall have access to said facilities as needed to ensure compliance. EXXONMOBIL shall provide the necessary safety training for appropriate City staff to have immediate access onto the plant site to inspect the equipment and/or collect samples per EXXONMOBIL site access procedures.

The Director or designee shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on EXXONMOBIL effluent Industrial Wastewater. Said parameters are listed within the Permit and are subject to change with each

reissuance of the permit. Such changes do not require renegotiation of this Agreement. EXXONMOBIL may request in writing to modify both the number of parameters and sampling frequency during each three year permit cycle.

In the event that acute toxicity occurs in the CITY'S Publicly Owned Treatment Works ("POTW") effluent demonstrated by two sampling events collected within 14 days, the CITY shall notify ExxonMobil within 5 days of the second event. EXXONMOBIL shall financially participate on an equitable basis in supplemental toxicity testing, toxicity identification evaluations ("TIE") and toxicity reduction evaluations ("TRE") conducted by the CITY. The EXXONMOBIL financial liability shall be based on actual costs incurred by the CITY and shall end at the time it is concluded that the EXXONMOBIL Industrial Wastewater discharge did not contribute to the POTW effluent toxicity. The enforcement procedures per the CITY'S ERP shall apply if the TRE and/or TIE indicate that the EXXONMOBIL Industrial Wastewater discharge caused the toxicity in the POTW effluent.

**8. Noncompliance:** Upon the CITY making a determination of noncompliance with the Industrial Discharge Permit, EXXONMOBIL shall take immediate steps to correct the problem and regain full compliance. EXXONMOBIL shall, as a result of any noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations including the Industrial Discharge Permit.

**9. Operation and Maintenance:** EXXONMOBIL acknowledges that the failure by EXXONMOBIL to properly operate and maintain its pretreatment plant may adversely influence the volume, rate of flow, and characteristics of the Industrial Wastewater discharged by EXXONMOBIL at the Point of Compliance.

**10. Modifications:** EXXONMOBIL shall obtain the Director's written approval prior to modifying its pretreatment system or lateral appurtenances if the modifications can be expected to change the character, volume, or rate of discharge of its wastewater over and above that specified in the Industrial Discharge Permit.

**11. Reopener:** It is understood by the Parties that the CITY can treat EXXONMOBIL's industrial wastewater only to the extent the CITY is capable of treating wastewater utilizing its existing collection and treatment facilities. In the event that DEQ, EPA or other agency require the CITY to operate with a lower effluent limit, the CITY shall comply with such requirements and may require a reduction in the discharge limits either during or at the reissuance of the Permit as determined by the CITY.

**12. Wastewater System Development Fees:** The System Development Fees ("SDF") shall be calculated by the CITY specifically for the EXXONMOBIL connection. This fee shall be paid at the time of connection. If the SDF is not paid at such time, this Agreement shall be null and void by the CITY.

The methodology used in calculating the SDF for EXXONMOBIL shall be based on industry standard cost of service principles and in accordance with Title 7, Chapter 6, Part 16, Montana Code Annotated. The SDF calculation for EXXONMOBIL shall include only the fixed assets defined as the CITY'S trunk line and waste water treatment plant facilities, capital improvement plan projects, and construction work in progress for which EXXONMOBIL shall receive a benefit.

13. **Billing:** EXXONMOBIL agrees to pay all established rates, charges, and fees of the CITY, now existing or revised, including franchise fees and late payment fees as specified in the CITY'S adopted schedule of rates and charges. EXXONMOBIL shall pay to the CITY a monthly charge for the treatment and disposal of EXXONMOBIL Industrial Wastewater. Monthly payments shall begin at the time EXXONMOBIL commences discharge of wastewater. Payments are due and payable in full no later than thirty (30) days from the date of billing. In addition to the franchise fee and other rates, fees and charges specified herein, a six (6) percent surcharge will be applied to all monthly charges for the treatment and disposal of EXXONMOBIL Industrial Wastewater. The surcharge shall not apply to system development fees and franchise fees.

Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge.

14. **Outside CITY Contract Wastewater Rate Methodology:** It is the intent of the Parties that during the life of this Agreement, EXXONMOBIL shall pay reasonable rates for treatment of its Industrial Wastewater and that the CITY, in turn, shall receive reasonable compensation for the treatment of the EXXONMOBIL Industrial Wastewater. Accordingly, the wastewater rate charged to EXXONMOBIL for treatment of its Industrial Wastewater shall be based upon cost-of-service principles set forth in 40 Code of Federal Regulations (CFR) Part 35, and the Water Environment Federation's latest publication outlining standard principles for equitable cost of service analyses. When calculating the cost-of-service rate to be charged to EXXONMOBIL for treatment of its Industrial Wastewater, the CITY shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the CITY shall, among other things, take into consideration the following when calculating the cost-of-service rate to be charged to EXXONMOBIL:

- A. The amount of capacity and level of service that the CITY is providing to EXXONMOBIL.
- B. Any capital contributions EXXONMOBIL has made for the construction of the CITY'S wastewater treatment facilities.
- C. The amount of contributions made by inside-city customers towards facilities utilized to serve EXXONMOBIL.
- D. The amount of reserve capacity that the CITY has set aside for EXXONMOBIL in the CITY'S collection and treatment system.

The CITY shall also take into consideration the fact that EXXONMOBIL is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. In order to recognize the risks incurred by the CITY in serving EXXONMOBIL, the rate of return to be used to calculate the return on investment shall be 15%, providing that the average 30-year treasury rate plus 600 basis points for the most recent twelve

month period ending June 30<sup>th</sup>, hereinafter referred to as “return on investment accelerator”, is 15% or less. If the return on investment accelerator exceeds 15%, the rate of return used to calculate the return on investment shall equal the rate of return on investment accelerator; however, the rate of return shall never be less than 15%.

EXXONMOBIL shall pay its proportionate share of any federal, state or local fees assessed to the CITY’S municipal wastewater utility. Such fees shall be due and payable as set forth in Section 14, above.

The CITY reserves the right to periodically adjust the rates set forth herein under the procedures set forth in sections 14 and 15 of this Agreement.

15. **Wastewater Rate Study:** With respect to any future wastewater rate studies that would affect the industrial wastewater rates charged to EXXONMOBIL, the CITY shall give EXXONMOBIL advance notice of its intent to undertake such a study. EXXONMOBIL agrees to provide any information relevant to determining customer service characteristics.

Once the CITY has completed its written report, the CITY shall promptly provide a copy of the report to EXXONMOBIL.

If the CITY and EXXONMOBIL are unable to agree on a reasonable and just wastewater rate to be charged EXXONMOBIL, then the CITY and EXXONMOBIL shall have thirty (30) days from the date of submission of EXXONMOBIL’S response to the CITY’S wastewater rate study within which to informally attempt to reach an Agreement through non-binding mediation. The CITY and EXXONMOBIL agree to work together in good faith in attempting to reach an Agreement on a reasonable and just rate. In the event the Parties are unable to reach an Agreement, EXXONMOBIL may appeal the determination of City staff to the City Council through the normal publicly available challenge process. The determination of the City Council shall be final and binding upon both Parties.

16. **Term of Agreement:** This Agreement shall be effective as of the Effective Date and shall continue until the fifteenth anniversary of the Effective Date, subject to the termination provisions and extensions provided for under this Section 16. This Agreement is renegotiable at any time if both Parties so consent in writing. Either party may terminate this Agreement by giving the other party three (3) years written notice. Upon expiration of the first fifteen (15) year term, this Agreement shall automatically renew for three (3) additional six (6) year terms unless terminated by either party giving to the other Party at least three (3) years’ written notice in advance of such renewal term.- Either Party may immediately terminate this Agreement in the event that EXXONMOBIL is no longer permitted to discharge Industrial Wastewater to the District; provided, that the CITY may not terminate this Agreement if EXXONMOBIL is able at such time to discharge Industrial Wastewater to the City System by other means, including a direct connection to the City System.

17. **Milestones:** EXXONMOBIL shall have three (3) years from the date this Agreement is approved by the CITY’S Mayor and Council to begin discharging their Industrial Wastewater to the CITY’S wastewater treatment plant. Should EXXONMOBIL fail to meet this milestone, this

Agreement may be terminated immediately, or the CITY may extend the Agreement for a reasonable period of time upon receiving from EXXONMOBIL information which the CITY deems to constitute good cause for the delay.

18. **Definitions:** Terms/phrases used in this Agreement (such as but not limited to, industrial wastes, Montana Pollutant Discharge Elimination System ("MPDES") Permit, municipal wastewater system, municipal wastewater treatment plant, pollutant, pretreatment, Public Works Department, Public Works Director, rules and regulations, Maximum Allowable Industrial Load (MAIL), Maximum Allowable Headworks Loading (MAHL), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code, CITY'S Rules & Regulations Governing Wastewater Service, Montana Code Annotated, and applicable US EPA regulations, or any future amendments thereto.

19. **Indemnification:** EXXONMOBIL agrees to indemnify, hold harmless and defend the CITY and its agents, employees and contractors from and against any and all third party claims, demands, suits, and causes of action (collectively referred to hereafter as "Claims") including and without limitation to those Claims relating to injury or death of any persons whomsoever, and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly" (i) EXXONMOBIL's breach of this Agreement or (ii) any negligence, Gross Negligence or Willful Misconduct by EXXONMOBIL and its officers, directors, employees and contractors in connection with the performance of this Agreement.

The CITY agrees to indemnify, hold harmless, and defend EXXONMOBIL, its affiliates, and their respective officers, directors, employees, contractors, successors and assigns from and against any and all Claims and to pay all costs of judgments, losses, fines, penalties, damages (including environmental damages to, loss of, or contamination or pollution of any property or resource), and costs and expenses (including reasonable attorneys' fees, costs of litigation and/or investigation and other costs) resulting from any such Claim to the extent such Claim arises out of or results from, directly or indirectly: (i) the CITY'S breach of this Agreement or (ii) any negligence, Gross negligence or Willful Misconduct by the CITY and its agents, employees and contractors in connection with the performance of this Agreement.

Notwithstanding anything in this Agreement to the contrary, each Party is fully responsible, without limit, for Gross Negligence or Willful Misconduct of its managerial and senior supervisory personnel and is not entitled to a release, indemnity, or defense from the other party for this conduct. "Gross Negligence" is defined by the law governing this Agreement; however, if such law does not define the term "Gross negligence," it means any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences. "Willful Misconduct" is defined by the law governing this Agreement; however, if such law does not define the term "Willful misconduct," it means an intentional disregard of good and prudent standards of performance or of any of the terms of this Agreement.

20. **Confidentiality:** "Confidential Information" under this Agreement means all technical and business information that is made available to the CITY, directly or indirectly, by ExxonMobil or Affiliates and expressly marked as such by ExxonMobil. The CITY will hold in confidence all expressly marked Confidential Information and may not use Confidential Information for any purpose other than the development or performance of this Agreement; provided, that the CITY may disclose Confidential Information as required to comply with a valid subpoena or order of a governmental entity or court with proper jurisdiction or as otherwise required by applicable laws, rules or regulations, provided that the CITY: (i) gives EXXONMOBIL prompt written notice to allow EXXONMOBIL to seek a protective order or other appropriate remedy; (ii) discloses only such information as is required by the order or other legal requirement; and (iii) uses reasonable efforts to obtain confidential treatment of the Confidential Information so disclosed.

21. **Audit:** The CITY shall preserve documentation related to this Agreement for three years after completion of the Agreement or as required by law. EXXONMOBIL may audit CITY'S compliance with the Agreement and the CITY shall provide EXXONMOBIL access to the CITY'S documentation, personnel and facilities in support of any such audit and shall permit EXXONMOBIL to reproduce any of the documentation. CITY shall cause any subcontractors to preserve documentation and allow EXXONMOBIL to audit to the same extent. EXXONMOBIL shall bear its own costs to perform an audit but shall not be liable for the CITY'S or subcontractor's costs resulting from an audit of the CITY'S pretreatment program.

22. **Assignment:** Neither Party may assign this Agreement without written approval of the other Party; such approval shall not unreasonably be withheld.

23. **Notices:** Questions, information, and notices under this Agreement shall be directed to the following addresses. Notices shall be in writing and either deposited in the mail with postage prepaid, delivered in person or by private prepaid courier, sent by facsimile with confirmation, or sent by email with confirmation. Either Party may change its address below by written notice to the other party.

EXXONMOBIL  
Address: 700 ExxonMobil Road  
City, State, Zip: Billings, MT 59101  
Attn:  
Phone:  
Fax:  
E-Mail:

CITY  
Address: 210 North 27<sup>th</sup> Street  
City, State, Zip: Billings, MT 59101  
Attn:  
Phone:  
Fax:  
E-Mail:

24. **Applicability 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.

25. **Severability:** In the event any provision of this Agreement is declared void, invalid or contrary to law, the Parties hereto agree that the remaining provisions shall continue and remain in full force and effect. Failure to request a Permit renewal shall nullify this Agreement.

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IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

CITY OF BILLINGS, MONTANA

EXXONMOBIL CORPORATION

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

By: \_\_\_\_\_  
Billings Refinery Manager

APPROVED AS TO FORM  
AND CONTENT

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Brent Brooks, City Attorney

Attest:

\_\_\_\_\_  
Denise R. Bohlman, City Clerk