

Pretreatment Service Agreement

THIS AGREEMENT made and entered into this 22nd day of July, 2013, by and between the CITY OF BILLINGS, MONTANA, a municipal corporation, hereinafter referred to as "CITY," and the PHILLIPS 66 Billings Refinery located at 401 S. 23rd Street, Billings, Montana 59101 referred to as "PHILLIPS 66". (The CITY and PHILLIPS 66 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; and

WHEREAS, PHILLIPS 66 requests to discharge treated non-domestic wastewater and limited stormwater, herein referred to as industrial wastewater, into the CITY's collection and treatment systems.

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the PHILLIPS 66 industrial wastewater in a manner that meets all the 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, and

WHEREAS, PHILLIPS 66 is an outside CITY contract customer and Significant Industrial Discharger subject to a wholesale rate fee schedule, and

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

1. Contractual Relationship: Approval of this Agreement does not create on behalf of PHILLIPS 66 any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and PHILLIPS 66. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual customer (PHILLIPS 66), 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 PHILLIPS 66. Per Billings Municipal Code 26-600 PHILLIPS 66 shall apply and must obtain an Industrial Discharge Permit and remit all fees prior to discharge into the wastewater system. Conditions specific to the Permit will be addressed in pretreatment application (Part A) and Industrial Discharge Permit (Part B).

3. Point of Connection: Under this agreement PHILLIPS 66 shall be limited to one industrial wastewater discharge lateral connection to the CITY's municipal wastewater system as identified in the Industrial Discharge Permit. PHILLIPS 66 shall bear all costs associated with construction, operation, maintenance and replacement of all the appurtenances associated with the lateral connection to the point of connection of the municipal wastewater system. The industrial wastewater discharge shall not be diluted with PHILLIPS 66 existing domestic discharge.

4. **Reserve Capacity:** CITY has allocated 80% of the Maximum Allowable Industrial Loading (MAIL) for selenium and arsenic in the first permit cycle to PHILLIPS 66. PHILLIPS 66 acknowledges and accepts a maximum daily discharge flow set by the CITY. Each Industrial Discharge Permit renewal will list and set both pounds per day (lbs/day) and/or concentration and the maximum daily discharge flow. PHILLIPS 66 acknowledges that mass limits, concentration limits, and number of specific pollutants will either remain the same, increase, or decrease with each renewal of the Industrial Discharge Permit as determined by the CITY.

Eighteen (18) months after the commencement of the PHILLIPS 66 industrial discharge, the CITY will conduct a review of the PHILLIPS 66 industrial discharge monitoring data and the CITY wastewater treatment plant operating data. The CITY at its sole discretion will determine if revisions of the Local Limits, the MAHL, the MAIL, the PHILLIPS 66 Industrial Discharge Permit effluent limitations is needed.

Should it be determined that revisions of the PHILLIPS 66 Industrial Discharge Permit effluent limitations are necessary, these revisions will be made in accordance with the CITY's pretreatment program and the reopener provisions of the PHILLIPS 66 Industrial Discharge Permit. In the event that a reduction in the PHILLIPS 66 Industrial Discharge Permit effluent limitations is made, the CITY will afford PHILLIPS 66 a minimum of a two-year compliance schedule in the Industrial Discharge Permit to comply with the reduced limits.

The CITY and PHILLIPS 66 shall initiate discussions no less than 90 days prior to the end of the first Industrial Discharge Permit cycle and all subsequent permit cycles to anticipate impacts to the PHILLIPS 66 Industrial Discharge Permit effluent limitations based upon, but not limited to, the MAHL, MAIL and the CITY's MPDES permit limits. Discussions can include alternative approaches to direct reductions of specific pollutants to the PHILLIPS 66 industrial wastewater discharge. The CITY will determine if these alternative approaches are acceptable. The CITY shall determine the permit limits for each subsequent Industrial Discharge Permit cycle.

5. **Compliance with Regulations:** PHILLIPS 66 hereby agrees to accept and abide by the following regulations governing pretreatment service:

- A. All applicable provisions of the Billings Montana City Code 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 into the municipal wastewater system and any future amendments thereto;
- C. Any special conditions set forth in this Agreement and/or Industrial Discharge Permit, and
- D. Comply with the policies and procedures in the amended Enforcement Response Plan (ERP)

If PHILLIPS 66 violates any of said codes, regulations, special conditions, and/or the indemnification provisions set forth in Section 19 then the CITY may, upon 30 days notice, deem the Agreement terminated. The CITY may extend this 30 day notice period if it receives information constituting good cause for a violation from PHILLIPS 66 and PHILLIPS 66 submits a written corrective action plan and schedule to the CITY that will correct the violation within a reasonable time. What constitutes a reasonable time pursuant to this provision will be determined on the basis of the nature and severity of the violation, regulatory mandates under which the CITY and PHILLIPS 66 are required to operate and the viability and expediency of the corrective action. Upon receiving this information, the CITY will inform PHILLIPS 66 of its intent to either 1) allow continued discharging under the

Agreement or to 2) terminate the Agreement.

6. Flow Measurement: PHILLIPS 66, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director, for the purpose of measuring the flow of the PHILLIPS 66 industrial discharge being conveyed to the municipal wastewater system. PHILLIPS 66 shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, accurately and continuously indicate and transmit to the municipal wastewater treatment plant the rate of flow and volume of all industrial wastewater discharge into the municipal wastewater system.

7. Testing and Sampling: PHILLIPS 66, 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 discharge being conveyed to the municipal wastewater system. PHILLIPS 66 shall install sampling and testing facilities at or near the point of connection to the municipal wastewater system. The CITY shall have access to said facilities as needed to ensure compliance. PHILLIPS 66 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 PHILLIPS 66 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 PHILLIPS 66 effluent industrial wastewater. Said parameters are listed within the Industrial Discharge Permit and are subject to change with each reissuance of the permit. Such changes do not require renegotiations of this Agreement. PHILLIPS 66 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 POTW effluent demonstrated by two sampling events collected within 14 days, PHILLIPS 66 will financially participate on an equitable basis in supplemental toxicity testing, toxicity identification evaluations (TIE) and toxicity reduction evaluations (TRE) conducted by the CITY. The PHILLIPS 66 financial liability will be based on actual costs incurred by CITY, and will end at the time it is concluded that the PHILLIPS 66 industrial wastewater discharge did not contribute to the POTW effluent toxicity. The enforcement procedures per the CITY's Enforcement Response Plan would apply if the TRE and/or TIE indicated that the PHILLIPS 66 industrial wastewater discharge caused the toxicity in the POTW effluent.

8. Noncompliance: Upon making such determination, PHILLIPS 66 shall take immediate steps to correct the problem and regain full compliance. PHILLIPS 66 shall, as a result of such 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 Users Permit.

9. Operation and Maintenance: PHILLIPS 66 acknowledges that the failure by PHILLIPS 66 to properly operate and maintain its pretreatment plant can adversely influence the volume, rate of flow, and characteristics of the industrial wastewater discharged by PHILLIPS 66 into the municipal wastewater system.

10. Modifications: PHILLIPS 66 shall obtain the Director's written approval prior to modifying its pretreatment system or lateral appurtenances which can change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in the Industrial Discharge Permit.

11. Reopener: It is understood by the Parties hereto that the CITY can only treat PHILLIPS 66 industrial wastewater to the extent the CITY is presently capable of treating wastewater, utilizing the

existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires 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 an Industrial Discharge Permit as determined by the CITY.

12. Wastewater System Development Fees: The System Development Fees (SDF) will be calculated by the CITY specifically for the PHILLIPS 66 connection. This fee shall be paid at the time of connection. If the system development fee is not paid at such time, this Agreement shall be null and void by the CITY.

The methodology used in calculating the system development fee for PHILLIPS 66 will 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 PHILLIPS 66 will 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 PHILLIPS 66 will receive a benefit.

13. Billing: PHILLIPS 66 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. PHILLIPS 66 shall pay to the CITY a monthly charge for the treatment and disposal of PHILLIPS 66 industrial wastewater. Monthly payments shall begin at the time PHILLIPS 66 commences discharge of wastewater into the municipal wastewater system. 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 PHILLIPS 66 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 hereto that during the life of this Agreement, PHILLIPS 66 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 PHILLIPS 66 industrial wastewater. Accordingly, the wastewater rate charged to PHILLIPS 66 for treatment of its 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 PHILLIPS 66 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 PHILLIPS 66:

- A. The amount of capacity and level of service that the CITY is providing to PHILLIPS 66.
- B. Any capital contributions PHILLIPS 66 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 PHILLIPS 66.
- D. The amount of reserve capacity that the CITY has set aside for PHILLIPS 66 in the municipal wastewater system.

The CITY shall also take into consideration the fact that PHILLIPS 66 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 PHILLIPS 66, 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 30th, hereinafter referred to as "return on investment accelerator", is 15% or less. If the return on investment accelerator exceeds 15.00%, 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%.

PHILLIPS 66 shall pay its proportionate share of any federal, state or local fees assessed the 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 paragraph 14 and 15.

15. **Wastewater Rate Study:** With respect to any future wastewater rate studies that would affect the industrial wastewater rates charged to PHILLIPS 66, the CITY shall give PHILLIPS 66 advance notice of its intent to undertake such a study. PHILLIPS 66 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 PHILLIPS 66.

If the CITY and PHILLIPS 66 are unable to agree on a reasonable and just wastewater rate to be charged PHILLIPS 66, then the CITY and PHILLIPS 66 shall have thirty (30) days from the date of submission of PHILLIPS 66 response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and PHILLIPS 66 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, PHILLIPS 66 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 is renegotiable at any time if both Parties so consent in writing. Either party may terminate this Agreement by giving the other party two (2) years written notice. Upon expiration of the first fifteen (15) year term, this Agreement will automatically renew for three (3) additional six (6) year terms unless terminated by either party.

17. **Milestones:** PHILLIPS 66 shall have two (2) years from the date this Agreement is initially signed to begin discharging their industrial wastewater to the CITY's wastewater treatment plant. Should PHILLIPS 66 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 PHILLIPS 66 information which the CITY deems to constitute good cause for the delay.

18. **Definitions:** Terms/phrases used herein 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 or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

19 **Indemnification:** PHILLIPS 66 agrees to protect, release, indemnify, and hold the CITY and

its agents harmless from and against any and all claims, losses, fines, penalties, damages, demands, suits, causes of action, judgments, costs and expenses (including attorneys' fees, costs of litigation and/or investigation and other costs associated therewith), and liabilities, of every kind, (collectively referred to hereafter as "claims"), including without limitation those relating to injury or death of any persons whomsoever, damage (including environmental damage) to, loss of, or contamination or pollution of, any property or resource, or the violation of any laws, rules, or regulations and from any breach of this agreement, arising out of or connected, directly or indirectly, with PHILLIP 66's exercise of any rights hereunder, regardless of the cause or causes thereof, including, without limitation any claims caused by or contributed to, in whole or in part, by the indemnified Parties' joint or concurrent negligence or fault (whether imposed by statute, rule, regulation or otherwise) and strict liability, except to the extent any such claims are caused solely by the indemnified Parties' gross negligence or willful misconduct.

The CITY agrees to indemnify, hold harmless, and defend PHILLIPS 66 and its successors and assigns from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the PHILLIPS 66 may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of the Agreement between the CITY and PHILLIPS 66; or (2) any gross negligence or willful act or omission of the CITY or its employees or agents.

20. **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.

21. **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 an Industrial Discharge Permit renewal shall nullify this Agreement.

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

CITY OF BILLINGS, MONTANA

By: *Thomas W. Hanel*
Mayor

PHILLIPS 66 BILLINGS REFINERY

By: *Julian R. Stoll*
JWT Julian R. Stoll, Billings Refinery Manager

Date: 21st July, 2013

APPROVED AS TO FORM
AND CONTENT

By: *Christine A. [Signature]*
City Attorney

Attest:

Cari Martin
City Clerk