

## UTILITY RELOCATION AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **CITY OF BILLINGS, MONTANA (“City”)**, a municipal corporation, P.O. Box 1178, Billings, Montana 59103, and **Northwestern Energy Corporation, a Delaware Corporation, d/b/a NorthWestern Energy (“Utility”)**, insert address.

In consideration of the mutual covenants and agreements contained herein, the parties agree to the following:

1. **Purpose:** City agrees to hire Utility to perform the services of underground utility relocation described in the Scope of Work attached as Exhibit “A,” labeled “Customer Agreement,” and by this reference made a part hereto.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the anticipated completion of the utility relocation by Utility which is anticipated to be June 1, 2012. The parties may extend the duration of this contract by written agreement prior to its termination.

3. **Scope of Work:** Utility shall perform the services outlined in Exhibit “A”. In performing these services, Utility shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all incidental and necessary duties to perform these services shall be performed diligently and completely and in accordance with professional standards of conduct and performance.

4. **Payment:** City agrees to pay Utility \$80,535.44 (insert written amount) for the work described in the Scope of Work in Exhibit “A”. Any alteration or deviation from the described work that involves extra costs shall be executed only upon written request by the City to Utility and shall become an extra charge over and above the contract amount. The parties shall first agree upon any extra charges in writing.

If partial payment is requested by Utility, it shall be made upon invoice and said estimate being proportioned to the work completed by Utility. **Payment shall be due in full before any work shall begin.**

5. **Independent Contractor Status:** The parties agree that Utility, for purposes of this Agreement, shall not be considered an employee of the City for any purpose. Utility is not subject to the terms and provisions of City’s personnel policies handbook and shall not be considered a City employee for workers’ compensation or any other purpose. Utility is not authorized to represent City or otherwise bind City in any dealings between Utility and any third parties.

Utility shall comply with the applicable requirements of the Workers’ Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers’ compensation insurance coverage for all members

and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Utility shall furnish City with copies showing one of the following: (1) proof of registration as a registered contractor under Title 39, Chapter 9, MCA; (2) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (3) proof of exemption from workers' compensation granted by law for independent contractors.

6. **Indemnity and Insurance:** Utility agrees to indemnify, defend and save City, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Utility or its agents or employees. Utility is self insured.

7. **Warranty:** Utility warrants that all services and work will be performed in a good workman-like manner. Utility acknowledges that it shall be liable for any breach of this warranty for the lesser period of one (1) year from the time services are completed or any warranty described in the Scope of Work in Exhibit "A".

8. **Compliance with Laws:** Utility agrees to comply with all federal, state, and local laws, ordinances, rules and regulations.

9. **Nondiscrimination:** Utility agrees that all hiring by Utility of persons performing this Agreement shall be on the basis of merit and qualification and shall not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

10. **Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) calendar days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

11. **Liaison:** City's designated liaison with Utility is Chris Hertz, P.E., and Utility's designated liaison is Mike Abbey, P.E..

12. **Governing Law and Venue:** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

13. **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions

shall continue to be valid and binding upon the City and the Utility, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**14. Successors and Assigns:** Neither the City nor Utility shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

**15. Ownership of Documents:** All documents, data, drawings, specifications, software applications and other products or materials produced by Utility in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by Utility are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold Utility harmless for such use. All or any portions of materials, products and documents produced under this Agreement may be used by Utility upon confirmation from the City that they are subject to disclosure under the Public Disclosure Act. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City. Any information relating to the services will not be released without the written permission of the City. Utility shall preserve the confidentiality of all City documents and data accessed for use in Utility's work product.

IN WITNESS WHEREOF, the parties have executed this instrument the day and year first above written.

**CITY OF BILLINGS, MONTANA**

**NORTHWESTERN ENERGY, Inc.  
UTILITY**

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

By \_\_\_\_\_

Print Name \_\_\_\_\_

Print Title \_\_\_\_\_

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**BRENT BROOKS, City Attorney**

## Exhibit A

### Scope of Work (Private Easement)

Northwestern Energy will relocate its 100kv transmission line that is currently in private easement (west of 56<sup>th</sup> St W) as shown in the drawing below to accommodate the widening of Grand Avenue. The work includes replacing 8 existing structures with 7 new structures and replacing approximately 4000 ft of conductor.



# Cost Estimate (Private Easement)

0208C Relocate - Grand Ave (Private ROW)

2016 UNIT COST SPREADSHEET

12/5/2016

| UNIT NUMBER   | UNIT DESCRIPTION   | TOTAL UNIT COST | ESTIMATE     |                 | FINAL BILL |                 |
|---|--|-----------------|--------------|-----------------|------------|-----------------|
|   |  |                 | # OF UNITS   | TOTAL UNIT COST | # OF UNITS | TOTAL UNIT COST |
| <b>TRANSMISSION FRAMINGS</b>  |  |                 |              |                 |            |                 |
| 100KV & 115KV STRUCTURES  |  |                 |              |                 |            |                 |
| T115-B-1  | SAHPC-R  | \$ 1,998.53     | 6.0          | \$ 11,991.18    |            | \$ -            |
| T115-B-2  | SAHPCG2  | \$ 2,805.49     | 1.0          | \$ 2,805.49     |            | \$ -            |
| <b>POLES</b>  |  |                 |              |                 |            |                 |
| WESTERN RED CEDAR POLES   |  |                 |              |                 |            |                 |
| 2211651   | 65 FT. CLASS 1   | \$ 3,942.23     | 6.0          | \$ 23,653.38    |            | \$ -            |
| LAMINATED POLES   |  |                 |              |                 |            |                 |
| H5-67   | H5-67  | \$ 10,471.97    | 1.0          | \$ 10,471.97    |            | \$ -            |
| <b>CONDUCTOR - Input Circuit Feet Only. Do not multiply the line length by the number of conductors used on the line. Units are /1000'.</b> |  |                 |              |                 |            |                 |
| TRANSMISSION CONDUCTOR  |  |                 |              |                 |            |                 |
| 10004414  | CONDUCTOR, 556.5 MCM ACSR, 26/7 STRAND, 765 LB/1000 FT, "DOVE" | \$ 9,335.94     | 1.3          | \$ 12,136.72    |            | \$ -            |
| <b>OPGW FRAMINGS</b>  |  |                 |              |                 |            |                 |
| FRAMINGS  |  |                 |              |                 |            |                 |
| FOG / OPGW TANGENT  | FOG / OPGW TANGENT MATERIAL                                    | \$ 382.90       | 7.0          | \$ 2,680.30     |            | \$ -            |
| FOG / OPGW WIRE   |  |                 |              |                 |            |                 |
| FOG WIRE/OPGW   | 0.501" 24-Single Mode Fiber OPGW (PER 1000 FEET)               | \$ 5,325.85     |              | \$ -            |            | \$ -            |
| <b>MISCELLANEOUS UNITS</b>  |  |                 |              |                 |            |                 |
|   | Select Backfill (Cubic Yard)                                   | \$ 80.97        | 5.0          | \$ 404.85       |            | \$ -            |
| <b>SUB TOTAL</b>  |  |                 |              | \$ 64,143.89    |            | \$ -            |
|   | Retirement (%)   | 9.00%           | \$ 64,143.89 | \$ 5,772.95     | \$ -       | \$ -            |
|   | Salvage (Enter Salvage Value)                                  |                 | \$ 2,240     | \$ (2,240.00)   | \$ -       | \$ -            |
| <b>UNITS TOTAL</b>  |  |                 |              | \$ 67,676.84    |            | \$ -            |
| CITY COST SHARE UNITS   |  |                 |              | \$ 67,676.84    |            | \$ -            |
| NWE COST SHARE UNITS  |  |                 |              | \$ -            |            | \$ -            |
|   | CITY Percent of Engineering * Total                            | 19.00%          | \$ 67,676.84 | \$ 12,858.60    | \$ -       | \$ -            |
|   | NWE Percent of Engineering * Total                             | 0.00%           | \$ 67,676.84 | \$ -            | \$ -       | \$ -            |
| <b>TOTAL PROJECT COST</b>   |  |                 |              | \$ 80,535.44    |            | \$ -            |
| <b>TOTAL CITY COST SHARE</b>  |  |                 |              | \$ 80,535.44    |            | \$ -            |
| <b>TOTAL NWE COST SHARE</b>   |  |                 |              | \$ -            |            | \$ -            |
| <b>NOTE:</b>  |  |                 |              |                 |            |                 |
| ENTER PERCENTAGE OF ORIGINAL LINE ON PRIVATE RIGHT OF WAY   |  |                 |              | 100.00%         |            |                 |
| CITY COST SHARE PERCENTAGE  |  |                 |              | 100.00%         |            |                 |
| NWE COST SHARE PERCENTAGE   |  |                 |              | 0.00%           |            |                 |
| CITY ENGINEERING SHARE PERCENTAGE   |  |                 |              | 19.00%          |            |                 |
| NWE ENGINEERING SHARE PERCENTAGE  |  |                 |              | 0.00%           |            |                 |

**Scope of Work (Public ROW)**

As part of this same project Northwestern Energy will also relocate its 100kv transmission line and distribution line that are currently in public ROW (between approximately 52<sup>nd</sup> St W and 56<sup>th</sup> St W) as shown in the drawings below. This work will be performed at NWE's cost.

