

3-25-2017 DRAFT

Trail and Recreational Use Easement

The Western Sugar Cooperative, Grantor, a Colorado corporation, whose address is 7555 East Hampden Avenue, Suite 520, Denver, Colorado 80231-4837, is the owner of the following parcels that are, except as specifically provided below, hereafter referred to collectively as the “Easement Area”:

Government Lot 1 of Section 14; a fraction of Government Lot 2 of Section 14; Tract 2 of Certificate of Survey No. 714 located in the north portions of fractional Section 14 and Section 15; a portion of the SE1/4 of the SW1/4 of the SW1/4 of Section 11 lying southerly of the County Road as now established and known as Garden Avenue; and any adjacent accreted property lying between said foregoing parcels and the Yellowstone River, all located in Township 1 South, Range 26 East of the Montana Principal Meridian, in Yellowstone County, Montana.

The Western Sugar Cooperative does hereby grant unto the **City of Billings**, Grantee, a Montana municipal corporation, and its successor(s) or assigns, for the use and benefit of the public, an in-gross easement, for, except as otherwise expressly provided herein, non-motorized trail and recreational use by pedestrians, bicyclists, and other users of non-motorized-conveyances for travel across, over, through, and along each and every part of the Easement Area, which is generally depicted on the attached Exhibit “A” that is hereby incorporated herein by this reference. The term of the easement shall be for twenty (20) years commencing as of the date this Easement has been signed by both Grantor and Grantee. The easement shall renew automatically and perpetually for successive ten (10) year periods unless either party provides written notice to the other of its intent to terminate no less than one (1) year before the date of the next automatic ten-year renewal period.

The Easement Area shall not include property located within any fence installed by Grantor around the existing pumphouse in Government Lot 1 (“Pumphouse Protection Area”). Grantor may determine the dimensions of the Pumphouse Protection Area in its sole discretion and may reconfigure, expand, or relocate the same at any time, including, if deemed necessary by Grantor, to entirely relocate the pumphouse. Fencing around the Pumphouse Protection Area shall be the responsibility of Grantor to install and maintain. Grantor also reserves the right to approve the location of any developed trail or pathway constructed in the general vicinity of the Pumphouse Protection Area so as to insure adequate separation between the pumphouse and any such trail or pathway as determined in the discretion of Grantor.

The easement granted hereby shall run with the land and be binding upon successors and assigns of Grantor. The City of Billings and its successor(s) and/or assigns, on behalf of the public, shall be

solely responsible for the construction and maintenance of any trails and recreational amenities now or hereafter located in the Easement Area and shall mow, spray, or otherwise control noxious weeds and excessive vegetation. The City of Billings and its successor(s) or assigns, on behalf of the public, shall construct, maintain, keep in good condition, free of debris and shall use the Easement Area so as to minimize any unreasonable adverse impact on the lands of Grantor. Upon completion of construction or maintenance of any trail or recreational amenity authorized hereunder Grantee shall restore any impacted lands of Grantor to a similar or better condition as existed prior to such construction or maintenance. Motorized vehicles may only be used to access and park at the proposed "Picnic Area/Trailhead" adjacent to Garden Avenue as depicted on Exhibit "A" and for construction or maintenance of recreational trails and amenities in the Easement Area. The Picnic Area/Trailhead shall include a perimeter fence installed at Grantee's expense that will confine motor vehicles to the Picnic Area/Trailhead and prevent all motor vehicles other than authorized maintenance vehicles from accessing the remainder of the Easement Area. Historical interpretive panels, way-finding signage, benches and similar trail and recreation-related amenities may be installed in the Easement Area, but picnic tables and any restroom facilities shall be restricted to the Picnic Area/Trailhead. The Grantor may reserve any part of the Easement Area on an occasional basis for its temporary, exclusive use by providing reasonable advance notice to the Grantee, provided that such use does not materially prevent the contemporaneous use of any developed trail constructed by Grantee in the Easement Area, and Grantor shall be responsible for posting signs or barricades in the affected area or areas to prevent access by members of the public, if so desired by Grantor.

Except as expressly acknowledged in this paragraph, this easement is intended to reserve exclusive use of the Easement Area for Grantor and Grantee, and Grantor shall not grant additional easements, leases, or similar rights to any other person or party without the express written consent of Grantee. Grantee acknowledges that the Easement Area is currently subject to a grazing lease that will expire April 26, 2018 unless the same is earlier voluntarily terminated by either party to the lease. Grantee agrees that it will not interfere with the lessee's rights under the grazing lease while it is in effect, and Grantor agrees that the lease will terminate no later than April 26, 2018. Grantee shall not permit any construction or trail use to occur in the Easement Area during the term of the grazing lease if it would materially interfere with the lessee's cattle or rights arising under the lease.

The parties acknowledge that an important purpose of this easement is to facilitate a connection to existing and future recreational trails on the island/locale known as "Clarks Crossing" located southerly of the Easement Area. This Easement is intended to permit the construction of improvements associated with the installation of a low-water crossing, bridge, or other passageway over or across the waterway that divides the two properties. Grantee or its successors or assigns shall be solely responsible for the construction and maintenance of any such crossing, bridge or other passageway.

Grantee agrees to indemnify, save and hold Grantor, and its directors and employees, harmless from and against all liabilities, claims, demands, losses and damages, including, without limitation, personal injury, death, property loss or damage to others or to Grantor or its employees, in any way arising out of or related to the use of the Easement Area by the public or Grantee or related to Grantee's (or its designee's) construction or maintenance of the Easement Area.

