

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this _____ day of _____, 2017, the undersigned, YELLOWSTONE COUNTY, P.O. Box 35003, Billings, MT 59107-5003, hereinafter called "Grantor", hereby grants and conveys unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, 210 North 27th Street, Billings, Montana 59103, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through the following described tracts of real property in Yellowstone County Montana:

Perpetual Right-of-Way Easement as described in attached Exhibit A, Exhibit B, Exhibit C, Exhibit D and Exhibit E.

This Perpetual easement to Grantee is limited to the purpose of constructing, reconstructing, upgrading, maintaining, operating, servicing, repairing and replacing the City's Waste Water Treatment Plant and facilities, and sanitary sewers and/or water lines and appurtenances over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, upgrading, maintaining, operating, servicing, repairing and replacing the City's Waste Water Treatment Plant and facilities and said sanitary sewers and/or water lines and appurtenances, and adding additional sanitary sewer and/or water lines.

Grantor shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantor and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantor agrees not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
3. Grantor agrees that authorized representatives of Grantee can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions. Grantee agrees to limit property in the right-of-way on the MetraPark grounds to underground pipelines and associated necessary appurtenances thereto such as, e.g., concrete structures, manholes, valves or similar appurtenances; such appurtenances may rise above the ground to enable

4. Subject to Paragraph 14 of this easement, Grantor agrees to obtain Grantee's permission prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantor agrees to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at Grantor's expense and without expense to Grantee.

5. Subject to Paragraph 8 of this Agreement, Grantor agrees that the sole responsibility of Grantee for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by Grantee, shall be limited to trench backfill compaction and placement of backfill material to existing grade by Grantee.

6. HOLD HARMLESS AGREEMENT:

- Grantor agrees to indemnify, defend, save and hold Grantee harmless from any claims, lawsuits, or liability, including reasonable attorney's fees and costs, to the extent caused by Grantor's negligent acts under this agreement or any negligent acts of Grantor's agents.
 - Grantee agrees to indemnify, defend, save and hold Grantor harmless from any claims, lawsuits, or liability, including reasonable attorney's fees and costs, to the extent caused by Grantee's negligent acts under this agreement or any negligent acts of Grantee's agents.
 - Neither Grantor nor Grantee shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or willful misconduct.
7. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.
8. Should any of the lines that are the subject matter of this agreement become ruptured, burst or in any way become damaged, except by the negligent or intentional actions of the Grantor, its agents or employees, any resulting damages, including but not limited to environmental damage, shall be the sole responsibility of the Grantee.
9. Should the lines cease to be used by the Grantee for a period of one year, this easement will terminate and Grantee shall plug and abandon the lines at its sole expense unless otherwise agreed to by the parties.
10. Grantee agrees to perform at its sole expense all maintenance to the road and bridge that service the lines and the Grantee's Wastewater Treatment Plant. Should the service bridge fall into the state of disrepair, the Grantee agrees to repair the bridge at its sole expense to get it into a safe and reasonable state for the uses expressed in this easement. The parties agree that bridge connecting Grantor's property to the Wastewater Treatment Plant over Alkali Creek shall be the property of Grantee. The parties further agree that should Grantee not use the bridge for a period of one year, the Grantee shall remove the bridge at its sole expense unless otherwise agreed to by the parties.
11. The parties agree that the easement shown in Exhibit "D" and the remainder of the terms of this easement shall replace and supersede the "Lease Agreement" between Yellowstone County and the City of Billings dated March 20, 1947 and recorded in the Yellowstone County Clerk and Recorder's Records at Book 970, Page 887.
12. The Grantee agrees that should the Wastewater Treatment Plant, whose footprint is shown on Exhibit "D," is not used for one year, the Grantee agrees to remove all structures and improvements on the site and will relinquish all easement rights to the footprint unless otherwise agreed to by the Grantor unless otherwise mutually agreed to by the parties. Grantee will further agree to remediate any environmental factors that may reasonably occur upon removal.
13. The Grantee agrees to allow all current sewer hookups on the MetraPark (fairgrounds site) under the terms in force at the time of this easement.

Montana Fair, the Indian Relays and the NILE, all of which make use of the contemplated easement.

- b. All future construction or maintenance will not occur during these blackout dates that coincide with these events for the duration of the easement, subject to (14)(c).
- c. In the case of emergency occurring in the easement that necessitate repair to the lines, road or bridge, during the blackout dates, the City will apply to the County for permission to work in the easement. The County shall make reasonable accommodation for the repair work and the City shall make reasonable efforts to mitigate impact to events occurring on MetraPark grounds.

Grantors warrants and covenant that there are no liens or other encumbrances on the described tract or tracts.

YELLOWSTONE COUNTY

By: _____ Title: _____

STATE OF MONTANA)
) ss.
County of Yellowstone)

On this _____ day of _____, 2017, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ to me known to be the _____ of the _____ that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Signature of Notary

Printed name of Notary

NOTARIAL SEAL * STATE OF MONTANA
RESIDING AT BILLINGS, MONTANA
MY COMMISSION EXPIRES _____

