

## **STORMWATER DRAINAGE, CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT**

This Stormwater Drainage, Construction and Maintenance Easement Agreement (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between Billings High School District #2, Yellowstone County, whose principal address is 415 N. 30<sup>th</sup> Street, Billings, Montana 59101 (“Grantor”) and the City of Billings, a municipal corporation, whose principal office is 210 N. 27<sup>th</sup> Street, Billings, Montana, 59103, (“Grantee”). Grantor and Grantee are sometimes referred to in this Agreement individually as “Party” and collectively as the “Parties”.

### **RECITALS**

WHEREAS, Grantor is the owner of record of certain real property located on Tract 2A of the Amended Plat of Certificate of Survey 2547, Billings, Yellowstone County, Montana described on Exhibit A attached hereto and incorporated herein by this reference (the “Grantor’s Property”); and

WHEREAS, Grantee intends to reconstruct Central Avenue (the “Public Road”) between the intersections of 32<sup>nd</sup> Street West and Shiloh Road pursuant to W.O. 16-05 (the “Project”) which is expressly made a part hereof, as approved or to be approved by the City; and

WHEREAS, the Project requires Grantee to provide for on-site stormwater drainage infrastructure to manage stormwater discharge from the Public Road; and

WHEREAS, Grantor agrees to receive stormwater discharge from the Public Road into Grantor’s existing water retention area described on Exhibit B attached hereto and incorporated herein by this reference (the “Easement Area”); and

WHEREAS, Grantor desires to grant to Grantee a permanent nonexclusive easement for the drainage, detention, retention and outfall of stormwater discharge from the Public Road for the Project and for the construction of stormwater drainage and detention improvements (“Grantee Improvements”) to, and maintenance of, the Easement Area; and

WHEREAS, in consideration for granting the desired easement, Grantee will construct the curb, gutter, and sidewalk along Grantor's Central Avenue property frontage, pursuant to the Project's plans and specifications, at no cost to Grantor; and

NOW THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The above recitals are hereby incorporated by reference as if set forth fully herein.
2. **POWER AND AUTHORITY OF GRANTOR.** Grantor represents and warrants that it has the full right, power and authority to enter into, deliver and perform this Agreement.
3. **GRANT OF PERMANENT STORMWATER DRAINAGE, CONSTRUCTION AND MAINTENANCE EASEMENT.** Grantor, for itself and its successors and assigns, hereby grants to Grantee, its successors and assigns, a permanent nonexclusive easement upon, under, across, and through the portion of Grantor's Property described on the attached and incorporated Exhibit A and Exhibit B (the "Easement Area"), for the drainage, detention, retention and outfall of stormwater discharge from the Public Road for the Project, and for the construction, reconstruction, repair, and maintenance of the Grantee Improvements to, and for the maintenance of, the Easement Area (the "Easement"). Grantee acknowledges that use of the Easement Area shall be shared by Grantee with Grantor, Grantor's successors and assigns and Grantee agree the volume of stormwater detention and retention from the Public Road shall not exceed the amount sufficient to accommodate the Easement Area.
4. **CONSTRUCTION OF GRANTEE IMPROVEMENTS.** Grantee may use the Easement Area for constructing and installing stormwater drainage and detention improvements pursuant to the Project's plans and specifications (the "Grantee Improvements") and any other work necessary and incident to the construction, reconstruction, and maintenance of the Grantee Improvements including but not limited to the right to: ingress and egress; temporarily place and store equipment, vehicles and materials; and to cut, and remove all trees, structures, and any other obstruction or obstacles. Grantor agrees that Grantee is entitled to the use of the fill dirt excavated from the Easement Area in connection with the preparation, excavation, construction or installation of the Grantee Improvements. If the amount of fill dirt removed from the Easement Area is in excess of the required fill dirt needed for Grantee Improvements, such excess fill dirt shall be the sole and exclusive property of Grantor. Except as in cases of emergencies, Grantee's access to the Easement Area for construction purposes shall be restricted to normal business hours. Any areas of Grantor's Property disturbed during construction of the Grantee Improvements shall be restored and landscaped to its original condition at Grantee's expense.
5. **MAINTENANCE OF EASEMENT AREA.** Grantor shall maintain the Easement Area, including the Grantee Improvements, in good condition to ensure the

functionality of the Easement. Such maintenance includes the obligation to properly maintain all surface and subsurface inlets, pipes, channels, structures, pits, vegetation and all other improvements to control the quantity and quality of the stormwater within the Easement Area. If any maintenance required by this Agreement is not performed by Grantor, Grantee may deliver a notice to Grantor setting forth the maintenance deficiencies, and Grantor shall then have ten (10) days to remedy the deficiencies, or twenty-four (24) hours in case of emergency. If the deficiencies are not remedied in a commercially reasonable fashion within the ten (10)- day period, or within such twenty-four (24)- hour period in case of emergency, Grantee shall have the right to ingress and egress upon Grantor's Property to undertake all reasonably necessary maintenance of the Easement Area to ensure the functionality of the Easement and to recover from Grantor the fees, costs and expenses incurred in connection with such maintenance.

6. **OBLIGATION OF PARTIES.** The Parties agree that neither party shall discharge into or within the Easement Area any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits.
7. **TERM OF EASEMENT.** The Easement shall commence on the Effective Date of this Agreement and shall run with the land and continue in full force and effect until Grantee formally vacates it.
8. **RESERVATION BY GRANTOR/NONEXCLUSIVE USE.** All right, title and interest in and to the Easement under this Agreement which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to the Grantor; provided, however that Grantor shall not locate any structures which may unreasonably or materially inhibit the functional purpose of the Easement.
9. **LIMITED PUBLIC DEDICATION.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication beyond the rights of the public set forth in this Agreement. Dedication of rights granted in this Agreement shall be strictly limited to stormwater drainage management purposes resulting from the Project.
10. **BENEFICIARIES OF EASEMENT RIGHTS.** The Easement set forth in this Agreement shall be for the benefit and use of Grantee, Grantor and their successors in title and assigns, and their agents, employees, consultants, representatives, contractors (and their subcontractors, employees and materials persons), licensees, guests, invitees and providers of emergency services.
11. **AMENDMENTS AND WAIVERS.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by further agreement in writing duly executed by the Parties, or successor in title, and recorded in the public records of Yellowstone County, Montana.

12. **INDEMNIFICATION.** Grantee does hereby agree to defend, hold harmless and indemnify Grantor, its successors and assigns, from and against any and all claims, causes of actions, liability, loss, damage, costs and expenses (including reasonable attorney's fees) for damage to property or persons whatsoever, arising from or caused by Grantee's negligent exercise of any of Grantee's rights under this Agreement. Nothing contained herein shall be interpreted to waive any statutory or common law grant of privilege or immunity.

Grantor does hereby agree to defend, hold harmless, and indemnify Grantee, its successors and assigns, from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including attorney's fees) for damage to property or persons whatsoever, arising from or caused by Grantor's negligent maintenance or security of the Easement Area.

13. **NOTICE.** Any notice provided for or concerning this Agreement shall be in writing and shall be deemed given when sent by certified, registered mail or electronic mail to the respective address of each Party as set forth below:

To Grantor: Billings High School District #2, Yellowstone County  
Superintendent  
415 N. 30<sup>th</sup> Street  
Billings, Montana 59101

To Grantee: Public Works  
David Mumford, Director  
2224 Montana Avenue  
Billings, MT 59103  
mumfordd@ci.billings.mt.us

14. **MISCELLANEOUS.** Except for the terms and conditions set forth in the Project's plans and specification, this Agreement contains the entire understanding of the Parties with respect to the matters set forth in this Agreement, and no other agreement, oral or written, not set forth in this Agreement shall be deemed to alter or affect the terms and conditions set forth in this Agreement. If any provision of this Agreement, or its application to any person or circumstances, shall be held invalid, inoperative or unenforceable, then the remainder of this Agreement, or the application of such provision to any other persons or circumstances, shall not be affected by such invalidity, inoperability or unenforceability; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of Montana. Venue for any proceeding brought under this Agreement shall be Yellowstone County, Montana. In the event of any dispute under this Agreement or of any action to interpret or enforce this Agreement, any provision of this Agreement or any matter arising from this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses, whether suit be brought or not, and whether in settlement, in

any declaratory action, at trial or on appeal. Nothing in this Agreement shall be construed to make the Parties to this Agreement partners or joint venturers or render either of the Parties liable for the debts or obligations of the other. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

**IN WITNESS WHEREOF**, the Superintendent of the Billings High School District #2, Yellowstone County has been authorized to sign on behalf of Grantor, and the Mayor of the City of Billings, been authorized to approve and accept on behalf of Grantee.

**GRANTOR:**

**Billings High School District #2, Yellowstone County**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2018  
Superintendent

**APPROVED FOR LEGAL CONTENT**

By \_\_\_\_\_  
Jeana R. Lervick, Attorney for Billings High School District #2, Yellowstone County

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

This instrument was signed or acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2018, by \_\_\_\_\_ Superintendent for Billings High School District #2, Yellowstone County.

\_\_\_\_\_  
(Notary Signature)

(Notarial Seal)

**GRANTEE:**

**CITY OF BILLINGS**

By: \_\_\_\_\_  
Mayor William A. Cole

Date: \_\_\_\_\_, 2018

**APPROVED FOR LEGAL CONTENT**

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

STATE OF MONTANA     )

: ss

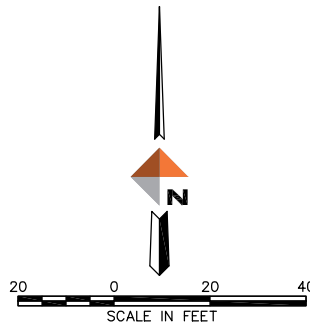
County of Yellowstone     )

\_\_\_\_\_ This instrument was signed or acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2018, by William A. Cole, Mayor on behalf of the City of Billings.

\_\_\_\_\_  
(Notary Signature)

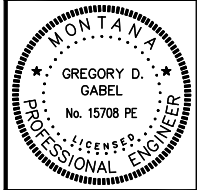
(Notarial Seal)

C:\Civil 3D Projects\2014\24\21144-01\Civil\MCI4-CU-PI-SD-Central.dwg PLOT DATE 2018-3-26 15:47 SAVED DATE 2018-03-19 07:40 USER: rgueiff



GRADING POINT TABLE				
POINT #	NORTHING	EASTING	ELEVATION	DESCRIPTION
1	555395.42	2196114.02	3238.00	POND BTM. - PT/PC
2	555371.92	2196113.91	3243.50	CATCH
3	555391.47	2196175.35	3243.45	CATCH
4	555463.75	2196182.72	3238.00	POND BTM. - PT
5	555459.55	2196198.65	3241.85	CATCH
6	555513.75	2196179.12	3239.00	CATCH
7	555553.72	2196168.96	3238.00	POND BTM. - PC
8	555583.13	2196138.86	3238.00	POND BTM. - PT
9	555592.11	2196069.58	3238.00	POND BTM. - PC
10	555571.64	2196041.74	3238.00	POND BTM. - PT
11	555525.31	2196033.62	3238.00	POND BTM. - PC
12	555509.76	2196022.77	3238.21	CATCH
13	555504.67	2196007.50	3238.00	POND BTM. - PT/PC
14	555520.23	2195980.30	3243.00	CATCH
15	555462.82	2195938.11	3242.71	CATCH
16	555409.05	2196000.68	3238.00	POND BTM. - PT/PC
17	555385.95	2195993.04	3243.97	CATCH

REV	DATE	DESCRIPTION	BY



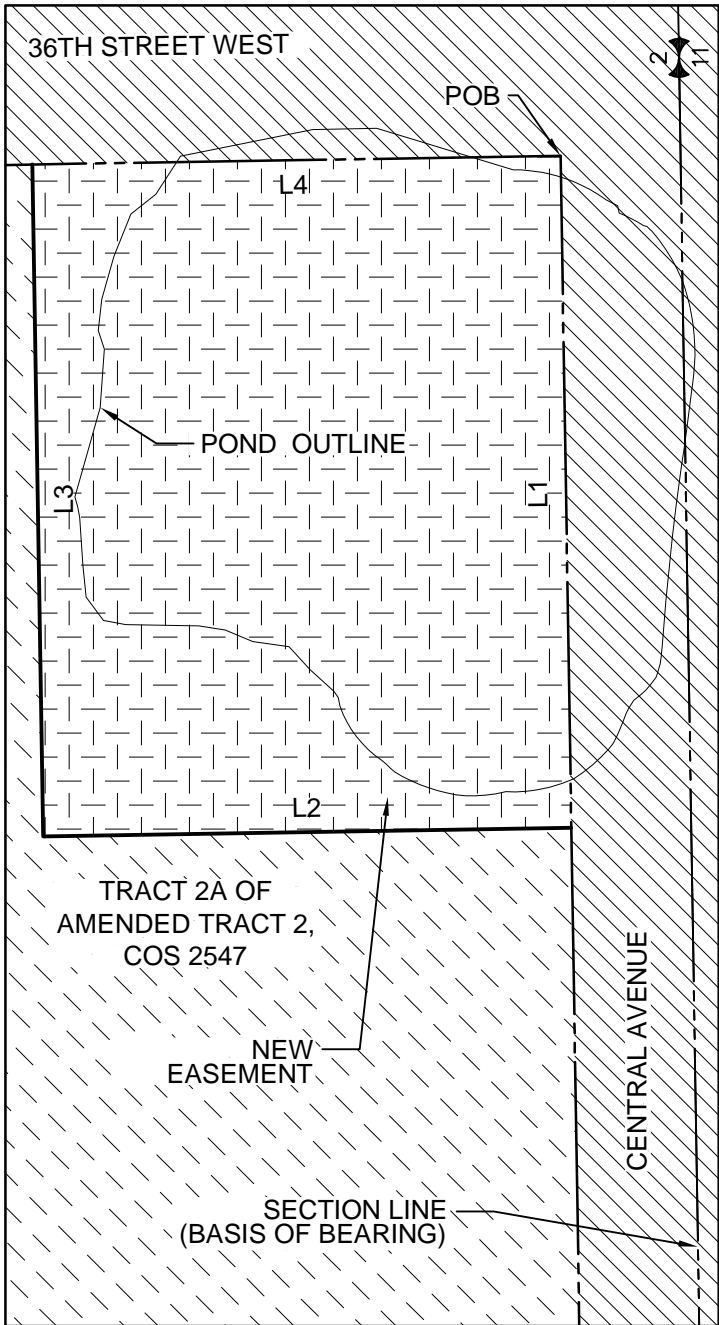
**DOWL**  
 WWW.DOWL.COM  
 222 N. 32nd Street, #700  
 Billings, Montana 59101  
 406-656-6399

W.O. 16-05 CENTRAL AVENUE  
 BILLINGS, MONTANA  
**EXHIBIT A**  
**POND GRADING DETAIL**

PROJECT 4024.21144.01  
 DATE 2/28/2018

© DOWL 2018  
 SHEET

**D10**



Current Owner:  
School District #2



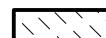
TRACT 2A  
OF AMENDED TRACT 2,  
COS NUMBER 2547  
SEC. 2, T1S, R25E,  
CITY OF BILLINGS,  
YELLOWSTONE COUNTY,  
MT

BASIS OF BEARING: N 89° 04' 57" E

- L1 S 89° 04' 57" W, 280.00 FEET
- L2 N 00° 57' 04" W, 220.00 FEET
- L3 N 89° 04' 57" E, 280.00 FEET
- L4 S 00° 57' 04" E, 220.00 FEET



R/W Legend

-  Existing Road Right-of-Way
-  New Easement
-  Area Remaining

TRACT 2A of Amended Tract 2, Certificate of Survey 2547 situated in the SW<sup>1</sup>/<sub>4</sub> of Section 2, T1S, R25E, P.M.M, City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Yellowstone County, Montana; (document number: 3447703).

Said easement perimeter is more particularly described as:

Beginning at the Southeast corner of TRACT 2A of Amended Tract 2, Certificate of Survey 2547; Thence, from said point of beginning, S 89° 04' 57" W, 280.00 feet along the existing South property line of TRACT 2A; Thence, N 00° 57' 04" W, 220.00 feet; Thence, N 89° 04' 57" E, 280.00 feet; Thence, S 00° 57' 04" E, 220.00 feet along the existing East property line of TRACT 2A to the point of beginning, and containing 61,600 sqft., more or less.