

After Recording, Return To:

NorthWestern Energy  
Lands & Permitting Dept.  
11 East Park Street  
Butte, MT 59701-1711

**EASEMENT  
AND EASEMENT MODIFICATION AGREEMENT**

This Easement and Easement Modification Agreement (“Agreement”), dated the \_\_\_\_ day of \_\_\_\_\_, 2018, is made and entered into by and between NorthWestern Corporation, d/b/a NorthWestern Energy, a Delaware corporation, of 11 East Park Street, Butte, Montana 59701-1711 (“NorthWestern”), and the City of Billings, Montana, of P.O. Box 1178, Billings, Montana 59103 (the “City”), and provides as follows:

**Recitals**

1. The City is the owner of certain real property, located in Yellowstone County, Montana, which is described as follows:

Tract 1 of Certificate of Survey No. 1293, which tract lies in the W2NE4 of Section 12, Township 1 South, Range 25 East, M.P.M. Yellowstone County, Montana, commonly known as Stewart Park, according to the official Certificate of Survey thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana. (the “Real Property”)

2. NorthWestern is the holder of an underground Electric Powerline Easement, affecting the Real Property, dated March 13, 2000 and recorded on April 13, 2000 as Document No. 3086831 in the records of the Clerk and Recorder of Yellowstone County, Montana (the “Electric Line Easement”).
3. As part of ongoing maintenance work NorthWestern desires to replace and re-route the existing line serving a portion of the Real Property.

**Agreement**

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NorthWestern and the City agree as follows:

1. Modification of Electric Line Easement. The location of the re-routed underground line is depicted on Exhibit “A” to this Agreement. Except as the location and dimensions of the Electric Line easement are expressly modified by this Agreement, the terms, conditions and priority of the Electric Line Easement remain as originally written. In no event shall this Agreement affect or limit the

terms of the Electric Line Easement as it affects Real Property, or any other easement rights held by NorthWestern.

2. Reclamation. NorthWestern shall at its own cost and expense and within a reasonable amount of time following construction and subsequent maintenance or repairs to line, replace or repair all landscaping, fences, and any other property damaged by the construction, maintenance or repairs to substantially the same condition as existed prior to such work.
3. Indemnification. Northwestern agrees to indemnify and save the City, its agents, employees, successors and assigns harmless from and against any and all claims, demands, costs (including, but not limited to, reasonable attorneys' fees), expenses, damages, fines, for injury, death, loss or damage to any person, entity or property caused by the negligent or intentionally wrongful acts of NorthWestern, its contractors', and subcontractors', in the construction, operation, maintenance or repair of the underground electric line and its appurtenances. This obligation shall survive termination of this Agreement.
4. Modifications. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof and contains the sole and entire agreement between the parties with respect to such subject matter. This Agreement may not be modified or terminated unless in writing signed by the party against whom the same is sought to be enforced.
5. Controlling Law. This Agreement shall be interpreted under and governed by the laws of the State of Montana, without regard to conflict of law rules.
6. Interpretation. This Agreement has been reviewed by both parties, each of whom has had the opportunity to consult with independent counsel regarding it and has done so to the extent that such party desired. No stricter construction or interpretation of the terms hereof shall be applied against either party as the drafter hereof.
7. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
8. Headings. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
9. Certification. The City represents that it is the sole owner of the Real Property, and has the right to enter into this Agreement. NorthWestern represents that it is the holder of the Easement, and has the right to enter into and perform this Agreement. Further, the individuals signing for the parties each hereby represent that they are duly authorized and empowered to execute this Agreement on behalf

of the party for whom each signs, and that once signed that this will be binding on the parties hereto.

10. Attorneys' Fees. In the event either party finds it necessary to employ counsel in order to enforce or rescind any term or provision of this Option Agreement, including any proceeding in bankruptcy before any officer or judge of the U.S. Bankruptcy Court or any proceeding pertaining thereto, the prevailing party shall be entitled to recover from the other party in addition to costs and disbursements allowed by law, the prevailing party's reasonable attorneys' fees. Attorneys' fees shall include any attorneys services rendered prior to the institution of litigation or proceedings in bankruptcy and include all matters pertaining to litigation, or proceedings in bankruptcy and include all matters pertaining to litigation, or proceedings in bankruptcy as may be necessarily incurred in such proceedings and shall include an estimate of the attorneys' fees to be incurred by the prevailing party following any initial decision or judgment entered in connection with that matter.
  
11. Effect. The Electric Line Easement, as modified hereby, and the Natural Gas Easement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement and their respective successors, assigns and permittees.

City of Billings

NorthWestern Corporation  
A Delaware Corporation  
d/b/a NorthWestern Energy

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Acknowledgements appear on the following page

STATE OF MONTANA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2018, by,  
\_\_\_\_\_ known to me to be the  
\_\_\_\_\_ for NorthWestern Corporation,  
d/b/a NorthWestern Energy.

**NOTARY SEAL**

Notary Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

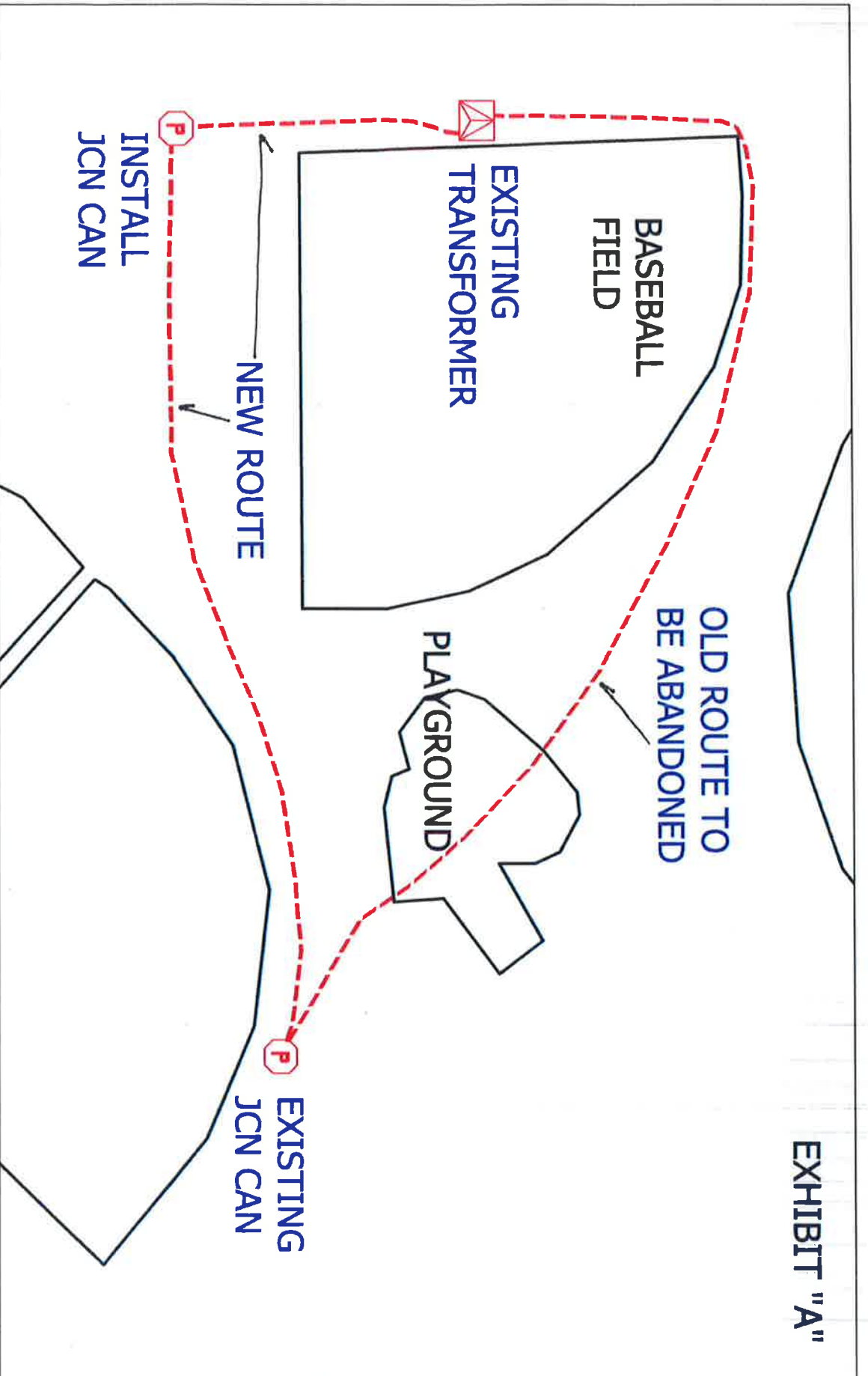
STATE OF MONTANA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2018,  
by \_\_\_\_\_ the \_\_\_\_\_ of the City of Billings,  
Montana,

**NOTARY SEAL**

Notary Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Project: Stewart Park Re-Route  
Agent: R. Ishkanian/K. Greenwood  
SAP No: 24087246-1050  
QRM# \_\_\_\_\_

**EXHIBIT "A"**



Time: 5/16/2018 4:38:20 PM

Session: C:\Maps\NWE-ALL Field.gis

Note: T1S-R25E,M.P.M SECT12:W2NE4, A STRIP OF LAND IN STEWART PARK COS 1293 TR1

NorthWestern Energy Map Extract

This information is proprietary and confidential data of NorthWestern Energy

Center: (2202052.1, 554389.4)

Zoom: 87.5

Scale: 1 IN = 100 FT

