

After Recording, Return To:
NorthWestern Energy
Lands & Permitting Dept.
11 East Park Street
Butte, MT 59701-1711

And copy to:
City Clerk
City of Billings
P.O. Box 1178
Billings, MT 59103

EASEMENT FOR NATURAL GAS PIPELINE AND EASEMENT MODIFICATION AGREEMENT

This Easement For Natural Gas Pipeline 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 3 of Certificate of Survey No. 1031, which tract lies in Lot 6 of Section 2, Township 1 South, Range 26 East, Yellowstone County, Montana, 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 a Right of Way Easement affecting the Real Property, dated October 24, 1966 and recorded on October 25, 1966 in Book 847 at Page 708, in the records of the Clerk and Recorder of Yellowstone County, Montana (the “Electric Line Easement”).
3. The City desires that NorthWestern define the location of the Electric Line Easement so to reduce its burden on the Real Property.
4. NorthWestern desires to obtain an easement for a natural gas pipeline on the Real Property and in that regard is willing to define the location of the Electric Line Easement, all subject to the terms and conditions of this Agreement.

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. Grant of Pipeline Easement. The City does grant and convey to NorthWestern, its successors, assigns and apportionees, an easement forty feet (40') in width, upon which to construct, operate, maintain, replace, upgrade, and remove a natural gas transmission pipeline, communications systems, and necessary appurtenances, over, under, along and across the Real Property, in the location as depicted on Exhibits "A", "B", and "C" to this Agreement (the "Pipeline Easement"). This Pipeline Easement is granted and conveyed together with reasonable right of access to and from the Pipeline Easement over lands of the City using existing roads and trails where practicable; the right to use and keep the easement area free and clear of any and all obstructions or structures, except fences; and the right to clear and remove all timber, brush, or vegetation from the easement area that may in NorthWestern's opinion, endanger the pipeline, communications system, or necessary appurtenances. NorthWestern agrees to bury all pipelines to a depth that is sufficient to avoid any interference with the public utilities operations of the City as they exist at the time of NorthWestern's initial pipeline installation. NorthWestern further agrees to pay any and all damages to the City's waterworks and pipeline facilities thereon and thereabouts that may arise from the construction, maintenance and operation of NorthWestern's pipeline, communications system and necessary appurtenances, thereon.
2. Modification of Electric Line Easement. Solely to the extent it affects the west side of the Real Property, the City and NorthWestern hereby agree that the Electric Line Easement is defined as and reduced to one hundred thirty five feet (135') in width, in the location as depicted on Exhibit "D" 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 other than the west side of the Real Property, or any other easement rights held by NorthWestern.
3. Reservation of Rights. In consideration for this easement, the City reserves the right to cross the pipeline within the easement area shown on Exhibit "A", "B", and "C" for the purposes of constructing, maintaining, and operating water lines; NorthWestern agrees to cooperate and work with the City to plan and make the necessary arrangements to facilitate such crossings. The City agrees to maintain a minimum of two feet (2') of ground separation between any new line(s) it installs and any installed NorthWestern pipeline(s). The City also agrees to contact NorthWestern in advance for consultation and coordination of any such work.
4. Reclamation. NorthWestern shall at its own cost and expense and within a reasonable amount of time following construction of the natural gas transmission line and any subsequent maintenance or repairs to the natural gas transmission line,

replace or repair all roads, drainage, fences, and other property damaged by the construction, maintenance or repairs to substantially the same condition as existed prior to such work.

5. Indemnification. Northwestern agrees to release, defend, 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 natural gas transmission line, communications system, and appurtenances. This obligation shall survive termination of this Agreement.
6. Environmental Issues. NorthWestern shall not use, dispose of or release on or under the easement areas or on the City's lands adjacent thereto any substances (other than those NorthWestern has been licensed or permitted by applicable public authorities or allowed under applicable law to use on the easement areas) which are defined as "hazardous materials", "toxic substances" or "solid waste" in federal, state or local laws. Should NorthWestern cause any pollutant, hazardous material, toxic substances, contaminated waste or solid waste be accidentally released, NorthWestern shall notify the City Public Works Director immediately. NorthWestern shall be responsible for and timely pay all costs of clean-up, remediation, including, but not limited to penalties and other costs related to and arising as result of a release caused by NorthWestern. NorthWestern shall be responsible for and comply with all applicable laws and regulations as to any required permitting, licenses, and fees related thereto concerning, relating to or arising from NorthWestern. Notwithstanding the foregoing, NorthWestern shall not be liable for any existing pollutant, hazardous material, toxic substances, contaminated waste, solid waste or other conditions discovered as result of NorthWestern's use of the easement areas.
7. 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.
8. Abandonment. If at any time after the pipeline is put into operation, NorthWestern, its successors or assigns, intentionally or voluntarily cease to operate the pipeline for a period of more than five (5) years, the easement as granted herein shall terminate and be of no further force and effect. Should NorthWestern be required to remove the abandoned pipeline by law, court order, or any federal or state regulatory authority determination, NorthWestern agrees to reimburse the City for all expenses related to such removal.
9. 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.

10. 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.
11. 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.
12. 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.
13. 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, this will be binding on the parties hereto.
14. Assignment. The rights granted to NorthWestern in this Agreement shall not be assignable to any other entity, together or separately, in whole or in part, without the express written consent of the City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, NorthWestern shall have the right to assign and transfer this Easement without the consent of the City to (i) any entity that controls, is controlled by, or is under common control with, NorthWestern, and (ii) to any entity that acquires substantially all of NorthWestern's transmission and distribution assets located in the state of Montana.
15. 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 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.

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

Printed Name

Title

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

Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____

Project: Warren Pipeline
Agent: Enright/Ishkanian
SAP No: 6018142-0110
QRM# _____

EXHIBIT "A"



| | | | | | | | | | |
|------|----|----|-----|----|-----|--------------------------------|------------|--|--------------|
| | | | | | | NorthWestern Energy | | Billings Reroute 12" Pipeline Crossing City Of Billings Property | |
| | | | | | | DRAWN | S. Gleason | DATE | 1/18/17 |
| | | | | | | CHECKED | | SCALE | 1"=200' |
| | | | | | | ENGINEERED | | APPROVED | |
| DATE | BY | CK | ENG | PE | APP | REFERENCE DRAWING | DWG. NO. | DRAWING NUMBER | Exhibit A |
| | | | | | | | | | SHEET 1 OF 1 |

EXHIBIT "B"

EXHIBIT "C"

Legal Description

A strip of land across Government Lots 9 and 10 of Section 11, Township 1 South, Range 26 East, Principal Meridian, Montana, Yellowstone County, Montana, being 40 feet wide, 20 feet on each side of the following described centerline, with all bearings contained herein referenced to the Montana Coordinate System, NAD83(2011):

Commencing at Meander Corner No. 2 of Sections 2 and 11, Township 1 South, Range 26 East, being the northeast corner of Certificate of Survey No. 750, and monumented with a 2-inch iron pipe and Bureau of Land Management brass cap; thence

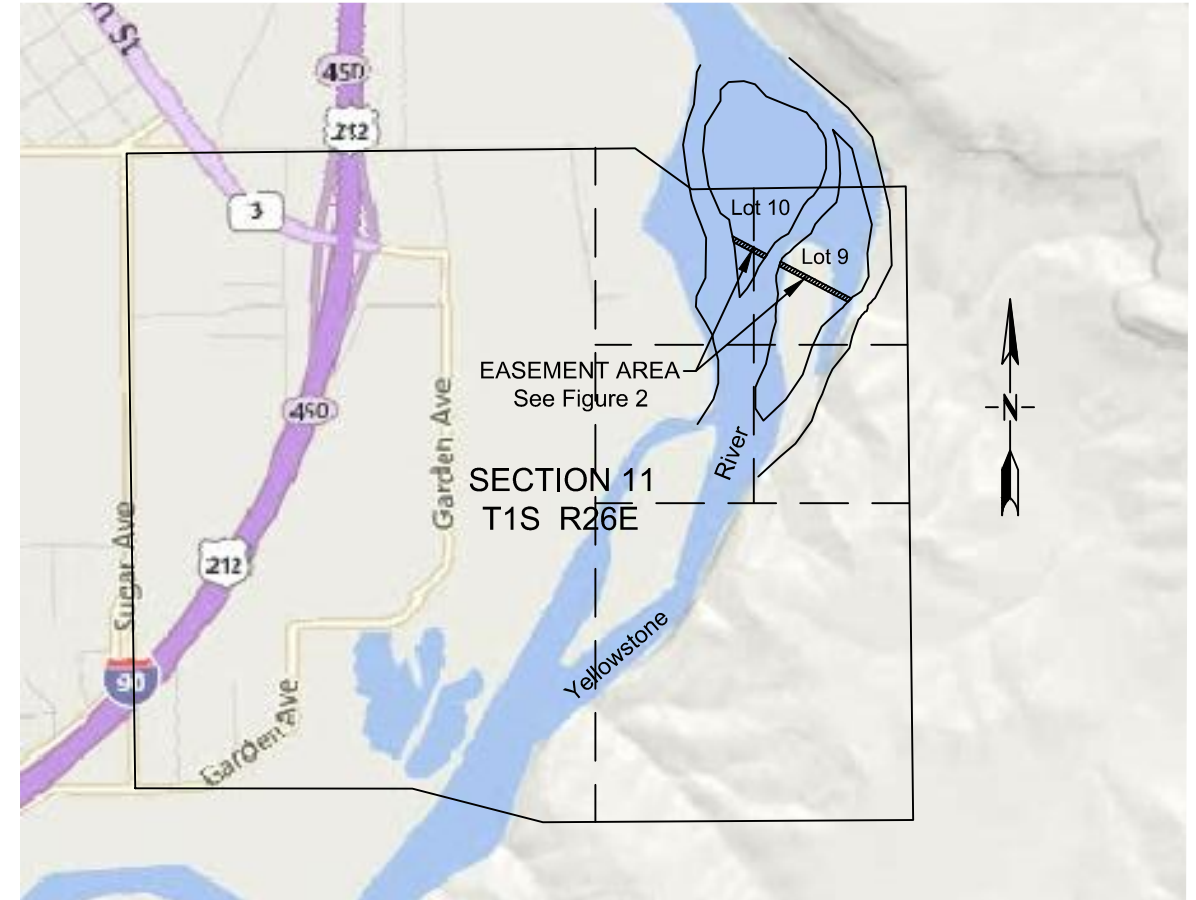
S47°02'58"E 1115.54 feet to the Point of Beginning 1 at the approximate low water mark on the right side of the left channel of the Yellowstone River; thence

S62°29'32"E 307.10 feet across Government Lot 10 to the Point of Termination 1 at the low water mark on the left side of the middle channel of the Yellowstone River; thence

S62°29'32"E 132.98 feet to the Point of Beginning 2 at the low water mark on the right side of the middle channel of the Yellowstone River; thence

S62°29'32"E 655.34 feet across Government Lot 9 to the Point of Termination 2 at the low water mark on the left side of the right channel of the Yellowstone River.

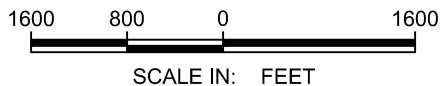
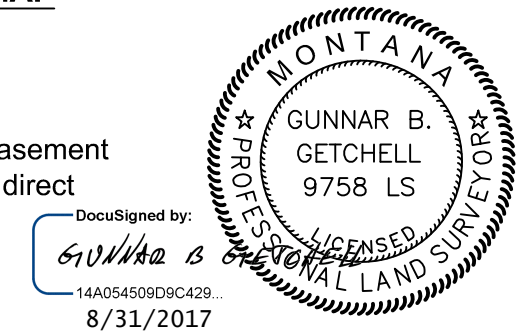
Containing 0.88 acres more or less, and subject to any easements of record or apparent on the ground.



VICINITY MAP

Surveyor's Certification

I, Gunnar B. Getchell, certify that this easement survey represents work done under my direct supervision.



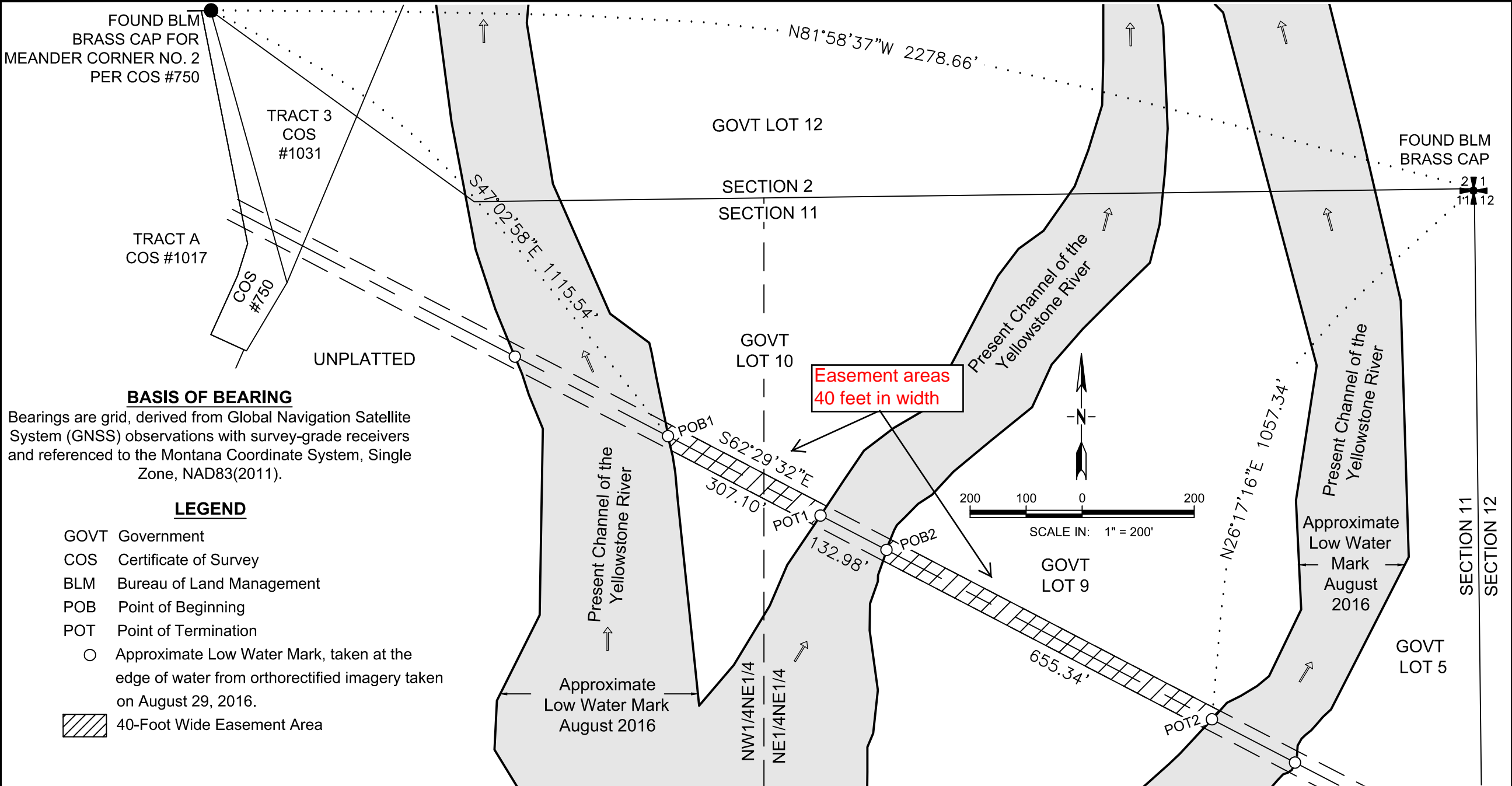
1 Engineering Place
Helena, MT 59602
406.442.3050
www.m-m.net

COPYRIGHT © MORRISON-MAIERLE, INC. 2017

DRAWN BY: JJR
DSGN. BY: NWE
APPR. BY: GBG
DATE: 08/31/17

R:\1051079 Survey\07953 WARBL DNRC Easement\ACAD\Survey\1051079 07953 Lots 9-10 Exhibit A.dwg Plotted by jeff roe on 8/31/17

| | | |
|--|---|----------------------------|
| EXHIBIT C | | PROJECT NO. 1051.079.53 |
| BILLINGS | 40' PIPELINE EASEMENT ACROSS GOVT LOTS 9 & 10 | MONTANA |
| LOCATED IN THE NW1/4NE1/4 AND THE NE1/4NE1/4 OF SECTION 11, T.1S., R.26E., P.M.,M., YELLOWSTONE COUNTY, MONTANA | | |
| | | FIGURE NUMBER 1 OF 2 |




BASIS OF BEARING
 Bearings are grid, derived from Global Navigation Satellite System (GNSS) observations with survey-grade receivers and referenced to the Montana Coordinate System, Single Zone, NAD83(2011).

LEGEND

- GOVT Government
- COS Certificate of Survey
- BLM Bureau of Land Management
- POB Point of Beginning
- POT Point of Termination
- Approximate Low Water Mark, taken at the edge of water from orthorectified imagery taken on August 29, 2016.
- ▨ 40-Foot Wide Easement Area

EASEMENT AREA TAKEN

GOVT LOT 9: 0.60 ac.
 GOVT LOT 10: 0.28 ac.
 Total: 0.88 ac.

| | | | | |
|--|--|---|--|----------------------------|
|  engineers ■ surveyors ■ planners ■ scientists | 1 Engineering Place Helena, MT 59602 406.442.3050 www.m-m.net <small>COPYRIGHT © MORRISON-MAIERLE, INC. 2017</small> | DRAWN BY: JJR DSGN. BY: NWE APPR. BY: GBG DATE: 08/31/17 | EXHIBIT C | PROJECT NO. 1051.079.53 |
| | | | BILLINGS 40' PIPELINE EASEMENT ACROSS GOVT LOTS 9 & 10 MONTANA | FIGURE NUMBER 2 OF 2 |

R:\1051\079 Survey\07953 WARBL DNRC Easement\ACAD\Survey\1051079 07953 Lots 9-10 Exhibit A.dwg Plotted by gunnar b. getchell on 8/31/17

EXHIBIT "D"



| | | | | | | | | | |
|------|----|----|-----|----|-----|----------------------------|------------|--|--------------|
| | | | | | | NorthWestern Energy | | Modification Of ROW Easement Dated Oct. 24, 1966 City Of Billings Property | |
| | | | | | | DRAWN | S. Gleason | DATE | 5/17/18 |
| | | | | | | CHECKED | | SCALE | 1"=200' |
| | | | | | | ENGINEERED | | APPROVED | |
| DATE | BY | CK | ENG | PE | APP | REFERENCE DRAWING | DWG. NO. | DRAWING NUMBER | Exhibit D |
| | | | | | | | | | SHEET 1 OF 1 |