

# STREET LIGHTING AGREEMENT

THIS AGREEMENT, effective this 1<sup>st</sup> day of November, 2018, by and between Yellowstone Valley Electric Cooperative, Inc., a corporation doing business at 150 Cooperative Way, Huntley, Montana 59037, hereinafter called the “Cooperative” and the City of Billings, a municipal corporation organized under the laws of the State of Montana, whose mailing address is PO Box 1178, Billings, Montana 59103, hereinafter called the “City”.

WITNESSETH:

WHEREAS, Special Improvement Lighting Maintenance District No. 313 has been duly created by the City Council of the City of Billings, Montana for the purpose of providing new 53 Watt Light-Emitting Diode (LED) street lighting within the boundaries of said District; and

WHEREAS, the Cooperative will supply, install, operate and own the facilities within said lighting district, and furnish electrical energy to and maintenance for said lighting district upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

## SECTION 1. INSTALLATION OF NEW FACILITIES

The Cooperative undertakes and agrees to construct and install the street lighting facilities in said lighting district at its own expense, hereinafter called the “lighting system”, and such work shall be commenced as soon as practical and completed by November 1<sup>st</sup> 2018. Said facilities shall be of the type and installed at the locations described below.

- (a.) Type of facilities: initially ten (10) 53-watt LED lamps in acorn style fixtures, mounted on twelve (12) foot posts with decorative fluted stems, served by underground wiring will be installed. An additional thirteen (13) 53-watt LED lamps mounted on decorative poles will be installed as public street improvements are completed in the subdivision, for a total of twenty-three (23) lights in the District.
- (b.) Locations: The lights shall be spaced and located in accordance with the map of said lighting district on file in the office of the City Engineer of the City of Billings, Montana.
- (c.) The type of facilities and number of lights may be modified only by the written consent of the parties hereto.

## SECTION 2. OWNERSHIP

The lighting system to be constructed and installed for the twenty-three (23) lights is, and shall remain, the property of the Cooperative until October 31<sup>st</sup> 2048. On that date, the ownership of the lighting system described within this Agreement shall be turned over to the City without compensation to the Cooperative and the City shall become responsible for all ownership and maintenance expenses related to the City’s ownership of the lights and related appurtenances. The Cooperative shall continue to bill the City for the electrical energy used by the District.

SECTION 3. MAINTENANCE, OPERATION AND REPAIR

- a. The Cooperative agrees to operate and perform ordinary maintenance of the lighting system while the lights are under ownership of the Cooperative. Lights shall be turned on at dusk and turned off at dawn each day during the term of this Agreement.
- b. The charges specified herein are based on normal conditions and do not cover charges for extraordinary repair and/or replacement costs.
- c. The Cooperative will make necessary repairs and replacements within a reasonable time after receiving notice of any outage or other damage to the lighting system. The Cooperative shall have no obligation to patrol the lighting system to determine that they are in operating condition.

SECTION 4. SUPPLY OF ENERGY TO SYSTEM

The Cooperative agrees to supply electrical energy to the lighting system for the charges hereinafter specified, irrespective of the ownership of the lighting system.

SECTION 5. CHARGES

- a. The City undertakes and agrees to pay the Cooperative for furnishing, operating and maintaining, as provided herein, the lighting system to be constructed and owned by the Cooperative and for supplying electrical energy thereto. The charge for each lighting unit with the lighting system shall be based on the rate schedule approved by the Board of Trustees of the Cooperative and in effect at the time the lighting units(s) are installed, subject to future amendment or revision of the rate schedule. The electric energy supply portion of the unit charge may vary based on the rate schedule approved by the Board of Trustees in effect at the time of service.
- b. The initial rate for each 53 watt LED, acorn fixture shall be \$24.95 for ownership and routine maintenance and \$2.89 for the electrical energy, for a total of \$27.84 per lighting unit per month.
- c. The Cooperative shall have the right to seek additional charges from the City for the cost of labor (including applicable overheads) and the actual material cost for repairs to and/or replacement of street lighting facilities that are extraordinary repairs and/or replacement costs.
- d. Bills for said services shall be due and payable in cash or valid warrants when rendered each month and will become delinquent thirty (30) days thereafter.

SECTION 6. FORCE MAJEURE

- a. The Cooperative shall not be liable for failure to comply with any of the terms and conditions of this Agreement where such failure is caused by acts of God, government regulations or orders, strikes or labor difficulties, fires, floods, droughts, riots, destruction of property, or by any other cause beyond its reasonable control.
- b. If the Cooperative is unable to fulfill any obligation by reason of a cause beyond its reasonable control, then it shall notify the City and the Cooperative shall use its best efforts to complete the work in a timely manner.

SECTION 7. TERM

This Agreement shall be and remain in full force and effect for a period of two (2) years and eleven (11) months from the date hereof, and shall thereafter continue in force and effect for successive periods of two (2) years and eleven (11) months each, until and unless terminated by either party giving to the other party notice in writing at least sixty (60) days prior to the expiration of the initial term hereof, or any renewal thereof, of its intention to terminate this Agreement at the expiration of such initial term or any renewal. If, however, the customer terminates this Agreement before the Cooperative recovers its installation costs, the City agrees to reimburse the Cooperative for the remaining installation costs.

SECTION 8. INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY

- a. The Cooperative, in the construction, maintenance and operation of the lighting system provided for herein, shall use reasonable care and shall indemnify, hold harmless and defend the City from any and all claims, liabilities, causes of action and judgments on account of property damages, bodily or personal injuries or death and expenses of any kind, including attorney's fees, caused by the negligent or willful acts or omissions of the Cooperative, its agents, representatives, or employees, or by the failure of the Cooperative to comply with the provisions of this Agreement.
- b. If this Agreement terminates, the City shall, under no circumstances, be entitled to claim or recover consequential damages of any nature arising, or claimed to have arisen, as a result of said termination.

SECTION 9. INDEPENDENT CONTRACTOR

For any services performed hereunder, the Cooperative is an independent contractor, responsible to the City only as to the results to be obtained and to the extent that the services shall be done in accordance with any plans or specifications furnished by the City.

SECTION 10. APPLICABLE LAW

- a. This Agreement shall be governed in all respects by the laws of the State of Montana.
- b. All hiring by the parties will be on the basis of merit and qualifications. The parties may not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin.
- c. The Cooperative shall have and maintain complete control over all of its employees, subcontractors, agents and operations, being responsible for any required payroll deductions and providing required benefits, such as, but not limited to, workers' compensation and unemployment insurance.

SECTION 11. TERMINATION

Either party may terminate this Agreement if the other party defaults in performance or breaches any of the terms of this Agreement and fails to cure such default or breach within thirty (30) days after written notice of such default.

SECTION 12. INSURANCE

Without limiting any of the Cooperative’s obligations hereunder, Cooperative shall provide and maintain comprehensive general liability and automobile liability insurance adequate to secure its indemnity obligation hereunder. The City shall have the right to request proof of such insurance coverage.

SECTION 13. BINDING EFFECT AND ASSIGNMENT

- a. This Contract shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.
- b. Either party may assign this Agreement upon written consent of the other party.

SECTION 14. NO THIRD PARTY BENEFICIARY

This Agreement is for the exclusive benefit of the parties and shall not constitute a third party beneficiary agreement and shall not be relied upon or enforced by a third party.

SECTION 15. AUTHORITY

Each party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to sign this Agreement.

SECTION 16. INTEGRATION

This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding upon the parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate by their duly authorized officers.

YELLOWSTONE VALLEY  
ELECTRIC COOPERATIVE, INC.

THE CITY OF BILLINGS

By: \_\_\_\_\_  
Brandon J. Wittman, General Manager

By: \_\_\_\_\_  
William A. Cole, MAYOR

Date: \_\_\_\_\_

DATE: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT:**  
**City Attorney’s Office**

By: \_\_\_\_\_

Date: \_\_\_\_\_

