

WATER LINE CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT

This Water Line Construction and Maintenance Easement Agreement (this “Agreement”) is made this ____ day of _____, 2019 (the “Effective Date”), by and between MC Real Estate Holdings, Inc., with mailing address at P.O. Box 250, Miles City, Montana 59301 (“Grantor”) and the City of Billings, a municipal corporation, whose principal office is 210 N. 27th 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 a tract of land located in the SW1/4 of Section 8, T. 1 S., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being Lot 1, Block F of the plat of Burlington Northern Subdivision, 3rd Filing, on file and of record in the office of the Yellowstone County Clerk and Records Office, recorded September 29th, 1978, under document No. 1105636 and incorporated herein by this reference (the “Grantor’s Property”); and

WHEREAS, Grantee intends to reconstruct the intersection of Monad Road and Daniel Street pursuant to W.O. 17-05 (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 water line replacement within the intersection to upgrade the existing water mainline; and

WHEREAS, Grantor agrees to allow Grantee to construct a new water line and connect it to the private water line system on Grantor’s property described as a tract of land situated in the SW1/4 of Section 8, T. 1 S., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being a portion of Lot 1, Block F of the plat of Burlington Northern Subdivision, 3rd Filing, on file and of record in the office of the Yellowstone County Clerk and Records Office, recorded September 29th, 1978, under document No. 1105636, more particularly described as follows; Commencing at the P.T. on the south Right-Of-Way line of Monad Road of said Lot 1, basis of bearing being the plat of Burlington Northern Subdivision, 3rd Filing; thence S 89° 52' 41” E along said south right-of-way for a distance of 53.00 feet to the True Point of Beginning; thence continuing S 89° 52' 41” E and along said south right-of-

way for a distance of 12.00 feet; thence S 00° 07' 19" W and leaving said south right-of-way line of Monad Road for a distance of 6.00 feet; thence N 89° 52' 41" W for a distance of 12.00 feet; thence N 00° 07' 19" E for a distance of 6.00 feet to the Point of Beginning. Said described tract having an area of 72 square feet (0.002 acres), more or less described on Exhibit A 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 construction and maintenance of water line replacement improvements ("Grantee Improvements") to, and maintenance of, the Easement Area; and

WHEREAS, in consideration for granting the desired easement, Grantee will construct and maintain the Grantee Improvements 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 WATER LINE 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 (the "Easement Area"), 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.
4. **CONSTRUCTION OF GRANTEE IMPROVEMENTS.** Grantee may use the Easement Area for constructing and installing water line 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. Equipment, vehicles, and materials will not be stored in the easement area overnight. 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. Grantee will conduct all construction of the water line and any subsequent repair or maintenance in such a manner as will cause the least injury to the surface of the Easement Area, the surface around the construction area, or the improvements thereon, and will replace the earth so removed, and will restore the surface

of the ground and any improvements to as near a condition as existed prior to such work as is practicable, at Grantee's sole expense. Grantee's use of the easement shall not unreasonably interfere with Grantor's use of the Easement Area or appurtenant property.

5. **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.
6. **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. Within ninety (90) days following abandonment or termination, Grantee shall remove at Grantee's sole cost any water line or other structure from the Easement Area, and will restore the surface of the ground, and any improvements, to as near a condition as existed prior to such removal.
7. **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.
8. **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 water line construction and maintenance resulting from the Project.
9. **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.
10. **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.
11. **INDEMNIFICATION.** Grantee shall be strictly liable for all damages and losses caused by or arising out of the construction, maintenance, repair, replacement, or operation of the water line or activities upon the Easement Area that may be asserted against Grantor other than to the extent any such claims arise from the acts or conduct of Grantor, Grantor's agents, contractors, employees, invitees, guests and permittees. The Grantee does hereby agree to defend, hold harmless, and indemnify Grantor, its successors and assigns, from

any and all claims involving the water line or arising out of the Grantee's use of the Easement.

12. **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: MC Real Estate Holdings, Inc.
P.O. Box 80850
Billings, Montana 59108-0850

To Grantee: Public Works
David Mumford, Director
2224 Montana Avenue
Billings, MT 59103

13. **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 representative of MC Real Estate Holdings, Inc. 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:

MC Real Estate Holdings, Inc.

By: _____ Date: _____, 2019
Representative

APPROVED FOR LEGAL CONTENT

By _____
Representative for MC Real Estate Holdings, Inc.

STATE OF MONTANA)

: ss

County of Yellowstone)

This instrument was signed or acknowledged before me on this ____ day of _____ 2019, by _____ Representative for MC Real Estate Holdings, Inc.

(Notary Signature)

(Notarial Seal)

GRANTEE:

CITY OF BILLINGS

By: _____
Mayor William A. Cole

Date: _____, 2019

APPROVED FOR LEGAL CONTENT

By _____
Brent Brooks, City Attorney

STATE OF MONTANA)

: ss

County of Yellowstone)

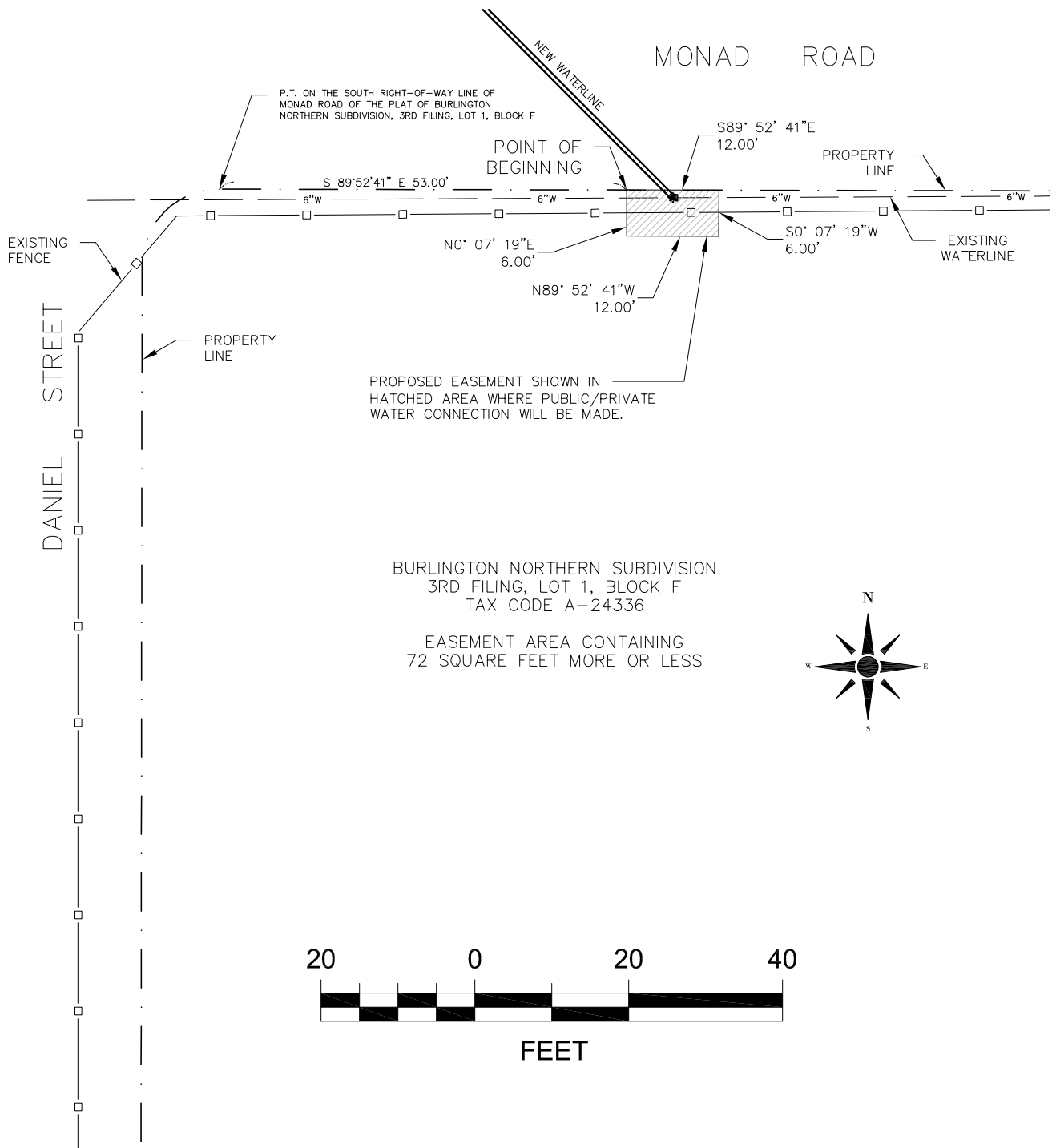
This instrument was signed or acknowledged before me on this ____ day of _____ 2019, by William A. Cole, Mayor on behalf of the City of Billings.

(Notary Signature)

(Notarial Seal)

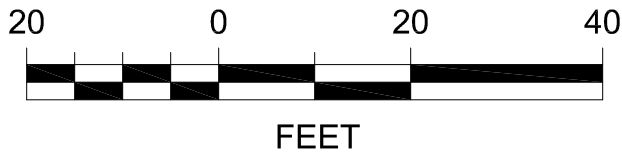
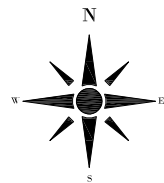
EXHIBIT "A"

WATER LINE EASEMENT DESCRIPTION WITHIN LOT 1, BLOCK F, OF BURLINGTON NORTHERN SUBDIVISION, 3RD FILING ON FILE AND OF RECORD IN THE OFFICE OF THE YELLOWSTONE COUNTY CLERK AND RECORDERS' OFFICE, RECORDED SEPTEMBER 29th, 1978, UNDER DOCUMENT NO. 1105636 CITY OF BILLINGS, MONTANA



BURLINGTON NORTHERN SUBDIVISION
3RD FILING, LOT 1, BLOCK F
TAX CODE A-24336

EASEMENT AREA CONTAINING
72 SQUARE FEET MORE OR LESS



LAND DESCRIPTION FOR WATER LINE CONNECTION

A tract of land situated in the SW1/4 of Section 8, T. 1 S., R. 26 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said tract being a portion of Lot 1, Block F of the plat of Burlington Northern Subdivision, 3rd Filing, on file and of record in the office of the Yellowstone County Clerk and Recorders Office, recorded September 29th, 1978, under document No. 1105636, more particularly described as follows; Commencing at the P.T. on the south Right-Of-Way line of Monad Road of said Lot 1, basis of bearing being the plat of Burlington Northern Subdivision, 3rd Filing; thence S 89° 52' 41" E along said south right-of-way for a distance of 53.00 feet to the True Point of Beginning; thence continuing S 89° 52' 41" E and along said south right-of-way for a distance of 12.00 feet; thence S 00° 07' 19" W and leaving said south right-of-way line of Monad Road for a distance of 6.00 feet; thence N 89° 52' 41" W for a distance of 12.00 feet; thence N 00° 07' 19" E for a distance of 6.00 feet to the Point of Beginning. Said described tract having an area of 72 square feet (0.002 acres), more or less.

CITY OF BILLINGS, MONTANA
EASEMENT EXHIBIT
CITY W.O. 17-05

THIS EXHIBIT IS PREPARED BY:
THE CITY OF BILLINGS, MONTANA