

Right of Way Application No. 19338
Affecting a 90-foot strip through
NW4NE4, E2NW4, E2SW4, Sec. 22, Twp.
1N, Rge. 25E
Yellowstone County, Montana

EASEMENT NO. D-

RIGHT OF WAY GRANT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Know ye that the State of Montana (hereinafter referred to as "Grantor"), in consideration of the sum of Forty-Six Thousand Eight Hundred Eighty and No/100 Dollars (\$46,880.00), now paid, grants to City of Billings (hereinafter referred to as "Grantee") a right of way upon and across State lands for a public city roadway, including water, sewer, and storm drainage facilities and a multi-purpose, non-motorized public trail, as follows:

A 90-foot strip through NW4NE4, E2NW4, E2SW4, Section 22, Township 1 North, Range 25 East, Principal Meridian Montana, Yellowstone County, Montana, as shown and depicted on the Exhibit attached hereto and made a part hereof and containing 11.72 acres, more or less.

The grant of this easement is subject to the following conditions:

The Grantee shall comply with the Montana Antiquities Act, Title 22, Chapter 3, MCA. In particular, Sections 22-3, Parts 4 and 8.

It is also agreed that the Grantee shall comply with such rules or regulations as may be hereafter imposed by the State Board of Land Commissioners to ensure that the environment will be adequately protected and the public health and safety not be endangered.

The Grantee shall be responsible for controlling any noxious weeds introduced by Grantee's activity on State-owned land. The Grantee's methods of control must be reviewed by the Grantor's Area Field Office that has jurisdiction for that locale.

The Grantee shall comply with the Montana County Noxious Weed Management Act, Section 7-22-2101 MCA, as follows:

The Grantee shall notify the local weed board that is responsible for that geographical area that the project is located in. If the Grantee disturbs vegetation for any reason, Grantee shall be required to revegetate the disturbed area. The Grantee shall submit to the local weed board a written plan specifying the methods to be used to accomplish revegetation. The plan must describe the time and method of seeding; fertilization, recommended plant species, use of weed-free seed, and the weed management procedures to be used. This plan is subject to approval by the local weed board, and therefore must be signed by the chairman of the board.

It is further agreed by the Grantee that Grantee shall backfill, grade and revegetate all disturbed areas that are not part of the road surface to the satisfaction of the State. If the first seeding of compatible grass species does not germinate to the satisfaction of the Department, the Grantee may be required to reseed in those areas open to erosion and weeds. Upon termination of this easement, Grantee shall reclaim the entire area in accordance with this paragraph.

The Grantee herein specifically agrees that the said water, sewer and stormwater pipelines shall be buried below plow depth, as well as any utilities. It is also understood and agreed that the State and its lessees and purchasers shall have the right to occupy, use and fully enjoy the surface of the right of way hereby granted and that the said Grantee and its successors and assigns shall pay any damages which may result to the fences and other property or interests of the lessees and purchasers from the State by reason of the laying, maintaining, operating or removing of the said water, sewer and stormwater pipelines, including utilities, and that the amount of such damages if not mutually agreed upon, shall be ascertained and determined by three disinterested persons, one of whom shall be appointed by the lessee or purchaser of the land, their heirs or assigns, one by the Grantee herein, its successors or assigns, and the third by the two so appointed. The award of such three persons shall be final and conclusive on both parties; and that the State and its lessees and/or purchasers will not be liable for any damages to the above-mentioned water, sewer and stormwater pipelines and/or utilities resulting from the occupancy, use and enjoyment of the surface of the right of way hereby granted.

Provided, further, that the right of way granted herein shall be assignable by Grantee only with the written approval of the Director, Department of Natural Resources and Conservation.

Provided, further, that permission must be obtained in writing, from the Director, Department of Natural Resources and Conservation, prior to the construction of any improvements on the right of way herein granted.

Provided, further, Grantee shall install and maintain pedestrian access gates on both sides of the public roadway at locations mutually agreed upon by Grantor and Grantee.

Provided, further, Grantee shall, at no expense to the Grantor, construct and maintain a stock pass tunnel at a location agreeable to both Grantor and Grantee.

Provided, however, Grantor has made no representation as to the present or future condition of the property and the Grantee assumes all risk or damage to property or an injury to Grantee or persons or property, in connection with the exercise of rights granted hereunder. Further, Grantee shall indemnify, defend, reimburse, and hold harmless Grantor against all claims or liabilities asserted by third persons resulting directly or indirectly from Grantee's acts or omissions hereunder regarding past, present and future use of the easement parcel defined herein whether negligent or otherwise. This duty shall extend to all claims, judgments, lawsuits brought or threatened, settlement reached or governmental order related to hazardous material, losses, penalties, liabilities, encumbrances, liens, costs, and expenses of investigation and defense, including attorney fees, of any claim, whether or not such claim is ultimately defeated, and any good faith settlement, including reasonable attorney fees and disbursements and consultant fees. It shall include the costs of preparation of remedial investigations and feasibility studies and reports, the cost of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring required by federal, state or county agency, and liability to any third person or governmental agency to indemnify it for those costs.

Provided, however, that the right of way granted herein is not exclusive and Grantee shall not interfere with the Grantor and its successors, assigns, lessees or other parties authorized to use State lands, in their right, at all times to go upon, cross and re-cross the land covered by said right of way and any road thereon, at any point, for any and all purposes in a manner that will not unreasonably interfere with the rights granted to the Grantee.

Provided further that the Grantee agrees that it shall indemnify and reimburse the State of Montana for all future assessments made upon Section 22, Township 1 North, Range 25 East, Yellowstone County, pursuant to Title 7, Chapter 12, MCA as it relates to establishment of any special improvement or maintenance district by the City of Billings and/or Yellowstone County. This condition shall apply only so long as the lands are held by the state or until waived in writing by the state.

Provided, that Grantor may terminate this right of way for a material breach of any of the conditions or provisions of this deed. Before termination, the Board shall give Grantee written notice of intent to terminate and a reasonable period to cure the breach.

It is further provided that whenever said lands herein granted as a right of way shall cease to be used for such purpose, the right of way shall terminate upon notice to that effect being given to the said grantee named herein.

IN TESTIMONY WHEREOF, the State of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director, Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this _____ day of _____ A.D. 2022.

.....
Governor of the State of Montana

ATTEST:

.....
Secretary of State

Countersigned by:

.....
Director, Department of Natural
Resources and Conservation

Accepted and Approved:

.....
Authorized Signatory

.....
Printed Name and Title

Attest:

.....
Authorized Signatory

.....
Printed Name and Title