

After recording, please return to:
Renee L. Coppock
Crowley Fleck PLLP
P.O. Box 2529
Billings, MT 59103-229

AGREEMENT FOR BIRELY DRAINAGE DISTRICT RIGHT-OF-WAY DEDICATION

THIS AGREEMENT is made this _____ day of November, 2021, by and between the CITY OF BILLINGS, MONTANA, a municipal corporation, with a mailing address of 210 North 27th Street, Billings, MT 59101 (“City”), and BIRELY DRAINAGE DISTRICT, with a mailing address of c/o Renee L. Coppock, P.O. Box 2529, Billings, MT 59103-2529 (“District”).

R E C I T A L S

- A. The District has a perpetual easement for drainage purposes across certain real property located in Yellowstone County, Montana (“Birely Drain”), including the west side of the proposed Trails West Subdivision, Fifth Filing, located in the NE¼ of Section 5, Township 1 South, Range 25 East, P.M.M., Billings, Yellowstone County, Montana.
- B. The City desires to acquire a right-of-way along the Birely Drain for future drainage purposes as it relates to the City’s west end storm drainage master plan;
- C. The City approved a preliminary plat of Trails West Subdivision, Fifth Filing, with certain terms and conditions on December 16, 2019;
- D. The developers of Trails West Subdivision, Fifth Filing, desire to build a walking path, not to exceed 5 feet in width, along the Birely Drain as part of the subdivision development.

In consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. The City hereby accepts the right-of-way dedication along the Birely Drain as shown and described on the plat of Trails West Subdivision, Fifth Filing.

2. The District hereby grants to the City the right-of-way dedication along the Birely Drain as shown and described on the plat of Trails West Subdivision, Fifth Filing.

3. The District hereby reserves access to the right-of-way at any time for repair and maintenance purposes, which reservation is agreed to by the City. Maintenance of the Birely Drain will remain a responsibility of the District until such time as the parties agree, in writing to alter maintenance responsibilities. The City shall not cause any additional storm water or other waters to flow into the Birely Drain until such time as the parties enter into an agreement as to the amount of water, flow rate, and the Birely Drain maintenance responsibilities. Routine maintenance and repair of the Birely Drain and, when practical, emergency maintenance of the Drain shall occur from the west side of the Birely Drain. In any emergency situation, the Birely Drain may be reached via Stockman Avenue or from the east side of Birely Drain. If in an emergency situation the District determines, in its sole discretion, that a fence along the right-of-way or other impediment to accessing the Birely Drain must be removed, the District shall not be responsible for the cost of repair or replacement of such fence or other impediment or resulting damage to any sidewalk, trail, bike path or any private property.

4. The developers of Trails West, Fifth Filing, shall be allowed to construct a walking path, not to exceed 5-feet in width, along the east side of the Birely Drain for use of the general public. The walking path shall not impede the flow of water in the Birely Drain nor alter the bank of the Birely Drain in such a manner that water flow is impeded. By the construction of such walking path, the developers of Trails West, Fifth Filing, and the Trails West Homeowners' Association ("Association") agree to be bound by the terms and conditions set forth herein. Pursuant to Montana law, including without limitation Mont. Code Ann. Section 70-16-302, the District shall not be liable in any manner for any injury, expense, damage, cost or judgment relating to the construction of the walking path along the Birely Drain or the use thereof. The District makes no representations or warranties with regard to the suitability of the Birely Drain for the construction or use of a walking path and specifically disclaims all implied warranties, including the warranty of fitness for a particular purpose.

5. There shall be no construction or placement of any improvement of any nature whatsoever on the west side of the Birely Drain by the City, the developers of Trails West Subdivision, or the Association without the express written consent of the District, which the District may withhold in its sole and absolute discretion.

6. Maintenance and repair of the walking path is the responsibility of the Association, which is hereby granted access to the right-of-way for such maintenance and repair. Neither the Association nor the developers of Trails West Subdivision shall expand the size or scope of the walking path without the express written consent of the City and District.

7. This Agreement is binding upon the parties hereto, any third-party beneficiaries, the developers of Trails West Subdivision, the Association and their respective successors in interest. The covenants, obligations and agreements set forth herein shall run with the land.

8. In the event it becomes necessary for a party to retain an attorney to enforce any term, obligation or condition hereof, then the prevailing party shall be entitled to reasonable attorney fees and costs, including fees and costs on appeal.

9. This Agreement may not be amended or modified except by written agreement executed in the same manner as this original document.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

“CITY”

CITY OF BILLINGS, MONTANA,
a municipal corporation

By _____
Its _____

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this _____ day of _____, 2021, by _____, in his capacity as _____ of the City of Billings, Montana.

(Notarial Seal)

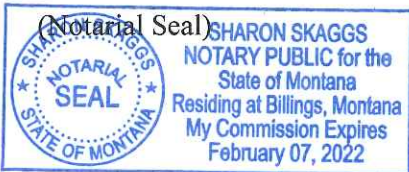
“DISTRICT”

BIRELY DRAINAGE DISTRICT

By Wade Steinmetz
Wade Steinmetz, Chairman

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this 4th day of November, 2021, by Wade Steinmetz, in his capacity as Chairman of the Birely Drainage District.



Sharon Skaggs