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WWC Engineering
550 S 24th St W, Ste 201
Billings, MT 59102

AGREEMENT FOR ENCROACHMENTS ON BIRELY DRAIN DISTRICT EASEMENT

This Agreement for Encroachments (“Agreement”), made this ____ day of _____, 2023, is by and among the **CITY OF BILLINGS, MONTANA**, a municipal corporation, with a mailing address of 210 North 27th Street, Billings, MT 59101 (“City”); **BUFFALO CROSSING LLC**, a limited liability company organized by the Fort Belknap Indian Community Council, with a mailing address of 353 Old Hays Road, Hays, MT 59527-7737, together with its successors in title to any portion of the Buffalo Crossing Property described below (“Buffalo Crossing”); and the **BIRELY DRAIN DISTRICT**, with a mailing address of c/o Reneé L. Coppock, P.O. Box 2529, Billings, MT 59103-2529 (“Birely”).

R E C I T A L S

WHEREAS, Birely has a perpetual easement for its drainage ditch and twenty-five (25) feet on each side of the drainage ditch for the purposes of the drainage of the lands, removal of surface waters therefrom, and the repair and maintenance of the drainage ditch (“Birely Easement”), which easement runs over and across real property in Yellowstone County, Montana, including without limitation the following-described lands (“Buffalo Crossing Property”):

Township 1 South, Range 25 East, M.P.M.

Section 5: That part off the N½ of Section 5, Township 1 South, Range 25 East of the Principle Montana Meridian, in Yellowstone County, Montana, described as Tract 4-A of Amended Tract 4 of Certificate of Survey No. 2735, filed of record in the office of the clerk and recorder of said county under Document No. 3539423 (“Buffalo Crossing Property”), and the Trails West Subdivision 4th Filing, filed April 28, 2020, in the office of the Yellowstone County Clerk and Recorder as Document #391830 and the Trails West Subdivision 5th Filing, Document #3998601, filed in the office of the Yellowstone County Clerk and Recorder.

WHEREAS, in order to develop Buffalo Crossing Property, City is requiring the installation of certain drainage pipes and culverts within the Birely Easement.

WHEREAS, Birely has agreed to grant to City the right to encroach upon the Birely Easement under the terms and conditions set forth herein.

WHEREAS, Buffalo Crossing has agreed to construct certain improvements within the Birely Easement as agreed with City and as described herein.

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

1. Grant of Encroachment Right. Under the terms and conditions set forth herein, Birely hereby grants to City the following encroachment rights:

- a. Culvert to Access Stockman Avenue East of the Buffalo Crossing Property. At City's direction, a culvert shall be installed by Buffalo Crossing for crossing the Birely Drainage Ditch to access Stockman Avenue east of the Buffalo Crossing Property, which culvert shall be at least sixty (60) inches in diameter and of reinforced concrete and shall be located within the proposed public right-of-way dedication for Stockman Avenue depicted on the Buffalo Crossing Subdivision plat and the Trails West Subdivision 6th Filing preliminary plat and on Exhibit 1 attached hereto and incorporated herein. City shall be responsible for the maintenance, repair, cleaning and replacement of the culvert. City shall keep the culvert free of debris and shall maintain the culvert in such a manner as to allow the free flow of water through the culvert with no impediments whatsoever. The City may require the installation of a water main underneath the culvert to be constructed by Buffalo Crossing. If other utilities are to be located near the culvert, such utility companies shall contact the Birely Drainage Ditch commissioners for permission.
- b. Culvert to Access Stockman Avenue South of the Buffalo Crossing Property. At City's direction a culvert may be installed by Buffalo Crossing to allow crossing the Birely Drainage Ditch for access to the property south of the Buffalo Crossing Property ("See Property") as shown on attached Exhibit 1, which culvert shall be at least thirty-six (36) inches in diameter and of reinforced concrete. Buffalo Crossing is responsible for receiving consent from the owner of the See Property for any work on or access to the See Property. City shall be responsible for the maintenance, repair, cleaning, and replacement of the culvert. City shall keep the culvert free of debris and shall maintain the culvert in such a manner as to allow the free flow of water through the culvert with no impediments whatsoever.
- c. Extension of Grand Avenue Culvert. Buffalo Crossing shall extend the culvert under Grand Avenue that is associated with Buffalo Crossing Property. The extension of the culvert shall be completed in a manner that allows the free flow of water through the Birely Drainage Ditch. City shall be responsible for the repair, maintenance, or replacement of the Grand Avenue culvert.
- d. The Right to Additional Future Discharge Pipe. City may add an additional future discharge pipe constructed and installed by Buffalo Crossing, no larger than ten (10) inches in size, allowing storm water to flow into the Birely Drainage Ditch at the location shown on the attached Exhibit 2, incorporated herein and labeled "Additional Future Discharge Pipe."

2. Construction. Buffalo Crossing shall be responsible for all costs and expenses relating to the construction and installation of the Additional Future Discharge Pipe, the extension of the Grand Avenue culvert, the two (2) culverts to access Stockman Avenue east and south of the Buffalo Crossing

Property, the placement of a water main under the culvert to access Stockman Avenue east of the Buffalo Crossing Property and for the maintenance, repair and replacement relating thereto. Any such construction shall not interfere with the sewer line which may be installed within the Birely Easement by the owners of or for the benefit of properties adjacent to or in the vicinity of the Buffalo Crossing Property. Buffalo Crossing shall comply with all applicable codes, laws, rules and regulations related to the installation and construction allowed hereby. All construction on, in, or around the Birely Drainage Ditch shall be conducted using professional skill and care and in a manner that does not damage the integrity of the Birely Drainage Ditch or cause soil or silt to be placed therein. Buffalo Crossing shall reclaim the portions of the Birely Easement that it disturbs by re-seeding the area with native grasses until grass is established and taking precautions to avoid the proliferation of noxious weeds. If, in the sole opinion of Birely, Buffalo Crossing's construction or City's maintenance, repair, or replacement activities in any way disturb the integrity of the Birely Drainage Ditch, Buffalo Crossing or City, whichever Birely deems responsible, shall be responsible for all expenses and costs associated with the remediation of the Birely Drainage Ditch to at least as good of condition as it was prior to such disturbance.

3. Notice. Except in cases of emergency, City shall give Birely at least 24 hours' notice before conducting any maintenance or repair within the Birely Easement. As soon as practical after an emergency entry onto the Birely Easement, City shall notify Birely and advise Birely how City will repair any resulting disturbance of, or damage to, the Birely Easement. Birely has no responsibility to notify City prior to conducting work on the Birely Drainage Ditch and shall continue to repair, maintain and operate the ditch system in accordance with decisions made by the Birely Drainage Ditch commissioners.

4. Maintenance and Repair of Birely Drainage Ditch. It is imperative that Birely have free access to the Birely Drainage Ditch for maintenance, cleaning, and repair. When conducting cleaning activities, Birely has historically deposited dirt and debris on and along the Birely Drainage Ditch bank without smoothing or re-seeding. Nothing in this Agreement shall be construed, in any way, to prevent or limit Birely's right to continue such activities.

5. No Warranties. Birely make no representations or warranties, express or implied, with regard to the Birely Easement or its suitability for the construction, encroachment, and installation allowed herein and specifically disclaim any warranty of fitness for a particular purpose.

6. Indemnification and Hold Harmless. City and Buffalo Crossing hereby agree to indemnify and hold Birely and its commissioners, agents, successors and assigns harmless from and against any and all claims, demands, damages, fines, causes of action, judgments, penalties, costs, liabilities, losses, expenses and fees (including attorney's fees) arising out of or related to rights granted and encroachments and activities allowed hereunder.

7. Entire Agreement. This Agreement is the entire agreement between the parties and supersedes any prior written or oral agreement relating to City's use of the Birely Easement or Birely Drainage Ditch as it relates to Buffalo Crossing Property. Any amendments or modifications to this Agreement shall be made in writing and shall be recorded in the records of Yellowstone County, Montana.

8. Binding Effect. The terms and conditions set forth herein shall run with the land and shall be binding on Birely, City, and Birely Crossing and their respective successors in interest.

9. Attorney's Fees. In the event it becomes necessary for any party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, then the prevailing party shall be entitled to reasonable attorney fees and costs.

[Signatures on following 3 pages.]

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

“BIRELY”

BIRELY DRAINAGE DISTRICT,
a Montana Quasi-Governmental Entity

By _____
Wade Steinmetz, Commissioner

By _____
Greg Miller, Commissioner

By _____
Raymond Kramer, Commissioner

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was acknowledged before me this _____ day of _____ 2023,
by Wade Steinmetz, Greg Miller and Raymond Kramer as Commissioners of Birely Drainage
District.

(SEAL)

[Signatures continue on following 2 pages.]

“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 _____, 2023, by _____, in his capacity as _____ of the City of Billings, Montana.

(Notarial Seal)

[Signatures continue on following page.]

“BUFFALO CROSSING”

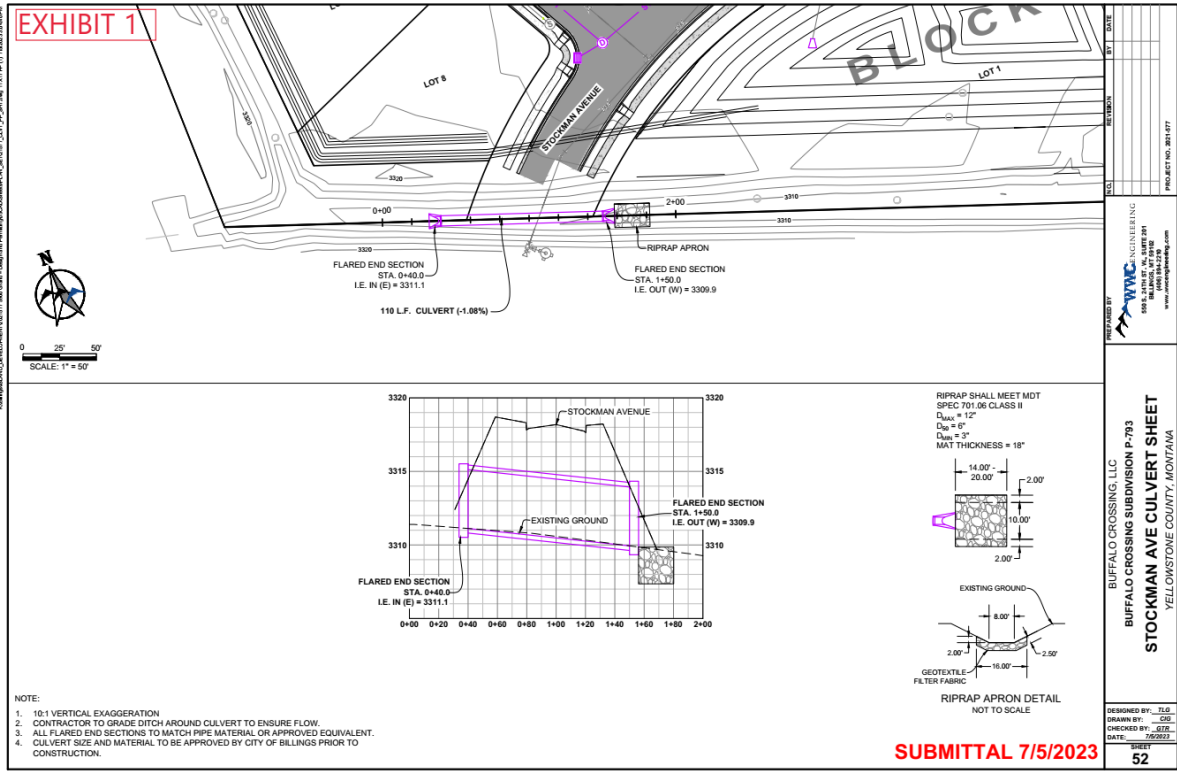
BUFFALO CROSSING LLC,
a limited liability company organized by
the Fort Belknap Indian Community Council

By _____
Its _____

STATE OF MONTANA)
 :SS
County of _____)

This instrument was acknowledged before me this _____ day of _____ 2023,
by _____, as _____ of Buffalo
Crossing LLC.

(SEAL)



DESIGNED BY: JLG
 DRAWN BY: CDE
 CHECKED BY: JGE
 DATE: 7/6/2023

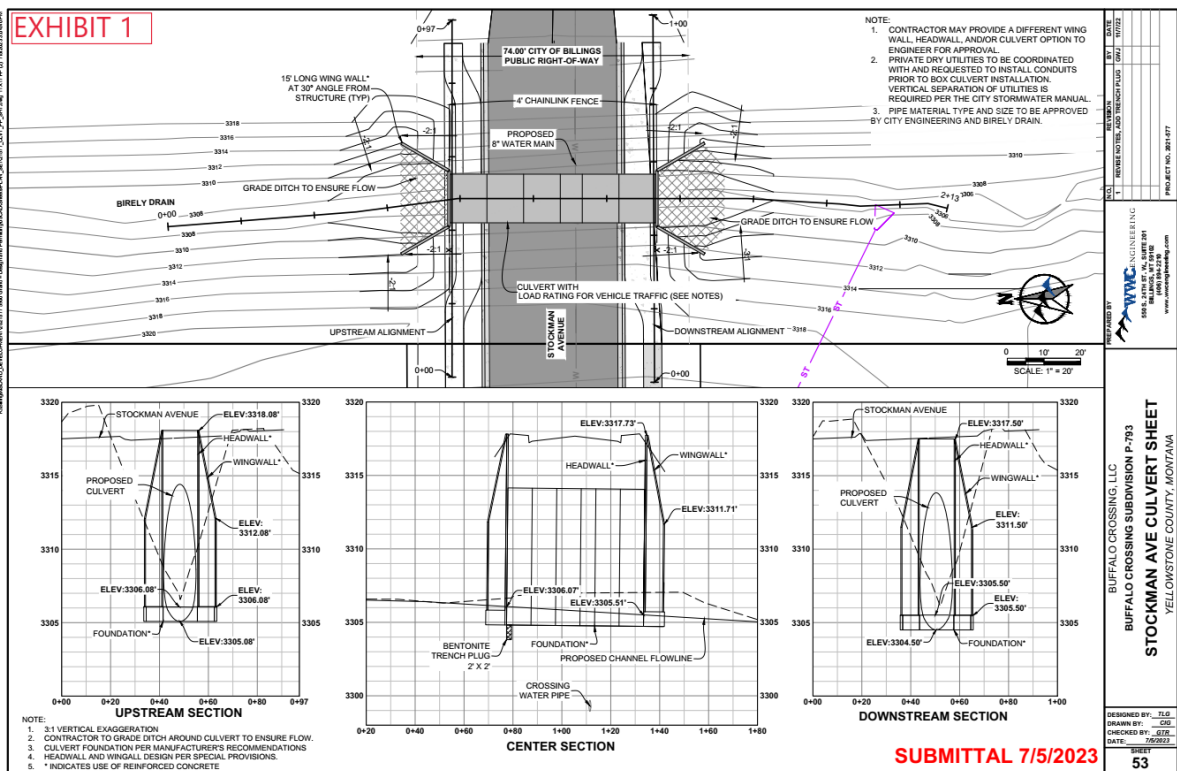
PROJECT NO. 2023-077

WMC ENGINEERING
 155 SOUTH 47TH STREET
 BILLINGS, MONTANA 59101
 WWW.WMCENGINEERING.COM

BUFFALO CROSSING, LLC
 BUFFALO CROSSING SUBDIVISION P-793
 STOCKMAN AVE CULVERT SHEET
 YELLOWSTONE COUNTY, MONTANA

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SUBMITTAL 7/5/2023



DESIGNED BY: JLG
 DRAWN BY: CDE
 CHECKED BY: JGE
 DATE: 7/6/2023

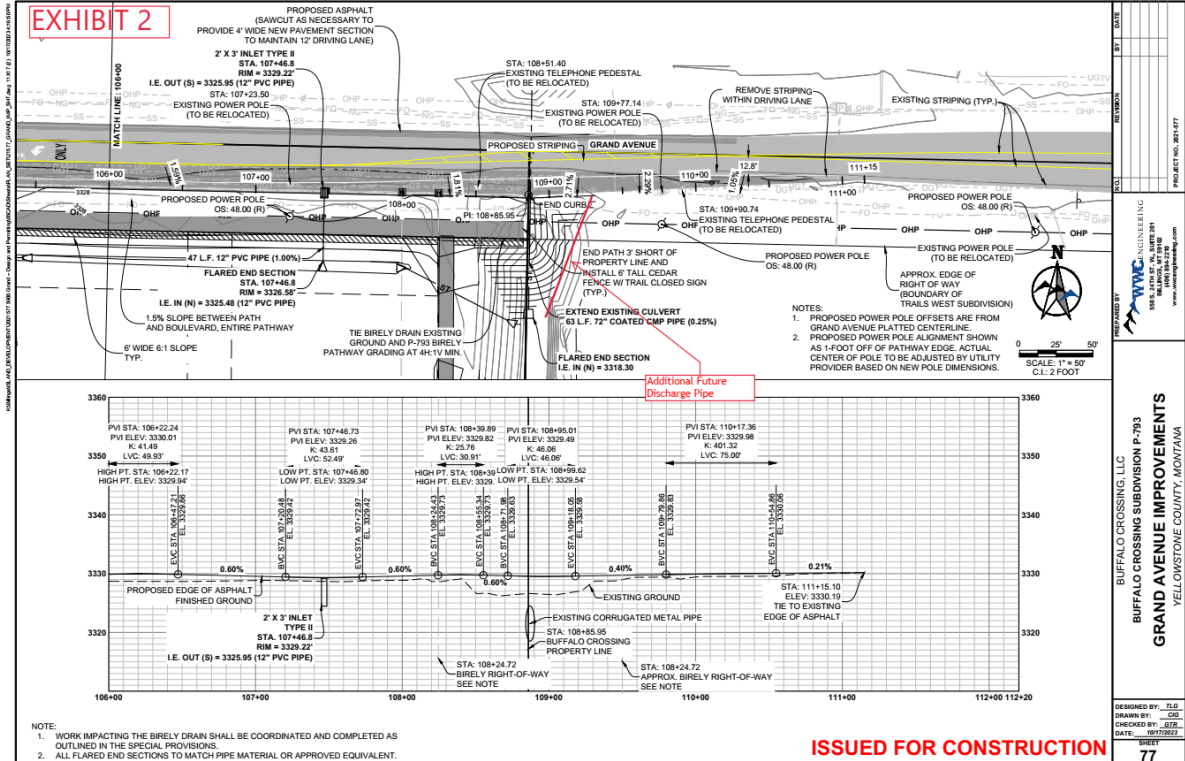
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BUFFALO CROSSING, LLC
 BUFFALO CROSSING SUBDIVISION P-793
 STOCKMAN AVE CULVERT SHEET
 YELLOWSTONE COUNTY, MONTANA

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SUBMITTAL 7/5/2023



ISSUED FOR CONSTRUCTION

