

PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this ____ day of _____, 20____, the undersigned,

_____ of _____ of STALEY FAMILY TRUST, hereinafter called "Grantors", hereby grant and convey unto THE CITY OF BILLINGS, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under and through real property as shown on the attached Exhibit A to construct, maintain, and access a sanitary sewer utility, more particularly described as follows, to-wit:

A strip of land being 45' in width and extending fully to the east and west boundaries, those being lines common to the eastern boundary of Tract 1, Certificate of Survey 2142 Amended and the western boundary of Tract 1, Certificate of Survey 2716, respectively, of an unplatted parcel of land generally described as the west half of the northwest quarter, less surveys, of Section 10, T01S, R25E, P.M.M., Yellowstone County, Montana. Said strip of land being 25' north of the southern boundary of said unplatted parcel being common with the E-W mid-section line of Section 10, T01S, R25E, P.M.M., as depicted in attached Exhibit A.

Said Perpetual Easement area containing 0.177 acres (7,726 square feet), more or less.

This Perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, using, and replacing a public sanitary sewer utility and, if necessary, a public main water line in the future across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing, using, and replacing said public sanitary sewer utility and main water line.

Grantors shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions:

1. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape or form, except as many be licensed by Grantee.
2. Grantors agree not to plant, nor cause to be planted within the easement right-of-way, any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions. The City agrees to construct any maintenance access road along the sanitary sewer pipe alignment that will allow for farm equipment access. The maintenance access road will match the width of the existing access road on the property (approximately 16-ft wide) and will be built with a minimum 1 ½" minus crushed base course (9-inch thickness or greater). The access road will only be used by the City for purposes of maintaining, repairing, and accessing the sewer pipe. It will not be open to the public and will not be used by anyone for recreational purposes. This Easement does not give the City the right to construct a public road over the access area or any other area of Grantor's property.
3. Grantors agree to obtain the permission of the Public Works Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing drainage ditches, storm and sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the City.

4. Grantors agree that it is the sole responsibility of the City of Billings to repair and remediate any surface damage due to any construction, replacement, repair or service work to the drainage ditches, storm and sanitary sewer and/or water lines by the City of Billings. The parties further agree that it is the City's obligation to maintain the easement (other than as to crops or vegetation planted by or other activities of Grantor) for its purposes, including removal of weeds, shrubs, or other natural impairments to the City's use of the easement.
5. HOLD HARMLESS AGREEMENT:
 - The City of Billings agrees to pay damages, except punitive damages, which may arise to growing crops, pasturage, fences, livestock or buildings of said Grantor caused by the City's negligence in the exercise of the rights herein granted. Grantor agrees to expressly notify the City of its allegations of the City's breach of duty of care and causal damages, and the parties will explore the possibility of reaching an agreeable resolution by informal dialogue and approval of City Council. If informal dialogue does not resolve the matter, either party may refer the disagreement concerning allegations of the breach of duty of care and causal damages to mediation by written notice to the other. Within thirty (30) days of the delivery of such notice, the parties may agree on a single, impartial mediator. Mediation shall be conducted in Billings, Montana. Each party shall pay its own attorney's fees and the costs of mediation shall be split equally between the parties. If the parties do not resolve the disagreement by mediation, then either party may bring an action at law or in equity in the Thirteenth Judicial District Court of Montana, Yellowstone County, for such relief as appropriate. Each party shall be responsible for its attorney's fees and costs of lawsuit.
 - Except to the extent arising out of the negligent acts or omissions, intentional misconduct, or illegal acts of Grantor, its successors, assigns, or anyone for whom the Grantor is legally responsible, the City of Billings shall defend, protect, indemnify, and hold harmless Grantor, and pay all costs and expenses, including reasonable attorney's fees actually incurred by Grantor, from and against any and all judgments, fines, claims, actions, causes of action, penalties, costs, damages, injuries, expenses, or other liability of any kind to the extent arising from, out of, or as a result of any construction or operations, activities (including removal or abandonment of the sanitary sewer or water main pipeline), actions or inactions of Grantee, its employees, agents, assigns, contractors, subcontractors, consultants, or any other person or entity acting through or under them, or any of them, including, but not limited to, the negligent, intentional, willful, or wanton exercise of the rights and privileges herein granted. In the event that Grantor shall bring a court proceeding to enforce this section (or otherwise reasonably incurs attorney's fees, costs and expenses) to establish the right to indemnity and prevails, Grantee shall reimburse Grantor's attorney's fees, costs, and expenses reasonably incurred in connection with establishing the right to indemnity.
 - The City of Billings shall not assign any of their rights hereunder without the prior consent of the other party, which consent shall not be unreasonably withheld.
6. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties hereto and all persons claiming thereunder.

Name: _____

Title: _____
Staley Family Trust

STATE OF MONTANA)
) ss.
County of Yellowstone)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____ to me known to be _____ for Staley Family Trust, the person whose name is subscribed to the within instrument and acknowledged to me that she/he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Signature of Notary

Printed name of Notary

NOTARIAL SEAL * STATE OF MONTANA
RESIDING AT BILLINGS, MONTANA
MY COMMISSION EXPIRES _____

ACKNOWLEDGMENT AND ACCEPTANCE OF CONVEYANCE

The Mayor and City Council of the City of Billings acknowledges receipt and hereby accepts the property interest conveyed through this instrument.

Mayor, City of Billings

ATTEST: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this ____ day of _____, 20__ , before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk of Billings, respectively, and acknowledged to me that they executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for the State of Montana

EXHIBIT A
PERPETUAL RIGHT-OF-WAY EASEMENT
GRANTOR: STALEY FAMILY TRUST
GRANTEE: CITY OF BILLINGS

