

RETURN TO  
City Clerk  
City of Billings  
P O Box 1178  
Billings, MT 59103

## ROSE PARK TRAIL EASEMENT

**THIS INDENTURE**, made and entered into this 8th day of May, 2024 (the "Trail Easement"), by and between the following:

Billings School District #2  
Administrative offices at 415 North 30th Street  
Billings, Montana 59101,  
hereinafter referred to as **GRANTOR**

and

**CITY OF BILLINGS**, a Municipal Corporation  
City Hall – 210 North 27th Street  
PO Box 1178  
Billings, Montana 59103-1178,  
hereinafter referred to as **GRANTEE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged;

**WITNESSETH THAT GRANTOR**, subject to the terms and conditions set forth herein below, does hereby grant, sell, and convey unto **GRANTEE** a perpetual, non-exclusive easement and public right-of-way to locate, construct, reconstruct, maintain, use, operate, and repair a public multi-use trail, together with the right to trim, cut, fell, and remove all trees, underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the Trail Easement as more particularly described below under the section titled Twenty (20) Foot Wide Trail Easement (the "Easement Area"), in, over, across, under, and through the real property more particularly described as follows (the "Burdened Premises"):

### EASEMENT LAND DESCRIPTION

Tract of land situated in the SW1/4 of Section 36, T. 1 N., R. 25 E., P.M.M., in the City of Billings, Yellowstone County, Montana, said easement being a portion of Tract A of Certificate of Survey No. 791 on file and of record under in the office of the Yellowstone County Clerk and Recorder, recorded February 5th, 1958 under Document No. 596282, Basis of Bearing being GPS observation;

### TWENTY (20) FOOT WIDE TRAIL EASEMENT

Commencing at the northeast corner of Tract A of said Certificate of Survey No. 791, Thence S 01° 27' 26" E along the east line of said C.O.S. 791 for a distance of 11.79 feet, to the true Easement Centerline Point of Beginning; Thence along a line in a southwesterly direction and 10.0 feet south and parallel to the north line of said Tract A the following three courses, S 56° 31' 34" W for a distance of 187.95 feet, S 58° 58' 34" W for a distance of 163.43 feet, S 69° 36' 34" W for a distance of 132.29 feet; Thence S 01° 10' 27" E and leaving said parallel line for a distance of 55.95 feet; Thence S 17° 07' 06" W for a distance of 33.89 feet; Thence S 38° 37' 14" W for a distance of 19.82 feet; Thence S 10° 56' 37" W for a distance of 77.71 feet; Thence S 12° 37' 07" W for a distance of 67.93 feet; Thence N 81° 00' 04" W for a distance of 74.81 feet; Thence N 74° 07' 07" W for a distance of 24.97 feet; Thence N 49° 52' 40" W for a distance of 75.68 feet; Thence N 29° 44' 38" W for a distance of 36.99 feet to a point 10.0 feet east and parallel to the west line of said Tract A; Thence N 01° 30' 02" W and parallel to said Tract A for a distance of 124.96 feet to a point 10.0 feet south and parallel to the north line of said Tract A; Thence N 84° 32' 26" W and along said north line of Tract A for a distance of 10.07 feet, to the terminus of said centerline of 20.0 wide easement, as shown on attached Exhibit A and incorporated, herein.

**TO HAVE AND TO HOLD** unto **GRANTEE** and to its successors and assigns forever.

Condition of the Easement Area. **Grantee** has inspected the Easement Area and accepts it in "As-Is" condition. **Grantor** makes no representations or warranties whatsoever or otherwise with respect to the physical condition of the Easement Area or the suitability of the Easement Area for **Grantee's** purpose and use. The Trail Easement is subject to all existing contracts, leases, easements, encumbrances, and claims which may affect the Easement Area (whether or not of record) and nothing in the grant and conveyance of the Trail Easement shall be construed as a covenant against the existence of any such matters.

Use and Maintenance of the Easement Area. **Grantee** shall:

- A. diligently pursue to completion any work it commences within the Easement Area and shall maintain the portion of the Easement Area where such work is being performed in a safe, debris-free condition;
- B. at **Grantee's** sole cost and expense inspect, repair, and maintain the Easement Area and any improvements constructed or installed thereon by **Grantee** or associated with **Grantee's** use of the Easement Area;
- C. promptly pay and discharge all liens arising out of any inspection, construction, repair, replacement, and maintenance done, suffered, or permitted to be done by **Grantee** on the Burdened Premises. **Grantor** is hereby authorized to post any notices or take any other action upon or with respect to the Burdened Premises that is or may be permitted by law to prevent the attachment of any such liens to any portion of the Burdened Premises; provided, however, that failure of **Grantor** to take any such action shall not relieve **Grantee** of any obligation or liability for the Trail Easement;
- D. not materially interfere with the use by, and operation and activities of, **Grantor** on the Burdened Premises, and **Grantee** shall use such routes and follow such procedures on **Grantor's** property so as to result in the least damage and inconvenience to **Grantor's** use and operation of and activities on the Burdened Premises;
- E. at **Grantee's** sole cost and expense repair any damage to any improvements on the Burdened Premises now existing or hereafter installed by **Grantor**, its successor owners, or any other parties having rights over **Grantor's** Property, to the extent such damage is caused by or attributable to (i) any construction, maintenance, repair, replacement, or any other work in connection with the Trail Easement, (ii) any other acts or omissions of **Grantee** or any of its contractors, agents, consultants, representatives, officers, employees, contractors, invitees, guests, or licensees (collectively, the "Grantee Parties"), or (iii) any exercise of the rights granted herein. **Grantee** shall promptly repair and restore, at its sole cost and expense, to its previously existing or better condition, any of **Grantor's** property (including, but not limited to, buildings, structures, playgrounds, pavement or hardtop areas, ball fields, and utilities) that may be altered, damaged, or destroyed in connection with **Grantee's** or any Grantee Parties' exercise and use of the Trail Easement and the Easement Area;
- F. not voluntarily or by operation of law assign, transfer, license, or otherwise transfer all or any part of its rights, duties, or interests in the Trail Easement without **Grantor's** prior written consent, which may be granted or withheld in **Grantor's** sole discretion. Any attempt to make an assignment in violation of this provision shall be null and void.

Indemnity. **Grantee** shall indemnify, defend, and hold **Grantor** and its trustees, auxiliaries, affiliates, officers, directors, employees, representatives, agents, invitees, and volunteers (collectively, the "Indemnified Parties") harmless from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs) incurred or suffered by the Indemnified Parties (collectively, "Indemnified Claims") caused or claimed to be by, on account of, or arising directly or indirectly from or out of (i) the exercise of the Trail Easement or use or occupancy of the Easement Area by **Grantee** or any Grantee Parties; (ii) any breach by **Grantee** or any Grantee Parties of any of the terms, conditions, or provisions of the Trail Easement; (iii) any acts, errors, omissions, negligence, or willful misconduct of **Grantee** or any Grantee Parties with respect to the Trail Easement; or (iv) the injury or death of any person, or injury to property, of any kind wherever located and by whomever owned (including without limitation the Burdened Premises), which injury or death arises out of or is attributable to the exercise of the Trail Easement or use or occupancy of the Easement Area by **Grantee** or any of the Grantee Parties. This indemnification shall not apply to the extent that the Indemnified Claims are solely and directly caused by the gross negligence or willful misconduct of any Indemnified Party.

Assumption of Risk. **Grantee** agrees to assume all risk of loss by fire, flood, earthquake, theft, accident, or casualty of any kind, which might affect the Easement Area, any improvements constructed or installed thereon by **Grantee**, **Grantee's** use of the Trail Easement, or exercise of the rights granted herein. **Grantee** waives all claims against **Grantor** and each of the Indemnified Parties for loss or damage caused by, arising out of, or in any way connected with (i) **Grantee's** use of the Easement Area, (ii) the improvements constructed or installed within the Easement Area pursuant to the Trail Easement, or (iii) the exercise of the rights granted under the Trail Easement.

Reservation of Rights. **Grantor** reserves the right to use the Easement Area, including the surface and subsurface areas within the Easement Area, and all other portions of the Burdened Premises and any improvements thereon, at any and all times for purposes that do not materially interfere with **Grantee's** permitted use of the Easement Area.

**IN WITNESS WHEREOF, GRANTOR** warrants they have good title and right to convey, free and clear of all encumbrances; the above-described interests in the real property described and have hereunto set their hand.

