

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

PERPETUAL RIGHT-OF-WAY EASEMENT

THIS INDENTURE, made and entered into this _____ day of _____, 2024 (the “Trail Easement”), by and between the following:

TREH Commercial
4701 River Drive North
Great Falls, MT 59405,
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 Easements as more particularly described below under the section titled Trail Easements (the “Easement Area”), in, over, across, under, and through the real property more particularly described as follows (the “Burdened Premises”):

SOUTHERN EASEMENT LAND DESCRIPTION (Exhibit A)

A 30-foot wide public multi-use trail easement lying 15-feet on each side of the following described centerline beginning at a point located on the west boundary of Tract 1A of Certificate of Survey No. 1596, said point being located N0° 49' 59"W a distance of 18.93 feet from the found Witness Corner; thence N70° 12' 50"W a distance of 333.29 feet; thence N77° 38' 15"W a distance of 482.76 feet; thence N51° 31' 18"W a distance of 232.49 feet; thence N31° 40' 17"W a distance of 70.02 feet to a point on the eastern easement boundary for Washington Street.

Sidelines of above-described easement shall be shortened or extended to intersect with the east easement boundary for Washington Street (County Road Petition #58) and the western boundary of Tract 1A of Certificate of Survey No. 1596.

WESTERN EASEMENT LAND DESCRIPTION (Exhibit B)

Commencing at the southeast corner of Lot 1, Block 1 of Big Iron Subdivision (Doc. No. 4001722); thence S31° 32' 41"E a distance of 115.98 to a point on the eastern boundary of Road Petition #58, said point also being the Point of Beginning; thence N45° 00' 00"E a distance of 28.09 feet; thence N00° 23' 25"W a distance of 240.46 feet; thence N83° 26' 31"E a distance of 27.54 feet; thence N00° 00' 00"E a distance of 23.07 feet to a point on the southern boundary of the right-of-way for the South Frontage Road, said point being the Point of Terminus.

Said easement contains an area of 6,086 square feet, more or less.

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

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.

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.

HOLD HARMLESS AGREEMENT:

- Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
- Grantors agree the owners of the above-described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.

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.

Condition of the Easement Areas. **Grantee** has inspected the Easement Areas 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 Areas or the suitability of the Easement Areas for **Grantee’s** purpose and use. The Trail Easements are subject to all existing contracts, leases, easements, encumbrances, and claims which may affect the Easement Areas (whether or not of record) and nothing in the grant and conveyance of the Trail Easements shall be construed as a covenant against the existence of any such matters.

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

- A. diligently pursue to completion any work it commences within the Easement Areas and shall maintain the portion of the Easement Areas 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 Areas and any improvements constructed or installed thereon by **Grantee** or associated with **Grantee’s** use of the Easement Areas;
- 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 Easements;
- 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 Easements, (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 Easements and the Easement Areas;
- 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 Easements 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.
- G. Grantee shall restrict motorized vehicles on the trail. Only motorized vehicles necessary for maintenance activities will be allowed on the trail.
- H. If the river bank is armored in the future and approved by a Professional Engineer and City Engineering, Grantor may request that southern easement be located closer to the river bank.

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 Easements or use or occupancy of the Easement Areas 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 Easements; (iii) any acts, errors, omissions, negligence, or willful misconduct of **Grantee** or any Grantee Parties with respect to the Trail Easements; 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 Easements 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 Areas, any improvements constructed or installed thereon by **Grantee**, **Grantee’s** use of the Trail Easements, or exercise of the rights granted herein. **Grantee** waives all claims against **Grantor** and each of the Indemnified Parties for loss or

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"

LEGAL DESCRIPTION

A 30-foot wide trail easement lying 15-feet on each side of the following described centerline beginning at a point located on the west boundary of Tract 1A of Certificate of Survey No. 1596, said point being located $N0^{\circ} 49' 59'' W$ a distance of 18.93 feet from the found Witness Corner; thence $N70^{\circ} 12' 50'' W$ a distance of 333.29 feet; thence $N77^{\circ} 38' 15'' W$ a distance of 482.76 feet; thence $N51^{\circ} 31' 18'' W$ a distance of 232.49 feet; thence $N31^{\circ} 40' 17'' W$ a distance of 70.02 feet to a point on the eastern easement boundary for Washington Street.

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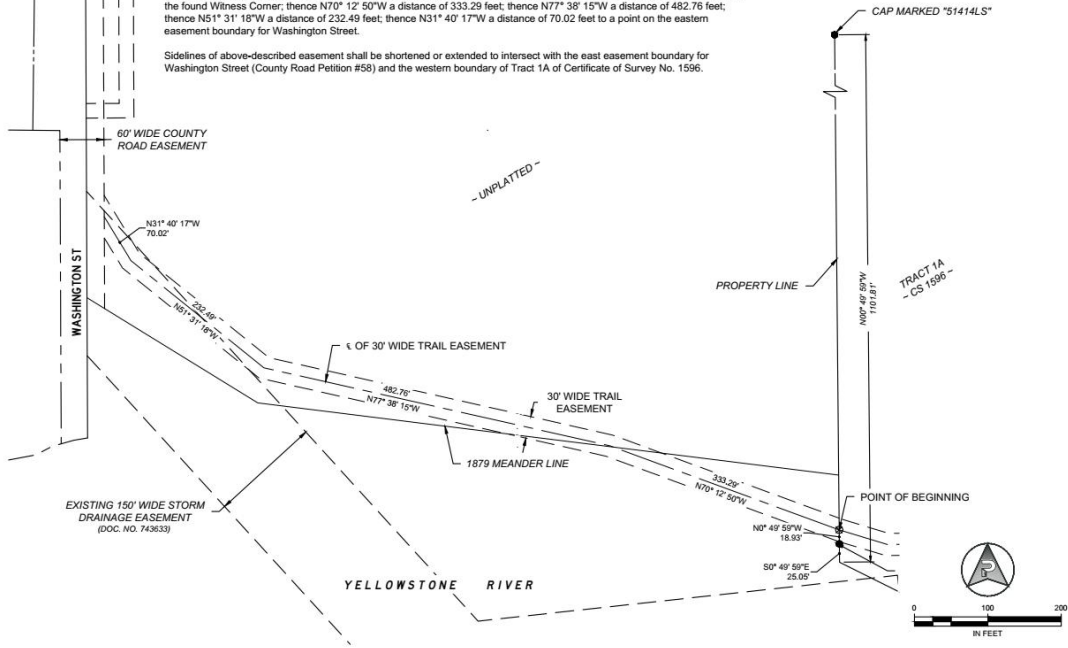


EXHIBIT "B"

