

**MEMORANDUM OF UNDERSTANDING
BETWEEN City of Billings
AND Sunset Memorial Gardens, AND Exchange City Par 3 Golf Course**

1. Parties. This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between the City of Billings Parks, Recreation & Public Lands Department (hereinafter referred to as “**CITY**”), whose address is 390 N 23rd St, Billings, MT 59101, Sunset Memorial Gardens (hereinafter referred to as “**SUNSET**”), whose address is 1721 Central Ave., Billings, MT 59102, and Exchange City Par 3 Golf Course (hereinafter referred to as “**PAR 3**”), whose address is 19 South, 19th Street West, Billings, MT 59102 .

2. Purpose. The purpose of this MOU is to establish the terms and conditions under which the **CITY**, **SUNSET**, and **PAR 3**, fund the maintenance, repair, and damage caused, due to a malfunction of the irrigation supply line starting at Bench Water District Association irrigation ditch and terminating at Mountview Cemetery. Bench Water District Irrigation Supply Line is identified in attachment “A” and referred to as the “Irrigation Line”. All parties to this MOU shall be permitted to use the Irrigation Line for all irrigation needs at the above properties, so long as they are in good standing with the agreements described in this MOU.

3. Term of MOU. This MOU is effective upon the day of execution through the Irrigation Line’s usable life. This MOU may be terminated, without cause, by any party upon 60 days written notice, which notice shall be delivered by hand or by certified mail to the addresses listed above.

4. Repair Fund Establishment. The **CITY** will establish and administer an Irrigation Line repair fund. Each party will provide a percentage, based on acres of irrigated land, to be deposited into the repair fund, totaling \$10,000 annually. Payments are due to the **CITY** August 1st, the first of which is due August 1st, 2025. The maximum repair fund balance will be \$100,000. Any funding required for the maintenance, repair, and damage caused by the Irrigation Line will first be paid out of the repair fund, until all funds are expended. At such a time that all repair funds are expended, each party will be invoiced based on the same percentages as applied to the repair fund calculation. In the event a party terminates their participation in this MOU, they will forfeit funds deposited into the repair fund.

5. Indemnity: Each Party shall indemnify, defend and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its officers, agents, and employees, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Where claims, lawsuits or liability, including

reasonable attorneys' fees and costs arise from the negligent acts of both Parties, each Party shall indemnify, defend, save, and hold the other harmless from and against only that portion of claims, lawsuits or liability, including reasonable attorneys' fees and costs, which result from the Party's negligent acts occurring as a result from such Party's performance under this Agreement.

6. Responsibilities of City of Billings Parks, Recreation & Public Lands.

The **CITY** will:

- Coordinate and Contract necessary repair and maintenance of the Irrigation Line.
- Pay the maintenance and repair costs associated with the Irrigation Line.
- Pay for 47.1% of all repairs, and any damages that may arise from an Irrigation Line malfunction.
- Establish and administer an Irrigation Line repair fund.
- Deposit \$4,710 annually to the Irrigation Line repair fund.
- On or about September 1st, provide all parties an annual statement on Irrigation Line repair fund.

7. Responsibilities of Sunset Memorial Gardens.

SUNSET will:

- Reimburse the **CITY** for 18.5% of necessary repair and maintenance of the Irrigation Line, and any damages that may arise from an Irrigation Line malfunction.
- Make all reimbursements within 30 days of receipt of invoice.
- Provide to the city \$1,850 annually for deposit into the Irrigation Line repair fund.

8. Responsibilities of City Exchange Par 3 Golf Course.

PAR 3 will:

- Reimburse the **CITY** for 34.4% of necessary repair and maintenance of the Irrigation Line, and any damages that may arise from an Irrigation Line malfunction.
- Make all reimbursements within 30 days of receipt of invoice.
- Provide to the city \$3,440 annually for deposit into the Irrigation Line repair fund.

9. Surrender of Irrigation Line usage.

If any party defaults for non-payment or terminates their portion of this MOU for any reason whatsoever, the applicable party will immediately surrender use of the Irrigation Line. Upon such surrender the **CITY** will secure the applicable parties irrigation supply valve.

10. General Provisions.

A. Amendments. Any party may request changes to this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and effective when executed and signed by all parties to this MOU.

B. Applicable Law. The construction, interpretation and enforcement of this MOU shall be governed by the laws of the State of Montana. The courts of the State of Montana shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be Yellowstone County, Montana.

C. Entirety of Agreement. This MOU, consisting of three (4) pages and one (1) drawing (Attachment 'A'), represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

D. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and a party may negotiate the terms affected by the severance.

F. Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce the MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

11. Signatures. The witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agree to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

IN WITNESS WHEREOF, the Parties have executed the Agreement this _____

CITY: CITY OF BILLINGS, a Montana Municipal Corporation

By: _____
William Cole, Mayor

ATTEST:

By: _____
City Clerk

PAR 3: EXCHANGE CITY PAR 3 GOLF COURSE

By: DocuSigned by:
Ronald Cole
AF14E34DF776444... _____

SUNSET: SUNSET MEMORIAL GARDENS

By: Signed by:
Mary Carpenter
20E37B0254F44D8 _____

