

**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 hand-delivered or by certified mail to the parties at the addresses listed above.

4. **Repair Fund Establishment.**

- (a) The **CITY** will establish and administer an Irrigation Line repair fund (“repair fund”).
- (b) Each party will contribute an agreed upon percentage to the repair fund based on acres of the party’s irrigated land. These contributions shall total approximately \$10,000 annually.
- (c) The repair fund will be used for repairs and maintenance of the Irrigation Line and will be managed in accordance with City policy. Any interest earned by the fund will remain in the fund and will be available for use in accordance with this agreement and City policy.
- (d) 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. If all repair funds are expended and additional repairs and/or maintenance are needed, each party will be invoiced based on the same percentages as applied to the repair fund

calculation and each party shall be required to contribute to the repair fund within thirty (30) days of receipt of the invoice.

- (e) In the event a party terminates their participation in this MOU for any reason, they will forfeit any 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:

- (a) Establish and administer an Irrigation Line repair fund in accordance with City policy.
- (b) Coordinate and Contract for the necessary repair and maintenance of the Irrigation Line.
- (c) Pay the maintenance and repair costs associated with the Irrigation Line from the repair fund.
- (d) Pay for 47.1% of all repairs and maintenance, and any damages that may arise from an Irrigation Line malfunction.
- (e) If the maximum fund balance has not been met at the time the annual contribution is to be made, then the **CITY** shall deposit \$4,710 annually to the Irrigation Line repair fund.
- (f) On or about September 1st, provide all parties an annual statement on Irrigation Line repair fund.

7. Responsibilities of Sunset Memorial Gardens.

SUNSET will:

- (a) Contribute 18.5% of the cost of necessary repairs and maintenance of the Irrigation Line, and any damages that may arise from an Irrigation Line malfunction.
- (b) Make all payments within 30 days of receipt of invoice.
- (c) If the maximum fund balance has not been met at the time the annual contribution is to be made, then **SUNSET** shall contribute \$1,850 annually to the **CITY** for deposit into the Irrigation Line repair fund.

8. Responsibilities of City Exchange Par 3 Golf Course.

PAR 3 will:

- (a) Contribute 34.4% of the cost of necessary repairs and maintenance of the Irrigation Line, and any damages that may arise from an Irrigation Line malfunction.
- (b) Make all payments within 30 days of receipt of invoice.
- (c) If the maximum fund balance has not been met at the time the annual contribution is to be made, then **PAR 3** shall contribute \$3,440 annually to the CITY for deposit into the Irrigation Line repair fund.

9. Surrender of Irrigation Line usage.

If any party terminates participation in this MOU as provided in section 3 or refuses or is unable to make payment as required in 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 party's 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 four (4) pages and one (1) drawing (Attachment 'A'), represents the entire 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.
- (e) **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 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: _____

SUNSET: SUNSET MEMORIAL GARDENS

By: _____

