

Upon recording, return to:
Bryce Burke
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559
Telephone (406) 248-7731

ENCROACHMENT AND EASEMENT AGREEMENT

This Encroachment and Easement Agreement ("**Agreement**") is made effective _____, between **VALLEY FINANCIAL CREDIT UNION** ("**Valley**"), and **THE CITY OF BILLINGS, MONTANA** ("**City**").

RECITALS

- A. The City is the owner of certain real property located in Yellowstone County, Montana, more particularly described as follows:

BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 58, Lot 1 – 12.

The foregoing parcel shall be referred to as the "City Hall Parcel".

- B. The City Hall Parcel also contains the Park 3 Parking Garage, with an address of 210 North 27th Street, Billings, MT 59101.
- C. Valley is the owner of certain real property located in Yellowstone County, Montana, more particularly described as follows:

LOTS 19, 20, 21 AND ALL OF LOT 22, EXCEPT THAT PORTION THEREOF BEING A STRIP OF LAND ALONG THE SOUTH LINE OF SAID LOT 22, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 22, WHICH IS ALSO THE NORTHWEST CORNER OF LOT 23, AND RUNNING THENCE IN A NORTHERLY AND WESTERLY DIRECTION A DISTANCE OF THREE-TENTHS OF A FOOT AT RIGHT ANGLES TO THE LINE DIVIDING THE SAID LOT 22 FROM THE SAID LOT 23 AND RUNNING THENCE AT RIGHT ANGLES TO THE COURSE LAST AFORESAID AND IN A NORTHERLY DIRECTION A DISTANCE OF 140 FEET MORE OR LESS, TO THE NORTH AND EAST BOUNDARY LINE OF LOTS 22 AND 23 AFORESAID, AND RUNNING THENCE APPROXIMATELY AT RIGHT ANGLES TO THE COURSE LAST AFORESAID AND IN A SOUTHERLY AND EASTERLY

DIRECTION ALONG THE BOUNDARY LINE LAST DESCRIBED A DISTANCE OF THREE-TENTHS OF A FOOT, MORE OR LESS, TO THE SOUTHEAST CORNER OF LOT 22 AFORESAID WHICH IS ALSO THE NORTHEAST CORNER OF SAID LOT 23, AND RUNNING THENCE APPROXIMATELY AT RIGHT ANGLES TO THE COURSE LAST AFORESAID IN A WESTERLY AND SOUTHERLY DIRECTION ALONG THE LINE DIVIDING THE LOT 22 FROM THE SAID LOT 23, A DISTANCE OF 140 FEET, MORE OR LESS, TO THE PLACE OF BEGINNING, IN BLOCK 58, OF TOWN OF BILLINGS, IN THE CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF SAID COUNTY, UNDER DOCUMENT #16312.

The foregoing parcel shall be referred to as the “Valley FCU Parcel”.

- D. A pedestrian Skybridge connects the building on the City Hall Parcel to the building on the Valley FCU Parcel. The City is the owner of the Skybridge and the City Hall Parcel and Valley acknowledges and agrees to the City’s ownership of the Skybridge. The skybridge connects the two properties through the alleyway between the properties.
- E. The City has entered into a purchase and sale agreement with Honaker Realty, LLC and JWT Capital, LLC for the purchase of the City Hall Parcel.
- F. The City intends to transfer ownership of the City Hall Parcel and the Skybridge to the purchasers of the City Hall Parcel.
- G. Valley and the City enter into this Agreement for the purpose of defining their respective rights and duties with respect to the Skybridge.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

AGREEMENT

1. **Grant of Easement.** The City grants to Valley and its successors and assigns an access easement for Valley and its employees, guests, and invitees to use the Skybridge for the purpose of ingress and egress to and from the Park 3 Parking Garage on the City Hall Parcel over and through the Skybridge that connects to the Valley FCU Parcel. Through this easement, the City grants to Valley and its successors and assigns, employees, guests, and invitees, access to and from the Park 3 Garage and the Park 3 Parking Garage through the Skybridge. This easement shall be appurtenant to the City Hall Parcel. For the purposes of this easement, the Valley FCU Parcel is the “Dominant Estate”, and the City Hall Parcel is the “Servient Estate”.

2. **Skybridge Encroachment.** The Skybridge connects the Valley FCU Parcel to the City Hall Parcel. The Skybridge encroaches upon and is attached to the building on the Valley FCU Parcel. The encroachment or “Encroachment Area” refers to that portion of the Skybridge that encroaches upon and attaches to the Valley FCU Building as well as the support columns under the Skybridge on the east side of the Valley FCU Building. The “Encroachment Area” means the specific area where the Skybridge attaches to the Valley FCU Building and includes the connecting portions of both the Skybridge and the Valley FCU Building as well as the support columns. The attached Exhibit A details the location and scope of the encroachment. Valley and the City consent to the encroachment as depicted on Exhibit A and further grant the City and its successors and assigns an easement to construct, maintain, and use the Skybridge and Encroachment Area.
3. **Skybridge Maintenance.** The City covenants and agrees that the City and its successors and assigns shall keep and maintain the Skybridge and Encroachment Area and ensure that the Skybridge is kept in good order and repair, consistent with maintaining the Skybridge in a condition that shall permit continued access and use through the same. The cost of maintaining the Skybridge and Encroachment Area shall be borne entirely by the City and its successors and assigns. Valley and its successors and assigns acknowledge and agree that, subject to applicable laws and regulations, the City and its successors and assigns shall, at all times, have exclusive control over and responsibility for all aspects involving maintenance or construction of the Skybridge; however, in no event shall such maintenance or construction increase the scope of the encroachment or easement described in this Agreement.
4. **Maintenance of Encroachment.** The City covenants and agrees to reimburse Valley for the reasonable costs to repair damage to the Valley FCU Building caused by the City’s maintenance of the Skybridge or the Encroachment Area. Valley covenants and agrees to reimburse the City for any and all costs to repair any damage to the Skybridge caused by Valley or Valley’s maintenance of the Valley FCU Building.

Subject to the right of the City or its successors and assigns to remove the Skybridge as detailed below, neither party shall do or permit to be done any act or thing that would tend to jeopardize the structural, cosmetic, or architectural integrity of the Valley FCU Building, the Skybridge, or the City Hall Building, nor shall they perform any act in relation to the Encroachment Area that would cause damage to any portion of the respective portions of the Skybridge or Valley FCU Building.

5. **Security and Fire Suppression.** The City and its successors and assigns shall be responsible for all security, alarm systems, cameras, and fire suppression systems located in the Park 3 Garage or the Skybridge. All systems located within the Skybridge shall be independent of and separate from the Valley FCU Building. Accordingly, no alarms, cameras, data cables, electrical wiring, or other shared systems in the Skybridge shall be connected to or operated from the Valley FCU Building or any of the equipment or systems located in the Valley FCU Building.

6. **Control and Access to Valley FCU Building.** The City or its successors and assigns shall have the exclusive right to limit or control access to the Valley FCU Building through the Skybridge, including without limitation the right to terminate access through the Skybridge or to remove the Skybridge without replacement. The City or its successor and assigns may, in its sole and exclusive discretion, limit or prohibit access to the Valley FCU Building through the Skybridge. The City or its successor and assigns shall generally keep the doors between the Park 3 Parking Garage and the Skybridge open during normal business hours. The door from the Park 3 Parking Garage to the Skybridge shall be locked during those days and hours outside ordinary business hours including hours after closing, Saturdays, Sundays, and holidays. The City or its successor and assigns may lock the door to the Skybridge for security, maintenance, or public safety purposes. Similarly, Valley and its successors and assigns shall keep the door from the Skybridge to the Valley FCU Building open during general business hours when the Valley FCU Building is open to the general public. In the event the City or its successors or assigns determines that it is advisable to remove the Skybridge without replacing the same, which decision shall be in the sole discretion of the City or its successors and assigns, then it shall provide the notice of its intent to Valley as provided at Section 7 below, and it shall effect such removal, at its sole cost, in a manner which restores the exterior and interior connecting Valley FCU Building wall to the Skybridge to reasonably conform to the exterior and interior finishes of the Valley Building at the time of its removal; provided, however, that Valley shall not be entitled to compensation from City or its successor or assigns by reason of the removal of the Skybridge, its closure or the termination of the easement granted herein except for the obligation of City and its successors or assigns to restore the exterior and interior of the Valley FCU Building as provided above in the case of the removal of the Skybridge.
7. **Destruction or Damage of the City Hall Building; Termination of Easement.** In the event the City Hall Building or the Park 3 Parking Garage are destroyed, removed, damaged, remodeled, reconfigured or reconstructed in a way that prevents or limits occupancy for either or both facilities, for any reason, the covenants, agreements, obligations, duties, or property interests, including easement interests granted to Valley by this Agreement, shall terminate.

In the event the City (or its successors or assigns) elects to close the Park 3 Parking Garage or the City Hall Parcel to the general public, it shall provide notice of such closing to Valley no less than forty-five (45) days (the “**Easement Notice Period**”) prior to the proposed closing of the Skybridge; provided, however, that such notice shall be solely for the purpose of information and not to provide Valley with a right to object to the same. The easements and other rights granted to Valley shall automatically expire and be of no further force or effect following the Easement Notice Period.

In the event the City (or its successors or assigns) elects to remove the Skybridge connecting the Park 3 Parking Garage and the Valley FCU Building, it shall provide notice of such removal to Valley FCU no less than sixty (60) days (the “**Removal Notice Period**”) prior to the proposed removal; provided, however, that such notice shall be solely for the purpose of information and not to provide Valley with a right to object to the same. The City or the owner of the City Hall Parcel shall cause the removal of the Skybridge within ninety (90) days following the Removal Notice Period or as soon thereafter as reasonably practicable if additional time for removal of the Skybridge is required.

8. **Easement and Covenants to Run with the Land.** Unless terminated as provided herein, the grant of the easements and covenants described in this Agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties of this Agreement, and their respective successors or assigns. Nothing contained in this Agreement shall grant any easement or access or use rights to the general public.
9. **Indemnity.** Each of the parties agree to indemnify and to hold the other party harmless from and against any and all liability for personal injury or property damage when such injury or damage shall result from, arise out of, or be attributable to maintenance, repair, or access undertaken by the other party during the time this Agreement is in place. Neither party shall be required to indemnify the other party for such other party's intentional or negligent acts or omissions.
10. **Insurance.** The City and its successors and assigns shall maintain commercial general liability insurance covering (i) the City's liability with respect to the Skybridge; and (ii) any construction that the City may perform in connection with the Skybridge. Such insurance shall provide limits of not less than \$1,000,000 general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the pedestrian Skybridge, or such other amounts as may be required by City Ordinances or applicable regulations.
11. **Negligent Acts or Omissions.** If the negligent acts or omissions of the owners, agents, or employees of Valley or the City cause damage to or destruction of the Valley FCU Building, the Skybridge, or the Encroachment Area, then such negligent party shall bear the entire cost of repair or reconstruction caused by the negligent acts or omissions. If either party to this Agreement fails or refuses to pay its share, or all costs in case of any negligent act or omission, the other party may perform the required repairs or restoration and shall be entitled to seek contribution from the negligent party. The party performing the repairs shall be entitled to recover attorney's fees along with all further and additional relief afforded under the law.
12. **Notices.** Any notice, consent, approval, waiver, or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by email if accompanied by confirmation of receipt, with the original sent by First Class United States Mail, postage prepaid, to the respective parties at the addresses listed below:

To the City:	City of Billings c/o City Administrator P.O. Box 1178 Billings, MT 59103
Email:	kukulskic@billingsmt.gov
Phone:	406-657-8433

With a copy to (but which shall not constitute notice to the City)

City of Billings
c/o City Attorney
P.O. Box 1178
Billings, MT 59103
Email: dahlg@billingsmt.gov
Phone: 406-657-8205

To Valley: Valley Financial Credit Union
c/o Brandon Scala
PO Box 20417
Billings, MT 59104
Email: bscala@valley.fcu.com
Phone: 406-655-2755

With a copy to (but which shall not constitute notice to Valley)

Allie Law Firm
c/o Ron Allie
P.O. Box 20417
Billings, MT 59104-0417
Email: allielaw@msn.com
Phone: 406-655-5089

Except as otherwise provided in this Agreement, the parties shall provide at least seven (7) days advance notice of any fact or circumstance affecting the terms and conditions of this Agreement, or where notice is otherwise required under this Agreement.

13. **Authority.** The undersigned persons signing this Agreement represent they have full authority, on behalf of the respective party, to enter into and bind the party to this Agreement.
14. **Confidentiality.** Except as set forth in this Agreement and any additions or amendments, the parties shall treat all information relating to the performance of the Agreement, but not as to the existence of this Agreement, as highly confidential information and trusted to the parties, solely for use in this transaction, and the parties shall not divulge or disclose any such information for any reason, unless required by law or by public records requests applicable to the City; provided, however, that the City and its successors and assigns may elect to record an Abstract of this Agreement and this duty of confidentiality shall not prevent disclosure of this Agreement or any portion of its contents on request of a third party for legitimate business reasons or as may be required by a title insurance underwriter.

15. **Breach.** Except as provided in this Agreement and any additions or amendments, each party shall disclose a known breach or other incident, to the other, by written notice, within thirty (30) days of discovery. The breaching party is allowed thirty (30) days from the notice date or such longer period as may be reasonably required to correct a breach if the breaching party commences a correction within thirty (30) days and thereafter diligently pursues the correction, to correct the breach or incident, or the other party may immediately terminate the Agreement, with written notice to the breaching party.
16. **Expenses.** Except as set forth in this Agreement and additions thereto, each party shall pay its own legal, accounting and other fees or expenses, incurred with respect to the transactions contemplated by this Agreement.
17. **Further Assurances.** The parties shall execute such further documents and take such further actions as may be necessary or convenient to the furtherance of the transactions, contemplated by this Agreement.
18. **Headings.** The Agreement headings are for reference purposes only and do not have any substantive effect.
19. **Time is of the Essence.** Time is of the essence in this Agreement and all clauses herein.
20. **Force Majeure.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement, due to any failure to perform its obligations, under this Agreement, other than a failure to pay amounts due, as a result of a cause beyond its control, which could not have been prevented with reasonable care, provided that said party has taken reasonable measures to notify the other party, in writing, of the delay.
21. **Survival.** Except as set forth in this Agreement and additions thereto, the obligation to pay amounts due, proprietary rights and the confidentiality and indemnification obligations, set forth in this Agreement, shall survive the termination of this Agreement.
22. **Counterparts.** The parties may execute this Agreement in counterparts, which taken together shall form one legal instrument.
23. **Binding Effect.** This Agreement, and the terms, conditions and covenants described herein, shall be binding on and shall inure to the benefit of the City, Valley, and their respective successors and assigns, and any person or entity that at any time hereafter shall become the owner of the City Hall Parcel, the Valley FCU Parcel, or the Skybridge, or portion thereof.
24. **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Montana. Venue shall lie in Yellowstone County.
25. **Attorney's Fees.** The prevailing party in any litigation, arbitration, or other proceeding arising out of, or relating to, this Agreement shall be entitled to recover, all costs, charges, and expenses, and all reasonable attorney and paralegal fees that the prevailing party incurred in maintaining such litigation, arbitration, or other proceeding.

- 26. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
- 27. **Severability.** Invalidation of any one of the provisions or covenants herein by judgment or court order shall in no way affect any of the other provisions herein which shall remain in full force and effect.
- 28. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- 29. **Recitals.** The Recitals stated above are incorporated into the parties' agreement herein.

DATED this ____ day of _____, 2025.

VALLEY FINANCIAL CREDIT UNION

By: _____
 Its: _____

STATE OF MONTANA)
 County of Yellowstone)

This instrument was signed and acknowledged before me on this ____ day of _____, 2025, by _____, known to me to be _____ of Valley Financial Credit Union.

 Signature of Notary Public

CITY OF BILLINGS, MONTANA

By: William A. Cole
Its: Mayor

STATE OF MONTANA)
County of Yellowstone)

This instrument was signed and acknowledged before me on this ____ day of _____, 2025, by William A. Cole, Mayor of the City of Billings.

Signature of Notary Public

EXHIBIT A – LOCATION AND SCOPE OF ENCROACHMENT

The encroachment area encompasses the West End Support and other connecting portions of the Skybridge and the VCU Building, as shown in the plans below.

