

## **TEMPORARY ACCESS AND USE EASEMENT AGREEMENT**

This Temporary Access and Use Easement Agreement (“Agreement”) is made this \_\_\_\_ day of September, 2025, between the **CITY OF BILLINGS**, (“Grantor”), a municipal corporation organized under the laws of the state of Montana, and **YELLOWSTONE COUNTY** (“Grantee”), a political subdivision of the state of Montana.

### **RECITALS**

The Grantee manages Duck Creek Bridge (“Bridge”) that crosses the Yellowstone River located in Yellowstone County, Montana.

The Grantee needs to perform repairs on the Bridge and needs land to store equipment and materials to repair the Bridge.

The Grantor owns real property at 4104 Duck Creek Road, located near the Bridge in Yellowstone County, Montana, more particularly described below and depicted in Exhibits A and B attached hereto and incorporated by reference:

Tract 2B of Amended Certificate of Survey No. 3505, recorded as Document No. 3643531 at the Yellowstone County Clerk and Recorder’s Office, Billings, Yellowstone County, Montana.

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

The Grantee desires to use 1.54 acres of the southwestern-most part of the City Parcel to store equipment and materials to repair the Bridge.

The parties enter into this Agreement for the purpose of defining their respective rights and duties under this Agreement.

### **AGREEMENT**

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

1. **GRANT OF EASEMENT.** Grantor does hereby grant to the Grantee a temporary, non-exclusive easement over the City Parcel more particularly described above and as depicted in Exhibit A.

Grantor covenants and agrees with Grantee that Grantor is lawfully seized and possessed of the above-described City Parcel and Grantor has a good and lawful right to convey it, or any part thereof.

2. **PURPOSE OF EASEMENT.** The easement is granted solely for the purpose of storing equipment and materials necessary to repair the Duck Creek Bridge (“Bridge”) located near the City Parcel, together with the right of free ingress and egress over and across said property for the above stated purpose subject to the conditions provided below.

3. **GRANTOR'S RIGHT OF ACCESS.** The Grantor retains the right to use the City Parcel, provided such use does not unreasonably interfere with the Grantee's temporary use under this Agreement.

4. **CONDITIONS.** In addition, the Grantee, its successors, assigns, agents, contractors, and employees agree to the following:

- a. **DAMAGE TO REAL PROPERTY:** Grantee shall exercise care to avoid damaging the property in any manner not consistent with the uses for which this agreement is made. If additional damage does occur it shall be the responsibility of the Grantee, its successors, agents, contractors, and employees to replace and/or restore the area to its original state.

- b. COOPERATION WITH GRANTOR: Grantee shall at all times cooperate with Grantor and comply with reasonable requests not inconsistent with the purpose for which this agreement is issued.
- c. CLEANUP AND RESTORATION: Upon completion of its work and at its sole cost and expense, Grantee shall restore the City Parcel disturbed by Grantee's activities to as near the condition it existed immediately prior to the commencement of Grantee's activities. Restoration shall include but is not limited to cleaning and clearing all occupied ground of all rubbish, excess material, temporary structures and equipment and shall be completed as set forth in Exhibit B attached hereto and incorporated by reference.

All restoration work must be completed within thirty (30) days of the completion of Grantee's repairs of the Bridge, unless otherwise agreed upon in writing by both parties.

- d. ENVIRONMENTAL COMPLIANCE: Grantee shall comply with all applicable federal, state, and local environmental laws and regulations in the conduct of its activities under this Agreement.
- e. INDEMNIFICATION: Grantee agrees to indemnify, defend and hold harmless Grantor from any and all claims, costs, expenses, obligations, demands, causes of actions, liabilities, litigation costs and reasonable attorneys fees, which are asserted against or incurred by Grantor arising from the negligent or intentional acts or omissions of Grantee or its agents, employees, contractors or subcontractors occurring during the Grantee's use of this easement.
- f. LIABILITY INSURANCE: Grantee shall obtain Commercial General Liability insurance in at least the amount of \$1.5 million each occurrence naming Grantor as a primary, non-contributory insured and shall provide written evidence through a Certificate of Insurance that such insurance has been secured covering the period of time in which this easement is in effect and used by Grantee.
- g. DURATION: This Agreement shall commence on the date this Agreement is executed and shall terminate automatically upon the earlier of July 31, 2026, or the completion of the Grantee's repairs to the Bridge and the restoration of the City Parcel as required by this Agreement. Grantor may terminate this Agreement upon written notice in the event of any material breach by Grantee that remains uncured after fifteen (15) days' written notice.

Upon termination, all rights granted to Grantee under this Agreement shall cease and the easement shall be of no further force or effect.

- h. FEE. As valuable consideration for the temporary use of the easement described herein, Grantee shall pay Grantor a lump sum fee of \$2,500, which shall cover the entire duration of this Agreement as set forth in Article 4(g). Payment shall be made within thirty (30) days of the effective date of this Agreement, unless otherwise agreed in writing by the Parties.

5. 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 Public Works Director  
P.O. Box 1178  
Billings, MT 59103  
Email: melingd@billingsmt.gov  
Phone: 406-657-3097

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 The County:** Yellowstone County Public Works Director  
Monica Plecker  
316 N. 26<sup>th</sup> St.  
Billings, MT 59102  
Email:  
Phone: mplecker@yellowstonecountymt.gov  
406 256-6812

6. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, concerning the subject matter hereof.

7. BINDING EFFECT. The rights, conditions, and provisions of this easement and conditions stated above shall inure solely to the benefit of and be binding upon Grantee and its agents, employees, contractors and subcontractors only, and cannot be assigned to successors in interest or any other person or entity without prior written approval of Grantor.

8. RECITALS. The Recitals stated above are incorporated into the parties' agreement herein.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on this \_\_\_\_\_ day of September, 2025.

**YELLOWSTONE COUNTY**

\_\_\_\_\_  
Monica Plecker  
Yellowstone County Public Works Director

STATE OF MONTANA )

County of Yellowstone )

This instrument was signed and acknowledged before me on this \_\_\_\_ day of September, 2025, by Monica Plecker, known to me to be the Public Works Director of Yellowstone County.

\_\_\_\_\_  
Signature of Notary Public

**CITY OF BILLINGS, MONTANA**

\_\_\_\_\_  
William A. Cole, Mayor

STATE OF MONTANA     )

County of Yellowstone     )

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

\_\_\_\_\_  
Signature of Notary Public