

After recording, please return to:

AGREEMENT FOR ENCROACHMENTS ON BIRELY DRAIN DISTRICT EASEMENT

This Agreement for Encroachments (“Agreement”), made this ____ day of _____, 2025, is by and among the **CITY OF BILLINGS, MONTANA**, a municipal corporation, with a mailing address of 210 North 27th Street, Billings, MT 59101 (“City”); **TRAILS WEST HOMES, LLC**, a Montana limited liability company, with a mailing address of 115 Shiloh road, Suite 2, Billings, MT 59106 (together with its successors in title to any portion of the Trails West Property described below, “Trails West”); and the **BIRELY DRAIN DISTRICT**, with a mailing address of c/o Renée L. Coppock, P.O. Box 2529, Billings, MT 59103-2529 (“Birely”).

R E C I T A L S

WHEREAS, Birely has a perpetual easement for its drainage ditch and 25 feet on each side of the drainage ditch for the purpose the drainage of the lands, removal of surface waters therefrom, and the repair and maintenance of the drainage ditch (“Birely Easement”), which easement runs over and across real property in Yellowstone County, Montana, including without limitation the following-described lands (“Trails West Property”):

Township 1 South, Range 25 East, M.P.M.

That part of the NE¼ of Section 5, Township 1 South, Range 25 East of the Principle Montana Meridian, in Yellowstone County, Montana, described as Trails West Subdivision 6th Filing, filed _____, 2025, in the office of the Yellowstone County Clerk and Recorder as Document # _____.

WHEREAS, in order to develop the Trails West Property, the City is requiring the installation of certain drainage pipes and culverts within the Birely Easement.

WHEREAS, Birely has agreed to grant to the City the right to encroach upon the Birely Easement under the terms and conditions set forth herein and as set forth in that certain Agreement for Encroachments on Birely Drain District Easement, dated May 28, 2024, and recorded May 29, 2024, in the records of the Yellowstone County, Montana Clerk and Recorder, under Document No. 4074945 (“Buffalo Crossing Encroachment”).

WHEREAS, Trails West and Buffalo Crossing LLC have both agreed to construct certain improvements on the Birely Easement as agreed with the City and as described herein and in the Buffalo Crossing Encroachment.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. Grant of Encroachment Right. Under the terms and conditions set forth herein, Birely hereby grants to the City the following encroachment rights:

- a. Culvert to Access Stockman Avenue West of the Trails West Property. At the City's direction, a culvert may be installed by Trails West for crossing the Birely Drainage Ditch to access Stockman Avenue west of the Trails West Property, which culvert shall be at least 60 inches in diameter and shall be located within the proposed public right-of-way dedication for Stockman Avenue depicted on the Buffalo Crossing Subdivision plat and the Trails West Subdivision 6th Filing preliminary plat and on Exhibit 1 attached hereto. The Buffalo Crossing Encroachment provides that Buffalo Crossing may install the culvert. Trails West shall begin the construction prior to Buffalo Crossing and shall install the culvert. Buffalo Crossing must equally share the cost and expenses therefore as may be outlined in an agreement between the parties.
- b. The City shall be responsible for the maintenance, repair, cleaning, and replacement of the culvert. The City shall keep the culvert free of debris and shall maintain the culvert in such a manner as to allow the free flow of water through the culvert with no impediments whatsoever. The City may also require the installation of a water main underneath the culvert. If other utilities are to be located near the culvert, such utility companies shall contact the Birely Drainage Ditch commissioners for permission.

2. Construction. Trails West and Buffalo Crossing shall be responsible for all costs and expenses relating to the construction and installation of the culvert to access Stockman Avenue west of the Trails West Property, the placement of a water main under the culvert to access Stockman Avenue west of the Trails West Property. Trails West shall comply with all applicable codes, laws, rules and regulations related to the installation and construction allowed hereby. All construction on, in, or around the Birely Drainage Ditch shall be conducted using professional skill and care and in a manner that does not damage the integrity of the Birely Drainage Ditch or cause soil or silt to be placed therein. Trails West shall reclaim the portions of the Birely Easement that it disturbs by re-seeding the area with native grasses and taking precautions to avoid the proliferation of noxious weeds. If, in the sole opinion of Birely, the Trails West's construction or the City's maintenance, repair, or replacement activities in any way disturb the integrity of the Birely Drainage Ditch, Trails West or the City, as applicable, shall be responsible for all expenses and costs associated with the remediation of the Birely Drainage Ditch to at least as good of condition as it was prior to such disturbance.

3. Notice. Except in cases of emergency, the City shall give Birely at least 24 hours' notice before conducting any maintenance or repair within the Birely Easement. As soon as practical after an emergency entry onto the Birely Easement, the City shall notify Birely and advise Birely how the City will repair any resulting disturbance of, or damage to, the Birely Easement. Birely has no responsibility to notify the City prior to conducting work on the Birely Drainage Ditch and shall continue to repair, maintain and operate the ditch system in accordance with decisions made by the Birely Drainage Ditch commissioners.

4. Maintenance and Repair of Birely Drainage Ditch. It is imperative that Birely have free access to the Birely Drainage Ditch for maintenance, cleaning, and repair. When conducting cleaning activities, Birely has historically deposited dirt and debris on and along the Birely Drainage Ditch bank

without smoothing or re-seeding. Nothing in this Agreement shall be construed to in anyway to prevent or limit Birely's right to continue such activities.

5. No Warranties. Birely make no representations or warranties, express or implied, with regard to the Birely Easement area or its suitability for the construction, encroachment, and installation allowed hereby and specifically disclaim any warranty of fitness for a particular purpose.

6. Indemnification and Hold Harmless. The City hereby agrees to indemnify and hold Birely and its commissioners, agents, successors and assigns harmless from and against any and all claims, demands, damages, fines, causes of action, judgments, penalties, costs, liabilities, losses, expenses and fees (including attorney's fees) arising out of or related to rights granted and encroachments and activities allowed hereunder.

7. Entire Agreement. This Agreement is the entire agreement between the parties and supersedes any prior written or oral agreement relating to the City's use of the Birely Easement or Birely Drainage Ditch as it relates to stockman Avenue and the culvert and construction described herein. Any amendments or modifications to this Agreement shall be made in writing and shall be recorded in the records of Yellowstone County, Monana.

8. Binding Effect. The terms and conditions set forth herein shall run with the land and shall be binding on Trails West, Birely, the City, and their respective successors in interest.

9. Attorney's Fees. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

[Signatures on following 3 pages.]

“DISTRICT”

BIRELY DRAINAGE DISTRICT

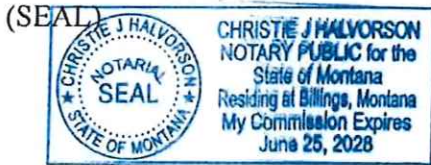
By *Kenneth Steinmetz*
Kenneth Steinmetz, Commissioner

By *Steve Miller*
Steve Miller, Commissioner

By *Edward A. Hein*
Edward Hein, Commissioner

STATE OF MONTANA)
 :SS.
County of Yellowstone)

This instrument was acknowledged before me this 17th day of June, 2025, by Kenneth Steinmetz, Steve Miller, and Edward Hein, as Commissioners of Birely Drainage District.



Christie J. Halvorson

“CITY”

CITY OF BILLINGS, MONTANA,

a municipal corporation

By _____
Its _____

STATE OF MONTANA)
 : ss.
County of Yellowstone)

This instrument was acknowledged before me on this _____ day of _____, 2025, by _____, in their capacity as _____ of the City of Billings, Montana.

(Notarial Seal)

[Signatures continue on following page.]

"TRAILS WEST"

TRAILS WEST LLC,
a Montana limited liability company

By _____
Michael D. Stock, Manager

STATE OF MONTANA)
 :SS
County of Yellowstone)

This instrument was acknowledged before me this _____ day of _____ 2025,
by Michael D. Stock in his capacity as Manager of Trails West LLC, a Montana limited liability
company.

(SEAL)
