First Amendment to Water Carriage Agreement

This First Amendment to Water Carriage Agreement (the **"First Amendment"**) is entered into effective _____, (the "Effective Date") by and between the **BILLINGS BENCH WATER ASSOCIATION** (the "BBWA"), a non-profit, private ditch corporation, having its principal office at 1111 Main Street, Suite 14, Billings, Montana 59105, and the **CITY OF BILLINGS**, a Montana Municipal Corporation (the "City"), having its principal office at 316 N. 26th Street, Billings, Montana 59103.

RECITALS

A. The City and BBWA entered into a **Water Carriage Agreement** on May 16th, 2023, hereinafter referred to as the "**Agreement**". The **Agreement** sets forth terms of the carriage of water by the BBWA for the City.

B. As of the date of this **First Amendment** to the **Agreement**, the City has made the following capacity improvements to the BBWA Ditch pursuant to section 5 of the agreement:

Project	Timeline	City Contribution	Status	Capacity/Operational Benefit
Ditch Lining	Early 2024	$83,750	Complete	15-20 cfs
Fill area near South Laurel Road	After irrigation season 2025	$80,000	Complete	TBD
Headgate Improvements	Fall 2026	Match amount up to $250,000	Construction	74 cfs (non-irrigation)

C. Pursuant to the **Agreement**, the BBWA is replacing the BBWA's Canyon Creek Flume resulting in a benefit to both the BBWA and the City. Congressional directed spending has been allocated to fund a portion of this project with the remaining balance of the improvements to be split by the benefit to each party per section 5 of the **Agreement**.

D. The BBWA is not in a financial position to fund its portion of the improvements and has requested that the City provide financing for the BBWA portion of the Canyon Creek Flume project.

NOW THEREFORE, the City and the District agree to amend the **Agreement** as provided herein:

AMENDMENTS TO THE AGREEMENT

1. The City and the BBWA agree that the Recitals stated above are true and accurate and are incorporated into this **First Amendment**.

2. The City and the BBWA agree that the **Agreement** shall be amended as follows:

   A. **Section 1 Agreement for the Carriage of Water** on page two**,**

   DELETE the following: "*The City intends to divert 30 cubic feet per second (cfs) on a regular basis during the irrigation season and up to 74 cfs during the non-irrigation season to supply the reservoirs. Understanding that volume may not always be available, the City and BBWA shall consult in good faith to reasonably determine the available carrying capacity of the BBWA ditch, at any given time, that may be used by the City pursuant to this Agreement. If the available volume is less than 30 cfs during the irrigation season, the BBWA will work diligently to resume operations to allow the City to divert the full 30 cfs volume."* and **REPLACE** with the following:

   "*The City may divert and convey through the BBWA Ditch up to 74 cubic feet per second (cfs) during both the irrigation season and non-irrigation season to supply the City's reservoirs and water treatment plant, subject to the priority provisions and operational limitations set forth in Sections 2, 3, and 4 of this Agreement. The Parties acknowledge that the City anticipates conveying between 30 and 74 cfs on a regular basis during the irrigation season.*

   The City shall be entitled to use available carrying capacity of the BBWA Ditch, up to 74 cfs, after satisfying those uses having priority over the City pursuant to Sections 2, 3, and 4 of this Agreement. The BBWA shall not limit the City's irrigation-season carriage to 30 cfs when additional carrying capacity is available. If available carrying capacity is temporarily insufficient to convey the City's requested flow, the BBWA shall work diligently to resume operations and restore the City's requested flow, up to 74 cfs, as soon as reasonably practicable, subject to the priority provisions and operational limitations set forth in Sections 2, 3, and 4 of this Agreement."

   B. **Section 5 BBWA Ditch Improvements**, on page three, after the sentence "*The cost of the improvements will be split by the benefit to each party*," **ADD** the following:

   "*The Canyon Creek Flume Project consists of replacing the existing Canyon Creek Flume and an increase in its design carrying capacity from approximately 430 cfs to approximately 550 cfs. The estimated total cost of the Canyon Creek Flume Project as of the Effective Date of this First Amendment is $2,869,718, which is estimated cost at thirty percent (30%) design. After application of approximately $1,000,000 in Congressional Directed Spending, the remaining project cost is*

estimated to be $1,869,718.

The City agrees to fund fifty percent (50%) of the remaining Canyon Creek Flume Project cost in consideration of the increased carrying capacity provided by the Project and the City's right, under this Agreement, to convey up to 74 cfs through the BBWA Ditch during the irrigation season, subject only to the priority provisions and operational limitations expressly set forth in Sections 2, 3, and 4 of the Agreement.

The Parties acknowledge that the estimated project cost of $2,869,718, based on thirty percent (30%) engineering design, is subject to change as design and construction progress. If the anticipated total project cost exceeds $3,500,000, BBWA shall consult with the City before awarding the construction contract. Both Parties must provide written approval before proceeding with a construction contract award that would result in the total project cost exceeding $3,500,000. Written approval from both Parties shall also be required before authorizing any change order or additional expenditure that would cause the anticipated total project cost to exceed $3,500,000.The Parties acknowledge and agree that one of the purposes of increasing the Canyon Creek Flume capacity from approximately 430 cfs to approximately 550 cfs is to provide sufficient carrying capacity for the City to convey up to 74 cfs during the irrigation season while preserving BBWA's priority established under Section 2 of the Agreement and its ability to serve its shareholders.

The City further agrees to finance BBWA's fifty percent (50%) share of the remaining Canyon Creek Flume Project cost without interest. BBWA's repayment obligation shall be satisfied exclusively through credits against annual fees otherwise payable by the City to BBWA under Section 8 of the Agreement. Beginning with the first annual fee payment following completion of the Canyon Creek Flume Project, the City shall reduce the annual fee otherwise payable to BBWA by fifty percent (50%), with such credits continuing until the financed amount is fully repaid, but in no event longer than fifteen (15) years. Each such reduction shall constitute repayment by BBWA of an equivalent amount of the financed balance. The Parties shall document annually the amount credited against the annual fee and the remaining outstanding financed balance."

The current, original **Agreement** remains in full force and effect, except as expressly amended by this **First Amendment**. In the event of any conflict between the **Agreement** and the terms of the **First Amendment to the Water Carriage Agreement**, the terms of the **First Amendment to the Water Carriage Agreement** shall govern.

IN WITNESS WHEREOF, on this___ day of _____ 2026, each of the parties has executed this **First Amendment to the Water Carriage Agreement** to be

incorporated as part of the original **Agreement** dated May 16th, 2023.

BILLINGS BENCH WATER ASSOCIATION

By: _____

Name: _____

Title: _____

Attest

By: _____
SECRETARY, BBWA

CITY OF BILLINGS

By: _____
MIKE NELSON, MAYOR

Attest:

By: _____
DENISE R. BOHLMAN, CITY CLERK