

After Recording Return To:

City of Missoula
435 Ryman
Missoula, Montana 59807

STORM WATER PIPELINE EASEMENT

THIS EASEMENT AGREEMENT (“**Agreement**” or “**Easement Agreement**”) is made as of this ____ day of _____, 20__, by and between _____, with the address of _____, (“**Grantor**”), and the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana, whose address is 435 Ryman Street, Missoula, MT 59802 (“**Grantee**”), 435 Ryman St, Missoula, MT 59802, a permanent easement over and along the full width and length of the premises described as follows, to-wit: (Legal Description below)

As shown on Exhibit B attached.

The parties to this easement agree that the above-described permanent easement shall be governed by the following terms, conditions, and restrictions:

- 1. Permanent Easement.** The permanent easement shall include the right, privilege, and authority of Grantee to:
 - A. Excavate for, and to construct, build, install, lay, patrol, operate, place, maintain, repair, replace, relocate, inspect, add to, and remove an underground storm water pipeline or pipelines, with all appurtenances incident thereto or necessary therewith, including aboveground valve boxes, or manholes, for the purpose of carrying or conveying storm water, and for similar uses in, under, and across the said premises, and make excavations therefor from time to time, in, under, and through the above-described premises within said easement, and Grantee shall have the right to reasonable entry, access and temporary use of property immediately adjacent to said Easement for necessary activities related to constructing, maintaining, occupying, improving, repairing, and removing the storm water infrastructure and associated facilities located within the Easement Area.
 - B. Authorize third parties to access and use the Easement Area for the purpose of connecting to the City-owned storm water facility located thereon.

- C. Remove from the Easement Area any vegetation, buildings, structures, fences, fill, or other materials or obstructions, or appurtenances attached to or connected therewith, for any reason; and
 - D. The right of ingress and egress in, under, over, across, and through the Easement Area at any and all times for any purpose. Grantor shall at all times upon reasonable notice from Grantee remove any surface obstructions or open gates which would otherwise prevent ingress or egress by Grantee. Grantee shall not be responsible for costs associated with the removal or replacement of surface obstructions placed in the Easement Area by the Grantor.
- 2. Prohibited Activities.** The Grantor is prohibited from engaging in any activity within the Easement Area, or use of the Easement Area, or allowing another to engage in or use the Easement Area, in any manner inconsistent with the purposes of this Easement or detrimental to the Grantee's use of the Easement, including but not limited to:
- A. Excavation or the placement of fill or material that would serve as an embankment in the Easement Area without the prior express written consent of Grantee.
 - B. Placing, installing, or constructing any buildings, structures, fences, fill, trees, shrubs, or other materials or obstructions without the prior express written consent of Grantee. Planting of grass shall not require consent of the Grantee.

Should such written consent be given, Grantee will set forth the conditions under which such activity may take place, including a stipulation that all risks of damage to the pipeline shall be assumed by Grantor, its successors, or assigns.

- 3. Indemnification.** To the extent permitted by the law, Grantee will indemnify and hold harmless Grantor, its heirs, and assigns, from claims for injury to person or property as a result of the negligence of Grantee, its agents, or employees in the use of the permanent easement, unless caused by Grantor's negligent or willful conduct or Grantor's failure to fulfill any duty owed to another.
- 4. Restoration.** Grantee, upon the initial construction and upon each and every occasion that the easement is used, shall restore the premises of Grantor, and any improvements disturbed by Grantee, to as good a condition as they were prior to any such installation or work, including the restoration of pavements, gravel areas, topsoil, and lawn.
- 5. Hazardous Substances.** Grantee assumes no liability for any hazardous waste on or from this Property. Grantor, its successors and assigns, shall indemnify and hold harmless the Grantee, its officers, employees, and agents against any and all liabilities, damages, penalties, losses, claims, demands, actions, suits, and judgments (including attorney fees and costs), and any costs or expenses incurred resulting from the presence of hazardous waste onto or from the Easement Area, including any and all costs associated with clean up or remediation that may be required. This provision shall not apply to a release of hazardous waste onto or from the Easement Area caused by the officers, employees, or agents of Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.

- 6. No Waiver or Abandonment of Grantee's Rights.** Failure of Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. No delay by or failure of Grantee to exercise its rights under this Easement shall be construed as abandonment of the Easement by Grantee.
- 7. Easement to Run with the Land.** This Easement, and the covenants and agreements contained in this Easement, shall run with the land and inure to the benefit of and be binding and obligatory upon the heirs, executors, administrators, successors, and assigns of the respective parties.
- 8. Governing Law and Venue.** The terms and conditions of this easement shall be governed by the laws of the State of Montana; and the venue for any dispute pertaining to this easement shall be in the Fourth Judicial District, Missoula County, State of Montana.

Dated this _____ day of _____, 20____.

Printed Name:(Grantor)_____

Signature:_____

Title:_____

Notary Block

State of _____

County of _____

The attached record, was acknowledged before me on _____(Date)
by _____, (Name of signer(s))

_____ (Notary's Signature)

[Affix stamp]

ACCEPTED ON BEHALF OF THE CITY OF MISSOULA BY:

Andrea Davis, Mayor

ATTEST:

Claire Trimble, City Clerk

(STAMP)