

Missoula Parks and Recreation Board Referral

Citizen or Organization Name: Northwestern Energy/Michael Cassidy

Staff Contact: David Selvage

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Phone: 552-6252

E-mail: dselvage@ci.missoula.mt.us

Referral to: Missoula Parks and Recreation Board

Requested date for Board consideration:
January 11, 2022

Item: Overhead Utility Easement request for power and communications lines through East Caras Park/Parking Commission property and Ron McDonald River Front Trail property.

Motion/Action requested:

I move the Missoula Parks and Recreation Board recommend to the Mayor and City Council **approval/denial** of an easement for overhead utility lines crossing East Caras Park - Parking Commission property, and the Ron McDonald Riverside Trail property to include conditions as described in the staff report recommendations and exhibits.

Background information:

Northwestern Energy is renovating and upgrading their Downtown Missoula Substation to include the overhead supply and distribution lines and poles that are connected to it. The NWE project will take nearly a year to complete and will have temporary and permanent impacts (both positive and negative) on the parklands and trails that are located in the vicinity and on both side of the river.

The City granted a 120' wide utility easement across the East Caras/Parking Commission properties in 1985 that serves the downtown power substation. An additional easement was granted for minor expansion of the substation into the Parking Commission's area of responsibility. In 2013, the city granted a 10' wide overhead easement to the Health Information Exchange of Montana (HEIM) to attach a fiber optic line to existing NWE poles that are located outside of a recorded easement. NWE has committed to work with HEIM to modify their

easement to follow the new utility easement and lines. NWE will abandon its easements and overhead lines that run west, across Beartracks Bridge and over Caras Park just upstream of Brennan's Wave – these lines serve the Reserve St area. Northwestern Energy is proposing to (re)move the Reserve St lines and poles so that they run more directly cross the river, necessitating a crossing over public land used for East Caras Park and parking commission operations. This aspect of the proposal is a tangible benefit to Caras Park both visually and aesthetically – especially given the improvements being made to the park.

The tradeoff is that existing overhead utility lines that cross the river will be concentrated between Pattee Street and Higgins. The proposed easement for the overhead crossings would further reduce the redevelopment potential of portions of East Caras and adjacent public parking lot properties; however, removal of existing overhead powerlines on the west half of the lands will provide a larger unencumbered footprint for redevelopment. The recently adopted Downtown Parks Master Plan does not contemplate uses or improvements that would materially conflict with the grant of easement(s) as requested.

The proposed new and renovated poles and lines associated with the request have been planned to reduce potential conflict with City plans for future widening of affected river side trails. NWE has worked with Parks and Recreation to avoid and reduce potential impacts on several existing park trees (Map Attachment 3). The proposed overhead alignments will provide a minimum of 41' of clearance from existing grade over the parking lot and Caras Park. This alignment may require future pruning of the existing Bur Oak trees for clearance from the powerlines. Bur Oak can grow to 65' height and 100' canopy spread at maturity. City Forestry valued these park trees at just over \$58K.

No utility related construction work within the park or the paved trail system should be permitted to occur on weekends or legal holidays. This will ensure any scheduled weekend activities (fun runs, weddings, park events) will not be unduly disrupted.

Staff notes that the city does not require a substantive fee/charge for new public utility easements. If approved, recordation and applicable fees shall be the responsibility of NWE.

Staff recommends approval of the requested overhead utility easement as conceptually shown in Attachment 5, with conditions.

Recommended conditions if approved

- Provide legal description and exhibit for proposed Overhead Utility easement including provisions for any anchoring systems to be permanently located in the public properties involved. This must be supplied before Council review and action can be scheduled.

- No utility pole construction in the park may be commenced until easement documents have been formally approved and signed by the city and recorded.
- NWE, or its contractor(s), shall obtain a Park Vehicle Access Permit to access, construct, install new power poles, and remove old poles on parklands. NWE shall post a returnable performance bond specific to this project in a sufficient amount to cover 110% of expected cost of site restoration(s).
- NWE project staff and the contractor shall meet with the Park Maintenance Manager one week prior to start of construction to establish the project construction limits; establish date the park irrigation system will be amended or shut off to facilitate construction; arrange for City Parks staff to mark existing irrigation system lines, control wires, valves, heads, and other park infrastructure that could be impacted within the project construction limits, and review public safety and convenience needs as well as any site concerns.
- NWE shall take digital photos of pre-construction park conditions and retain them until park restoration is complete and accepted by the City Parks & Recreation Department.
- NWE contractor shall provide, install and maintain temporary construction fencing at the project limits to maintain public safety and limit potential liability due to construction in the park.
- NWE, its contractor's and sub-contractors shall not drive or park vehicles in the park except to deliver equipment and materials or for construction of the project. All project related vehicle access across the parklands/trails shall be controlled by NWE to limit and minimize damage to park infrastructure and turf that is outside the project construction limits.
- NWE shall retain a qualified, experienced landscape irrigation contractor to affect any required park site repairs due to project construction impacts as follows:
 - Damaged irrigation lines, wires, heads, valves, etc.... shall be professionally repaired in place using new materials. All park irrigation repairs shall be inspected and approved by Parks Staff before being backfilled and covered by the contractor. Irrigation system shall be run and tested by the Parks Manager for any problems resulting from said repairs, prior to signing off on HIEM's completion of project.

- Excavated, compacted, damaged and rutted irrigated park turf areas shall be treated to relieve compaction, leveled to match existing grade with an approved topsoil; sodded with grass type and source pre-approved by the Park Maintenance Manager.
- All rock and debris greater than ¼" in diameter and generated by the construction project shall be raked up and removed from turf areas after landscape repairs are complete
- Any request to change, modify, or vary from project conditions must be submitted in writing by NWE's project manager for the review and written decision of the Parks Maintenance Manager.

Attachments:

- NWE e-mail request for easement dated 12/1/2013
- 5 Maps: Vicinity, Location of requested new easement(s). Existing easements; Net result of proposed easements and modifications; and, Pole placement and trail expansion plan.
- Park Tree appraisal from Urban Forestry
- DRAFT City Granted Utility Easement for crossing public park, trail, and parking lot lands

Attachment 1. NWE request letter/email 12/16/21

David,

As a follow up to our previous conversations and our most recent on-site visit of Tuesday, 12/14/21, I'm writing to provide as much detail as possible with regards to our request for an overhead electric transmission power line easement at East Caras Park and the River Front Parking Lot. We are planning extensive work in this area including a complete substation rebuild as well as updating both our transmission & distribution systems. This work will increase reliability and attempt to address any future projected capacity needs. The need for this new easement area arises from the fact that we will be relocating an existing line (and extinguishing the existing easement for this particular line only) that currently runs out of our substation heading West, crosses over Higgins St. into Caras Park and then heads in a Southwesterly direction across the Clark Fork River (directly overhead at Brennan's Wave). We will be moving this line to the East side of Higgins St. where it will head South from our substation and connect with another of our existing lines before crossing the Clark Fork River. This move would necessitate a new easement from our substation property to the point where our lines cross into Montana DNRC "jurisdiction" at the Clark Fork River and would span two properties identified by Geocodes 04-2200-22-04-01-0000 & 04-2200-22-2-04-01-0000.

Other details to consider:

-The overall project is scheduled to take place from 2/1/22 thru 11/30/22. The work within the new proposed easement area itself would take place intermittently throughout these months and we will work with both the Parks Dept. and the Parking Commission to coordinate closures of the walking trail and/or parking lot. Specific dates can't be pinpointed at this time but we will provide as much lead time as possible when notifying the respective departments.

-We will be replacing several of the wooden structures with steel structures. These new structures are self-supporting and will eliminate the need for many of the existing guy wires and, although they're larger structures, this should reduce the overall encumbrance in the area. Placing these new structures will require the use of heavy equipment/machinery. Our preferred ingress/egress for this would be across the grass covered park area but that would be dictated by the City of Missoula and the underlying water lines and any other underground facilities in the area. We will use any and all means necessary to mitigate the damage caused by our work and would be responsible to return the properties to as close to pre-construction condition as possible. We will apply for all necessary VAPs required by Parks. We are also in the process of acquiring any/all permitting required for the levy area through the Army Corp of Engineers and will have that in hand prior to working on/near the levy. We should have our new Montana DNRC permitting in hand shortly as our applications were approved at their most recent land board meeting held this past Monday, 12/13/21.

-We will be removing the two large pine trees on our substation property and replacing that structure which is where this new proposed easement would begin. We'll have a clearance of approximately 41' in this new easement area. At our on-site meeting it was noted that our corridor is in conflict with at least one of the trees in the park area. NWE acknowledges these trees as a public asset and will work closely with Parks to arrive at the best possible resolution to this conflict.

I hope I've provided all of the necessary details in order for you to consider our request for easement but please let me know if you need anything further.

Thanks again!

Mike Cassidy

Real Estate Representative

Michael.Cassidy@northwestern.com

Internal Ext. 76435

Attachment 2: Vicinity Map

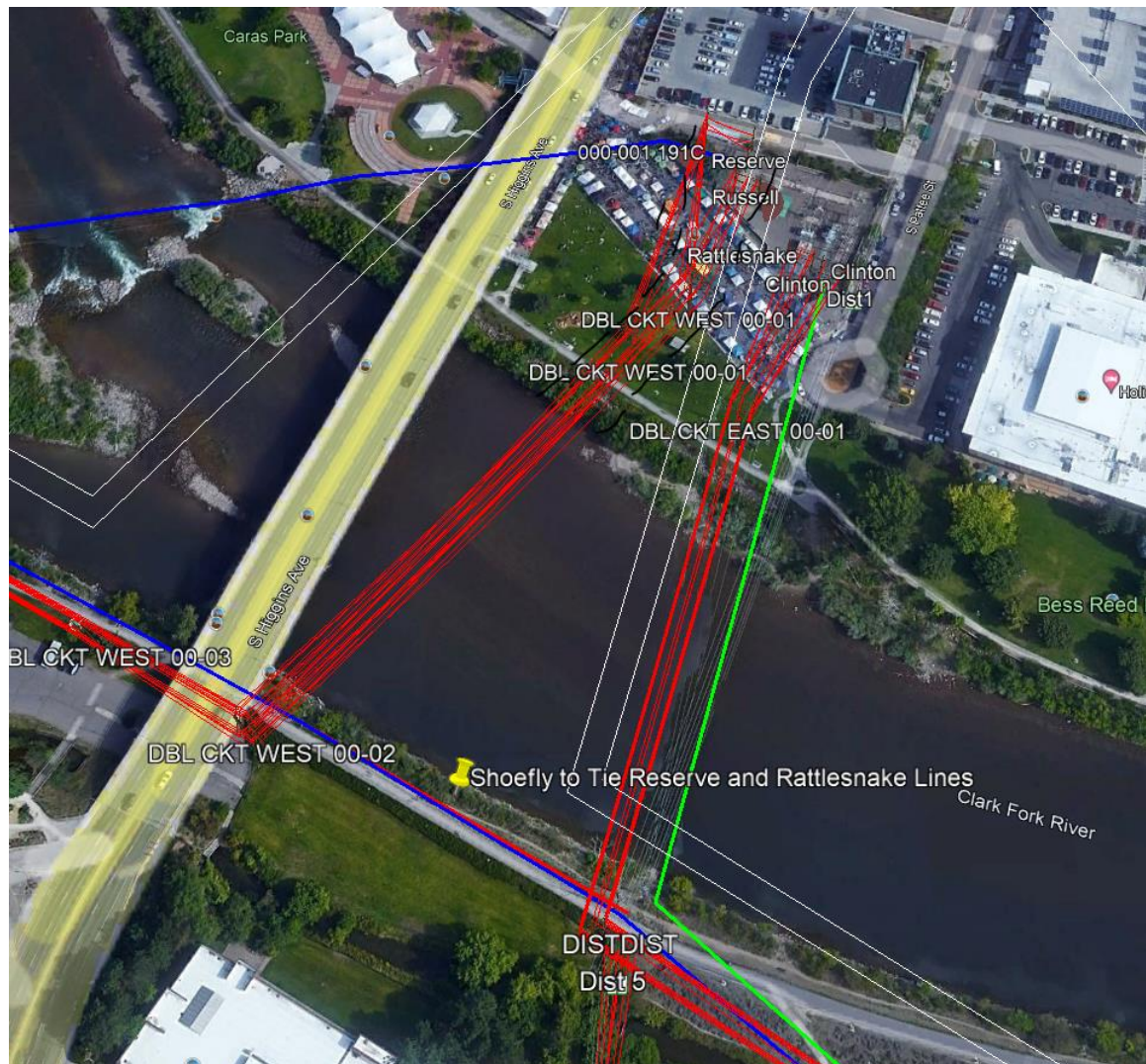


Attachment 3: Map of NWE easement request

○ 406-542-5935

● 406-241-8096

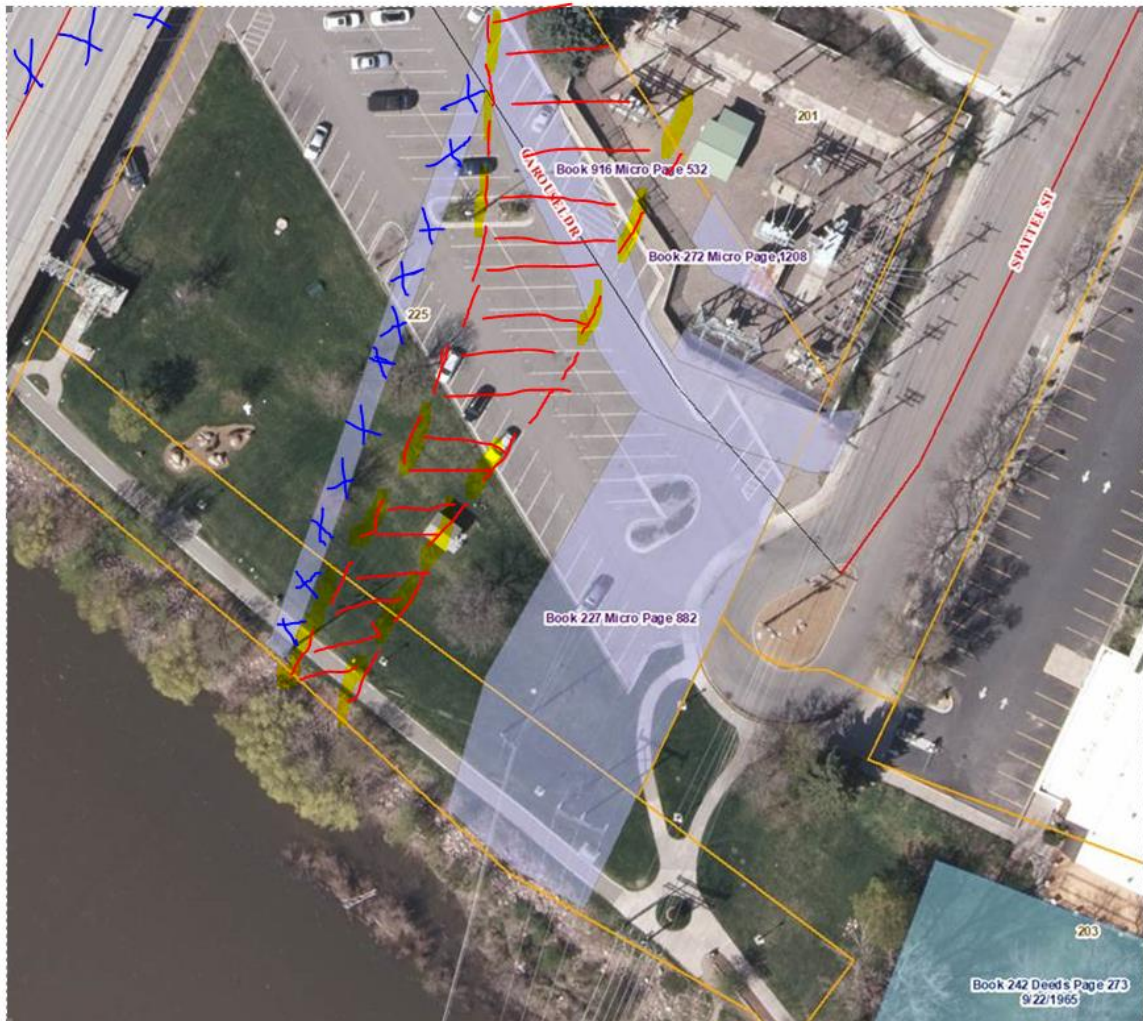
1903 S. Russell St. | Missoula, MT 59801



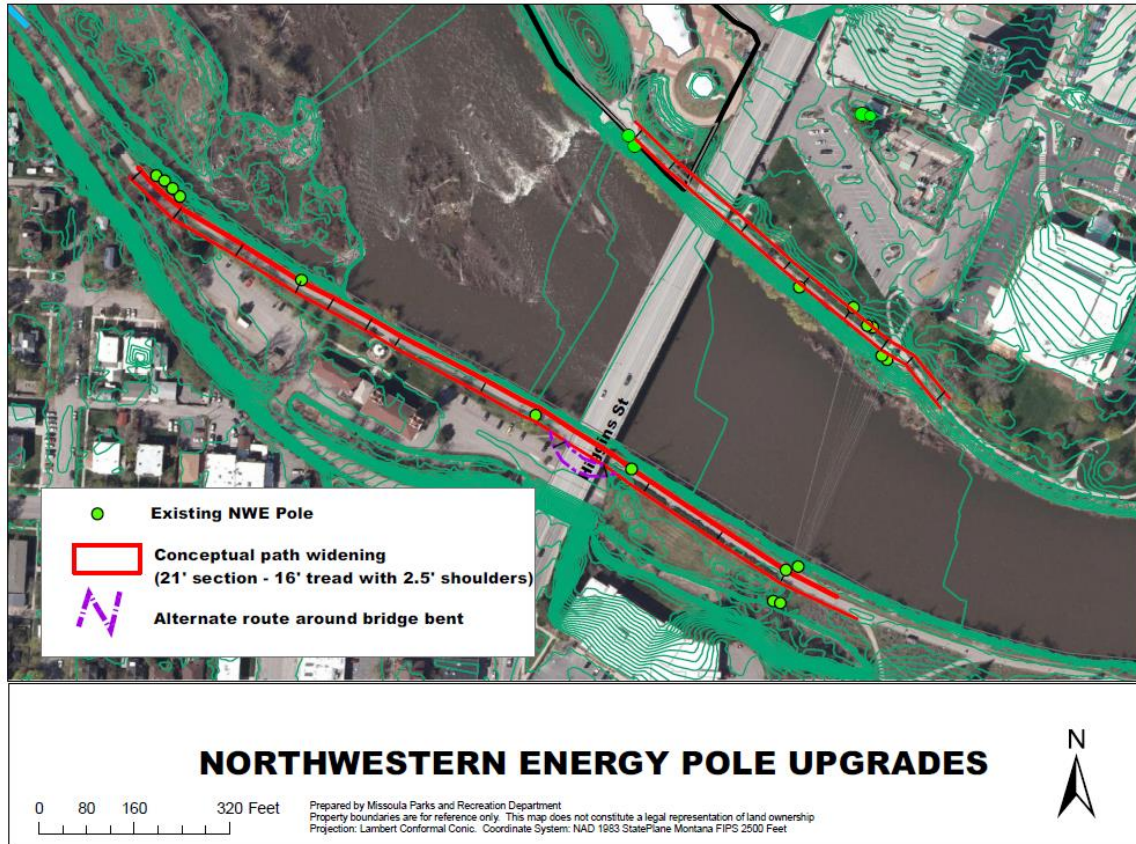
Attachment 4. Existing overhead utility easements in East Caras/public parking properties



Attachment 5 – net result of easement amendments: Dashed yellow-red new; blue X's to be abandoned.



Attachment 6: Map showing utility poles and planned future trail expansion.



Attachment 6: Urban Forestry Park Tree Appraisal

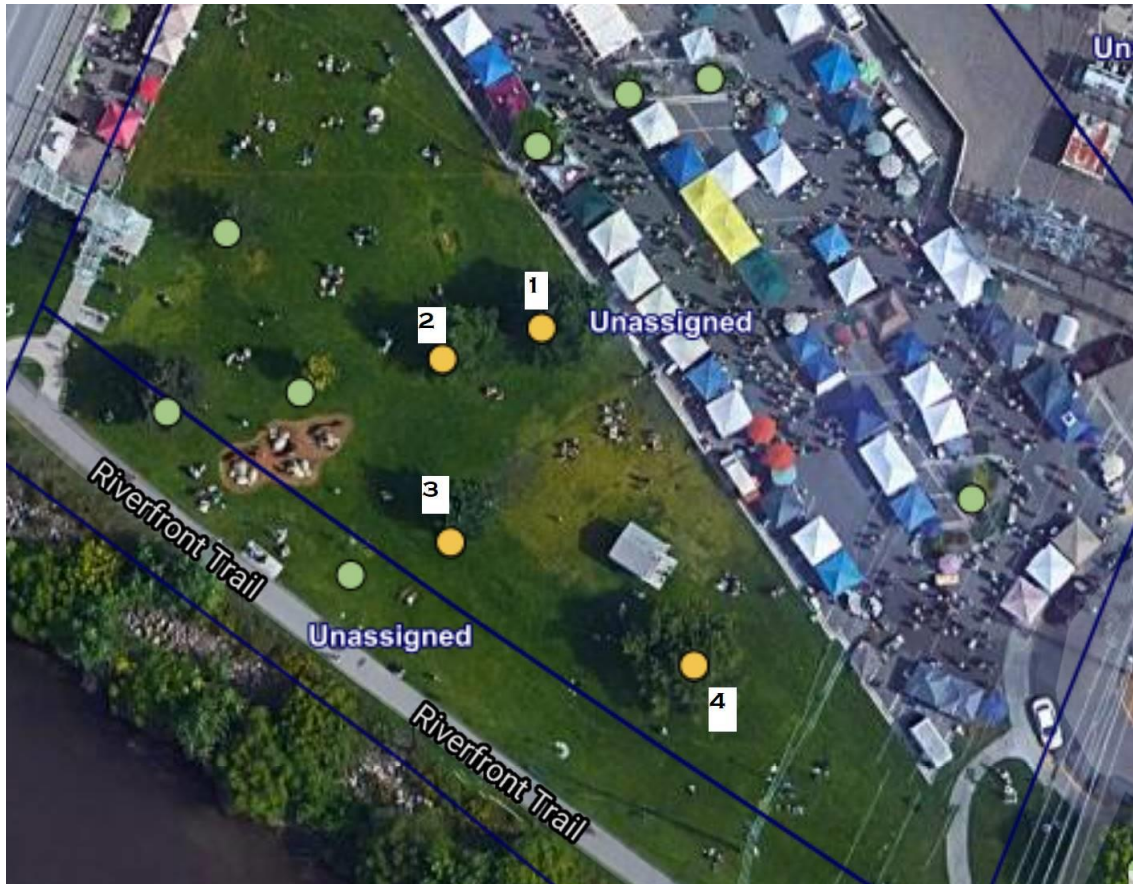
The following is the appraised values for the 4 Bur oaks in East Caras based on the observed structure and conditions as of December 14, 2021. The current replacement calculation for a 2" caliper ball and burlap Bur oak is \$101.70 per square inch and all calculations are based on this metric. Utilizing the 10th Edition of the Guide to Plant Appraisal and the Market Valuation per the Trunk Formula Technique and Hedonic Regression Research the following valuations have been identified:

Tree 1 – is a 16" diameter at breast height (DBH), Bur oak in excellent condition. There is an assumption of no depreciation costs for this tree as it is in excellent condition and requires no corrective pruning, site mitigations and no limitations for the species soil volume needs. Therefore, the calculated appraised value is \$20,442.61.

Tree 2 – is 13" at DBH, in Excellent condition. There is an assumption of .9 depreciation in value due to structural pruning requirements. The site retains the depreciation value of 1, which retains the sites full value.
Therefore, the appraised value is \$12,144.

Tree 3 – is a multi-stem tree with 5 trunks of 6" DBH each. Due to the poor structure the value is no more than the current cost of replacement of \$500 for a new Memorial tree.

Tree 4 – is 18" at DBH, in Excellent condition. There is an assumption of no depreciation as the structure and site are appropriate for the trees condition rating.
Therefore, the appraised value is \$25,867.



Each of these trees would incur a minimum of \$500 each for labor costs associated with replanting in addition to the above appraisals for each tree.

Marie Anderson

Urban Forestry Program Specialist 2

(406)529-4607

ISA Certified Arborist Municipal Specialist

ISA Certified Arborist RM-7249A

ISA Qualified Tree Risk Assessor

Attachment 7. DRAFT City Granted Utility Easement for crossing East Caras Park; Ron McDonald North River Side Trail; and adjacent public parking lot lands
(FOLLOWS THIS PAGE)

Return to: City Clerk
City of Missoula
435 Ryman Street
Missoula, MT 59802

DRAFT

CITY GRANT OF UTILITY EASEMENT

Geocode:
SUID:

THIS CONVEYENCE made this _____ day of _____, 2022 by and between the City of Missoula, a municipal corporation, organized and existing under and by virtue of the laws of the State of Montana, referred to as "Grantor" or "City", and Northwest Energy, [address], Missoula, Montana 5980 [] , referred to as "Grantee".

WITNESSETH

That the Grantor, for and in consideration of \$1.00 and other good and valuable consideration to him/her by the Grantee, receipt of which is hereby acknowledged, The Grantor hereby grants, conveys and warrants to the Grantee, its successors and assigns, a permanent overhead utility easement and right-of-way across real property, for the purpose of constructing, maintaining, altering, reconstructing and/or removing private utility lines and other related facilities and appurtenances under, along, and across that certain real property located in Missoula County, Montana, and more particularly described as follows and by reference incorporated into and made part of this instrument. Said Utility Easement being located over and across a portion of the following described real property:

[Legal Description], as recorded in the office of the Clerk and Recorder, Missoula County, Montana.

Said easement over and across said portion being more particularly described as follows:

[Easement Description or the description can be on Exhibit A] and being more particularly described and shown on Exhibit A by this reference made a part hereof.

TERMS Grantor does hereby designate, grant, and convey a public utility easement for the purpose of constructing, maintaining, improving, repairing, and removing said utilities and related appurtenances as described on the attached Exhibit "A". This conveyance shall be subject to the conditions that the Grantee or its assigns shall have the right at all times of reasonable access to said public utility easement and to enter upon such easement for the purpose of constructing, maintaining, improving, repairing, or removing the utility and related appurtenances, and shall have the right to reasonable entry upon and temporary use of the property immediately adjacent of said easement for necessary activities related to constructing, maintaining, improving, repairing, or removing the utility and related appurtenances, provided, however, that the Grantee or its assigns shall make only such excavation as is reasonably necessary for the installation, maintenance, improvements, repair, or removal of said utilities, that said utilities shall be placed only within said easement, and that each time it is necessary to enter upon said premises for the above described purposes; excepting emergencies, advance notice shall be provided to the City, and that fences shall be removed and replaced and that the surface and underlying public park and parking infrastructure shall be restored as close as reasonably possible to its original condition using new parts by the Grantee. Site restoration shall be accomplished as promptly as

possible. Together with reasonable right of access to and from the easement area over lands of the Grantor using existing roads and trails where practicable; the right to use and keep the easement area free and clear of any and all obstructions or structures, except fences and the existing pump station building; and the right to clear and remove all timber, brush, or vegetation from the easement area that may, in the Grantee's sole opinion, endanger the Grantee's overhead lines and related necessary appurtenances.

Grantee shall be solely responsible for repairing and restoring the real property and any damage to City facilities, inclusive of the irrigation system, paved trail or parking surfaces, parking lot lighting, trail lighting, turf and landscapes to as near its original condition as reasonably possible, after any usage of the easement, whether original construction, maintenance, replacement, reconstruction, or removal.

Grantor agrees not to build any kind of new permanent structure within the easement or a structure that will prevent access to the easement for maintenance purposes.

If Grantee or a successor in interest ever no longer needs this easement or abandons use of this easement for more than one year, this easement shall be deemed abandoned.

Grantee acknowledges that it will participate in a utility location program such as the One Call Notification Center as set forth in sections 69-4-501 through 69-4-514 MCA entitled "EXCAVATION NEAR UNDERGROUND FACILITIES".

Grantor does hereby covenant with the Grantee that the Grantor is lawfully seized and possessed of the real estate above described, and that the Grantor has a good and lawful right to convey it, or any part hereof.

BINDING EFFECT. This grant of Utility Easement, which shall be recorded at the Missoula County Clerk and Recorder's Office, is binding upon the heirs, executors, personal representatives, assigns, and successors of the parties hereto and shall run with the land.

ACCEPTANCE

This easement is accepted, and its terms and conditions agreed to by the City of Missoula on this

_____ day of _____, 2022.

ATTEST:

APPROVAL:

Martha L. Rehbein, CMC
City Clerk

John Engen
Mayor

(SEAL)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____
day of _____, 2022.

Grantee Name

Grantee Name

STATE OF _____)
County of _____) ss.

This instrument was acknowledged before me on the _____ day of _____
_____, 2022 by _____
Grantee Name

Notary



The Following to be filled out by Appropriate Staff:

Timeline:

Notes:

| | |
|-----------------------------|---|
| Staff Review: | Circulated plan to Lincoln Lake, TJ Machado, Neil Miner, Nathan McLeod, Ben Carson, and Donna Gaukler for comment and potential park infrastructure and tree conflicts. |
| Referral date: | January 5, 2022 |
| Park Board discussion date: | January 11, 2022 |
| Park Board Recommendation | |
| Notification Date | |
| | |

Staff recommendation to Parks Board: Recommend Approval of easement to Mayor and Council