

After Recording Return to:  
North Western Energy  
Attn: Lands Dept  
11 E. Park St.  
Butte, MT 59701

### ACCESS AGREEMENT & ENCROACHMENT EASEMENT

This Access Agreement & Encroachment Easement, (the "Easement") made this 17<sup>th</sup> day of May, 2022, is between the City of Missoula, a municipal corporation organized pursuant to the laws of the State of Montana ("Grantor"), of 435 Ryman St, Missoula, MT 59802, and North Western Corporation, a Delaware corporation, d/b/a Northwestern Energy, of 11 East Park Street, Butte, MT 59701 ("Grantee"). Grantor owns property legally described as follows:

**Parcel 1:**

Tract B of Certificate of Survey 4729, on file in the property records of Missoula County at Book 981, Page 899, along with adjacent right-of-way for Kiwanis Street to its intersection with Pattee Street, and Pattee Street between Kiwanis Street and Caras Drive.

**Parcel 2:**

Tract 1 of Certificate of Survey 3505, on file in the property records of Missoula County at Book 270, Page 2461.

Parcel 1 and Parcel 2 referred to together as the "Real Property".

Grantor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants and conveys, subject to the conditions and covenants herein set forth, to Grantee, an Easement over and across a portion of the Real Property described above. Said Easement being more particularly described as follows:

See Exhibit A attached hereto and made a part hereof which legally describes in detail the Easement Areas A and Easement Area B ("Easement Area"); as well as the Site Drawing shown in Exhibit B attached hereto and made a part hereof.

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

1. **Permanent Easement.** The Easement shall include the right, privilege, and authority of Grantee to:
  - A. Construct, install, operate, place, maintain, repair, replace, inspect, add to, and remove overhead electric utility infrastructure, and substation enclosure within said Easement Area together with a 5' perimeter beyond the final exterior installed wall to allow for the installation and maintenance of a grounding grid mat to be placed approximately 18" underground. Grantee shall have the right to

reasonable entry, access and temporary use of property immediately adjacent to said Easement Area for necessary activities related to constructing, maintaining, occupying, improving, repairing, and removing the utility infrastructure located within the Easement Area.

- B. The right to clear and remove all timber, brush, or vegetation from the Easement Area that may, in the Grantee's sole opinion, endanger Grantee's overhead lines, perimeter wall and related necessary appurtenances.
  - C. The right of ingress and egress in, over, across, and through the Easement Area from adjacent right-of way over lands of the Grantor to effectuate the above described purposes. Grantor shall at all times upon reasonable notice from Grantee remove any moveable surface obstructions or open gates which would otherwise prevent ingress or egress by Grantee.
2. **Prohibited Activities.** Grantor agrees not to build any kind of new permanent structure within the Easement Area that will prevent access to the Easement Area by Grantee.
3. **Restoration.** Grantee, upon the conclusion of construction activity, shall restore the Real Property of Grantor, including any improvements disturbed by Grantee, to as near its original condition as reasonably possible, including the restoration of irrigation system, pavements, parking areas, trails, lighting, gravel areas, topsoil, and lawn. Site restoration shall be accomplished as promptly as reasonably possible in order to avoid erosion and creating public safety concerns, as well as to limit the inconvenience of the public use of the adjacent public areas.
4. **Hazardous Substances.** Grantor assumes no liability for any hazardous waste on or from the Real Property as a result of Grantee's activities. Grantee, its successors and assigns, shall indemnify and hold harmless the Grantor, 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 as a result of Grantee's activities, 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 Grantor. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
5. **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. Grantor and Grantee acknowledge that there is public right of way areas described in the Easement Area. The Parties also acknowledge that Grantee is allowed to install its facilities in the public right of way as per the Montana Code Annotated (MCA). By

signing this Easement, Grantor agrees that no precedent is being established which would suggest that Grantee is, in any way, waiving any of its rights to place its facilities in dedicated public right of way as provided for in the MCA.

6. **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, except that if Grantee or its successor in interest no longer needs this Easement or abandons use of this Easement Area for a period of more than five years, this easement shall be deemed abandoned.
7. **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, Montana.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


GRANTED ON BEHALF OF THE CITY OF MISSOULA BY:

\_\_\_\_\_  
John Engen, Mayor

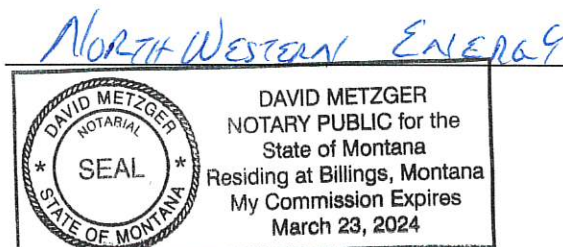
Attest:

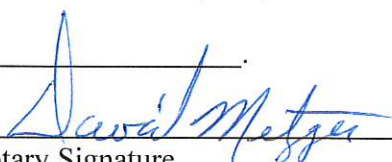
\_\_\_\_\_  
Martha L. Rehbein, CMC

FOR GRANTEE:

By:   
ROY U. ISHIKAWA  
Title: MANAGER OF LANDS

This instrument was acknowledged before me on MAY 17, 2022 by  
ROY U. ISHIKAWA as MANAGER OF LANDS of  
(Name) (Title)



  
Notary Signature

## Exhibit "A"

The following is made a part of that certain Utility Easement dated \_\_\_\_\_ by and between City of Missoula, "Grantor", and Northwestern Corporation D/B/A NorthWestern Energy as "Grantee".

### LEGAL DESCRIPTION EASEMENT "A"

A TRACT OF LAND LOCATED IN THE NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  OF SECTION 22, T. 13 N., R. 19 W., PRINCIPAL MERIDIAN, MONTANA; BEING A PORTION OF DEDICATED PATTEE STREET AND KIWANIS STREET AND A PORTION OF TRACT B OF CERTIFICATE OF SURVEY 4729 AND MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

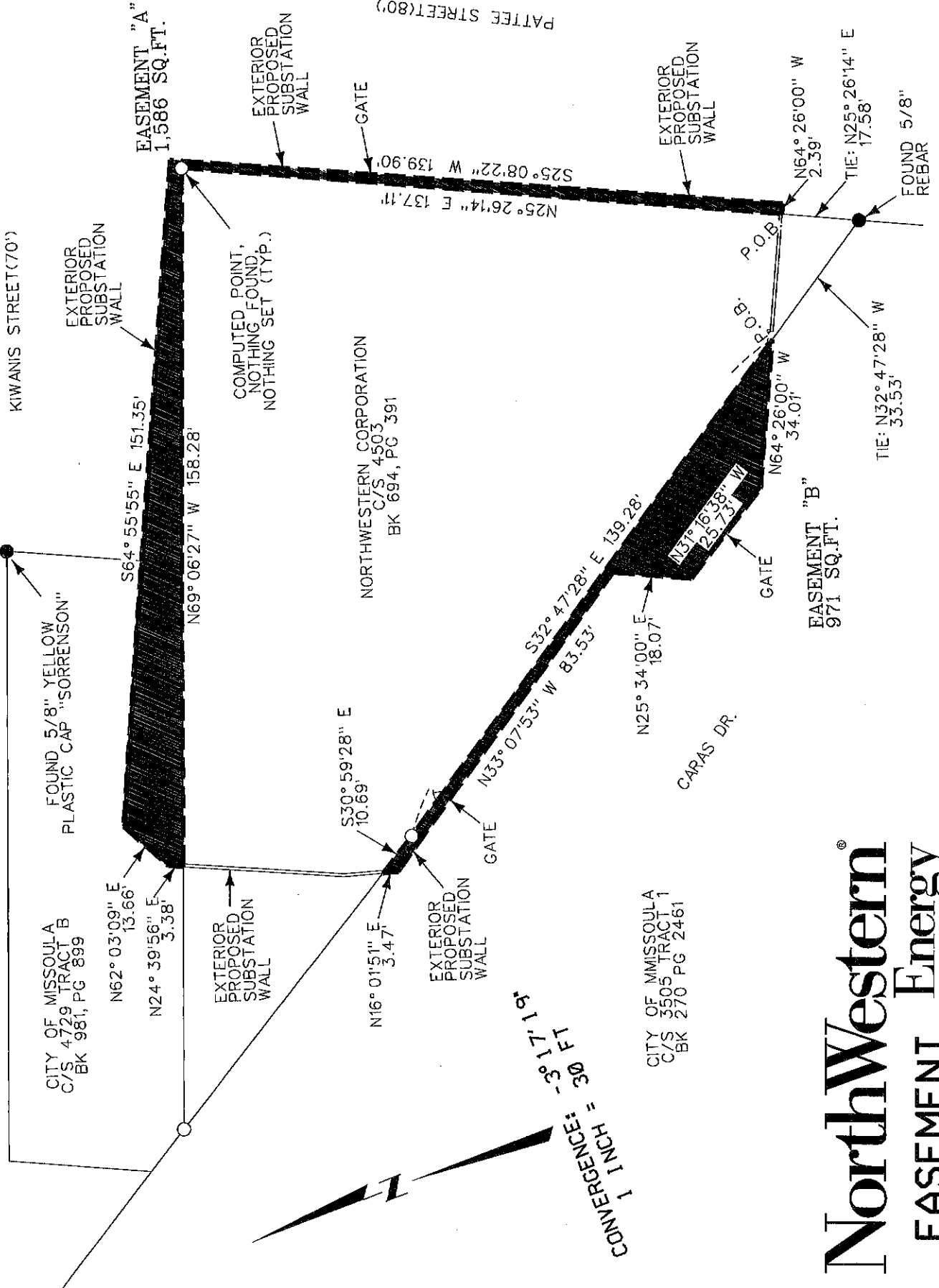
COMMENCING AT THE SOUTHEAST CORNER OF COS 4503, BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OF PATTEE STREET AND COMMON TO THE NORTHEAST CORNER OF TRACT 1 OF CERTIFICATE OF SURVEY 3505; THENCE NORTH 25°26'14" EAST, A DISTANCE OF 17.58 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF SAID PATTEE STREET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 25°26'14" EAST, A DISTANCE OF 137.11 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF SAID PATTEE STREET TO ITS INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY OF KIWANIS STREET, BEING THE NORTHEAST CORNER OF SAID CERTIFICATE OF SURVEY 4503; THENCE NORTH 69°06'27" WEST, A DISTANCE OF 158.28 FEET TO A POINT ON THE BOUNDARY COMMON TO SAID TRACT B OF CERTIFICATE OF SURVEY 4729 AND CERTIFICATE OF SURVEY 4503; THENCE NORTH 24°39'56" EAST, A DISTANCE OF 3.38 FEET; THENCE, NORTH 62°03'09" EAST, A DISTANCE OF 13.66 FEET; THENCE SOUTH 64°55'55" EAST, A DISTANCE OF 151.35 FEET; THENCE SOUTH 25°08'22" WEST, A DISTANCE OF 139.90 FEET; THENCE NORTH 64°26'00" WEST, A DISTANCE OF 2.39 FEET TO THE POINT OF BEGINNING; CONTAINING 1,586 SQUARE FEET, MORE OR LESS.

### LEGAL DESCRIPTION EASEMENT "B"

A TRACT OF LAND LOCATED IN THE NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  OF SECTION 22, T. 13 N., R. 19 W., PRINCIPAL MERIDIAN, MONTANA; BEING A PORTION OF TRACT 1 OF CERTIFICATE OF SURVEY 3505, AND MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF COS 4503, BEING A POINT ON THE WESTERLY RIGHT-OF-WAY OF PATTEE STREET AND COMMON TO THE NORTHEAST CORNER OF TRACT 1 OF CERTIFICATE OF SURVEY 3505; THENCE NORTH 32°47'28" WEST, A DISTANCE OF 33.53 FEET ALONG THE BOUNDARY COMMON TO SAID TRACT 1 OF CERTIFICATE OF SURVEY 3505 AND CERTIFICATE OF SURVEY 4503 TO THE TRUE POINT OF BEGINNING; THENCE, NORTH 64°26'00" WEST, A DISTANCE OF 34.01 FEET; THENCE NORTH 31°16'38" WEST, A DISTANCE OF 25.73 FEET; THENCE NORTH 25°34'00" EAST, A DISTANCE OF 18.07 FEET; THENCE NORTH 33°07'53" WEST, A DISTANCE OF 83.53 FEET; THENCE NORTH 16°01'51" EAST, A DISTANCE OF 3.47 FEET TO THE BOUNDARY COMMON TO TRACT 1 OF CERTIFICATE OF SURVEY 3505 AND CERTIFICATE OF SURVEY 4503; THENCE SOUTH 30°59'28" EAST, A DISTANCE OF 10.69 FEET ALONG THE BOUNDARY COMMON TO SAID TRACT 1 OF CERTIFICATE OF SURVEY 3505 AND CERTIFICATE OF SURVEY 4503; THENCE SOUTH 32°47'28" EAST, A DISTANCE OF 139.28 FEET TO THE POINT OF BEGINNING; CONTAINING 971 SQUARE FEET, MORE OR LESS.

THE FOLLOWING IS MADE A PART OF THAT CERTAIN UTILITY EASEMENT DATED  
 BY AND BETWEEN CITY OF MISSOULA, "GRANTOR", AND  
 NORTHWESTERN CORPORATION D/B/A NORTHWESTERN ENERGY AS "GRANTEE".



CONVERGENCE:  $-3^{\circ}17'19''$   
 1 INCH = 30 FT

# NorthWestern Energy

## EASEMENT EXHIBIT B