

**RESOLUTION NO. 07-18539**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, PURSUANT TO BILLINGS CITY CODE CHAPTER 12, EMINENT DOMAIN, DECLARING PUBLIC PURPOSE AND USE, DESCRIBING THE PROPERTIES TO BE TAKEN AND AUTHORIZING CITY OFFICIALS TO PROCEED.**

**WHEREAS**, the City of Billings finds it necessary to acquire certain easements to allow it to utilize for purposes of constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County; and

**WHEREAS**, the perpetual easements to be acquired, and the temporary construction easements necessary, to complete these improvements are shown and described in Exhibit "A" attached hereto and by this reference incorporated herein; and

**WHEREAS**, the City officials have attempted to purchase said easements at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to purchase said easements; and

**WHEREAS**, pursuant to Chapter 12, Section 12-102 of the Billings City Code, it is necessary to pass a Resolution initiating eminent domain procedures; and

**WHEREAS**, said use is a public use and will benefit the general public and will be used for public purposes; and

**WHEREAS**, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available in the City of Billings and in Yellowstone County for constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision ; and

**WHEREAS**, it is necessary to condemn the right-of-way in said private real property for perpetual easements and for temporary construction easements as shown in Exhibits "A" and "C" and as described in Exhibit "B" for purposes of constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County; and

**WHEREAS**, the City officials should be authorized to proceed with the condemnation proceedings as provided by law.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Billings, Montana, as follows:

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said perpetual easements and necessary temporary construction easements, for purposes of

constructing, operating and maintaining a sanitary sewer main extension to the Briarwood Subdivision in the City of Billings and in Yellowstone County;

2. PUBLIC PURPOSE AND NECESSITY: It is hereby declared that said easements are being acquired for a public purpose, for public use and is necessary to the project.

3. DESCRIPTION OF PROPERTY, EXTENT OF INTEREST: The right-of-way in the form of perpetual easements and temporary construction easements as shown in Exhibits "A" and "C" and as described in Exhibit "B" shall be taken for public purpose.

## EXHIBIT "B"

### LEGAL DESCRIPTIONS OF BRIARWOOD SANITARY SEWER MAIN EXTENSION EASEMENT ACQUISITIONS

#### Parcel #1

#### DESCRIPTION:

A permanent 20.0 foot wide sanitary sewer easement across Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended, recorded as document No. 3133911, and Tract 8, Certificate of Survey No. 2544 Amended, recorded as document No. 1746814, located in Sections 27 and 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southeast corner of said Tract 1A-1, Certificate of Survey No. 2544 4<sup>th</sup> Amended: thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet, to the Point of Beginning; thence N40°53'57"W, a distance of 116.23 feet; thence N06°56'00"E, a distance of 410.00 feet; thence N06°43'28"W, a distance of 400.00 feet; thence N33°29'38"W, a distance of 220.00 feet; thence N60°36'48"W, a distance of 395.00 feet; thence N54°59'24"W, a distance of 312.00 feet; thence N59°16'28"W, a distance of 588.00 feet; thence N61°04'34"W, a distance of 325.00 feet thence N70°00'40"W, a distance of 26.74 feet, to the Point of Termination on the West line of said Tract 8, Certificate of Survey 2544 Amended, being S00°28'12"E, a distance of 41.24 feet from the Northwest corner of said Tract 8, containing an area of 1.282 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described easement, containing an area of 2.565 acres, more or less, and all according to Exhibit A (Figures 1 and 2) attached hereto.

#### ACCESS EASEMENT 'A' DESCRIPTION

A strip of land 14 feet wide across Tract 14A of Certificate of Survey No. 2544 5<sup>th</sup> Amended and Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the NW¼SW¼ Section 27, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tracts:

Commencing at the Northeast corner of said Tract 14A, thence S43°04'20"W along the line common to said Tract 14A and Lot 8, Block 12, Briarwood Subdivision a distance of 42.79 feet to the True Point of Beginning; thence along a non-tangent curve to the right with a radius of 100.00 feet, a delta angle of 36°02'04", an arc length of 62.89 feet, and a chord bearing and distance of N02°20'02"E, 61.86 feet; thence N20°21'04"E, a distance of 50.60 feet to the Point of Termination on the southerly easement line of the sanitary sewer main easement, said Point of Termination bears S89°19'19"W, a distance of 395.74 feet, N40°53'57"W, a distance of 116.23 feet and S20°21'04"W, a distance of 11.41 feet from the Southeast corner of said Tract 1A-1. Said described Access Easement 'A' contains 0.037 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

### ACCESS EASEMENT 'B' DESCRIPTION

A strip of land 14 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 27, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southeast corner of Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, thence S89°19'19"W along the South line of said Tract 1A-1, a distance of 395.74 feet to the Centerline of the permanent sanitary sewer easement; thence along the following (3) courses of said sanitary sewer easement (1) N40°53'57"W, a distance of 116.23 feet; (2) N06°56'00"E, a distance of 410.00 feet; (3) N06°43'28"W, a distance of 400.00 feet, to the True Point of Beginning; thence N48°58'33"W, a distance of 144.05 feet; thence along a curve to the right with a radius of 50.00 feet, a delta angle of 66°47'02", an arc length of 58.28 feet, a chord bearing and distance of N15°34'52"E, a distance of 55.04 feet; thence N17°48'49"E, a distance of 21.84 feet, thence along a curve to the left with a radius of 32.00 feet, a delta angle of 86°41'15", an arc length of 48.42 feet, and a chord bearing and distance of N25°31'49"W, a distance of 43.93 feet; thence N68°52'26"W, a distance of 41.16 feet; thence along a curve to the right with a radius of 32.00 feet, a delta angle of 30°13'13", an arc length of 16.88 feet and a chord bearing and distance of N53°45'50"W, 16.68 feet; thence N38°39'13"W, a distance of 15.84 feet; thence along a curve to the left with a radius of 32.00 feet, a delta angle of 29°48'58", an arc length of 16.65 feet, and a chord bearing and distance of N53°33'42"W, 16.47 feet; thence N68°28'11"W, a distance of 26.12 feet; thence along a curve to the left with a radius of 32.00 feet, a delta angle of 25°54'06", an arc length of 14.47 feet and a chord bearing and distance of N81°25'14"W, 14.34 feet; thence S85°37'43"W, a distance of 38.70 feet; thence along a curve to the right with a radius of 32.00 feet, a delta angle of 39°22'23", an arc length of 21.99 feet and a chord bearing and distance of N74°40'50"W, 21.56 feet; thence N54°59'24"W, a distance of 188.55 feet to the Point of Termination on the centerline of said sanitary sewer main easement, being N13°42'11"E, a distance of 209.63 feet from the Northerly most angle point on the Southerly boundary of said Tract 1A-1. Said described Access Easement 'B' contains 0.211 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 1 of Exhibit 'C' attached hereto.

### ACCESS EASEMENT 'C' DESCRIPTION

A strip of land 60 feet wide across Tract 1A-1 of Certificate of Survey No. 2544 4<sup>th</sup> Amended, situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to adjoin and extend 20 feet each side of the sanitary sewer main easement being more particularly described as follows:

Commencing from the Northerly most angle point on the Southerly boundary of said Tract 1A-1, thence N23°26'51"W, a distance of 373.33 feet to a point on the centerline of the sanitary sewer main easement and the True Point of Beginning; thence N54°59'24"W along said sanitary sewer easement a distance of 60.00 feet to the Point of Termination, being N82°22'27"E, a distance of 825.77 feet from the Southwest corner of Tract 8, Certificate of Survey No. 2544 Amended. Said described Access Easement 'C' contains 0.055 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

### ACCESS EASEMENT 'D' DESCRIPTION

A strip of land 14 feet wide across Tract 8 of Certificate of Survey No. 2544 Amended, situated in the SE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement is to be 7 feet each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Southwest corner of said Tract 8, thence N57°07'40"E, a distance of 175.24 feet to the True Point of Beginning on the Westerly easement line of an existing access easement granted to the City of Billings, Document #3332999; thence N71°49'32"W, a distance of 86.35 feet; thence along a curve to the right with a radius of 33.96 feet, a delta angle of 154°01'29", an arc length of 91.29 feet, and a chord bearing and distance of N05°10'45"E, 66.18 feet; thence N82°11'20"E, 51.10 feet; thence along a curve to the left with a radius of 100.00 feet, a delta angle of 29°08'33", an arc length of 50.86 feet, and an a chord bearing and distance of N67°37'04"E, a distance of 50.32 feet; thence N53°02'47"E, a distance of 48.05 feet; thence along a curve to the left with a radius of 50.00 feet, a delta angle of 50°35'23", an arc length of 44.15 feet, and a chord bearing and distance of N27°45'06"E, 42.73 feet; thence N02°27'24"E, a distance of 69.99 feet; thence along a curve to the right with a radius of 50.00 feet, a delta angle of 26°28'02", an arc length of 23.10 feet and a chord bearing and distance of N15°41'25"E, 22.89 feet; thence N28°55'26"E, a distance of 61.12 feet to the Point of Termination on the southerly line of the sanitary sewer main easement

being  $S00^{\circ}28'12''E$ , a distance of 41.24 feet; thence  $S70^{\circ}00'40''E$  a distance of 26.74 feet; thence  $S61^{\circ}04'34''E$  a distance of 285.00 feet; thence  $S28^{\circ}55'26''W$  a distance of 10.00 feet from the Northwest corner of said Tract 8.

Together with a strip of land 60 feet in length 30 feet each side of the intersection of the above access easement and the sanitary sewer main easement, said easement is to adjoin and extend 20 feet each side of the sanitary sewer main easement.

Said described Access Easement 'D' contains 0.217 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### **ACCESS EASEMENT 'E' DESCRIPTION**

A strip of land of varying widths across Tract 8 of Certificate of Survey No. 2544 Amended, situated in the  $SE\frac{1}{4}NE\frac{1}{4}$  of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, said easement being more particularly described of the following centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of said Tract 8, thence  $S00^{\circ}28'12''E$  along the West line of said Tract 8, a distance of 146.00 feet to the True Point of Beginning; Thence  $N28^{\circ}55'26''E$ , along the centerline of a strip of land 14 feet wide, 7 feet each side, a distance of 65.43 feet; thence continuing  $N28^{\circ}55'26''$  along a strip of land 60 feet wide, 30 feet each side, a distance of 20 feet to the Point of Termination on the sanitary sewer main easement, being  $S00^{\circ}28'12''E$ , a distance of 41.24 feet; thence  $S70^{\circ}00'40''E$  a distance of 26.74 feet; thence  $S61^{\circ}04'34''E$  a distance of 25.00 feet; thence  $S28^{\circ}55'26''E$  a distance of 10.00 feet from the Northwest corner of said Tract 8

Said described Access Easement 'E' contains 0.049 acres more or less and subject to easements either of record or apparent on the ground, as shown and described on Figure 2 of Exhibit 'C' attached hereto.

#### **Parcel #2**

##### **DESCRIPTION:**

A permanent 20.0 foot wide sanitary sewer easement across a portion of the Northeast quarter of Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, being 10 feet on each side of the following described centerline where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of Tract 8, Certificate of Survey No. 2544 Amended, thence  $S00^{\circ}28'12''E$  along the West line of said Tract 8, a distance of 41.24 feet, to the Point of Beginning; thence  $N70^{\circ}00'40''W$ , a distance of 193.26 feet; thence  $N51^{\circ}07'18''W$ , a distance of 260.00 feet; thence  $N79^{\circ}33'19''W$ , a distance of 580.00 feet; thence  $N37^{\circ}53'34''W$ , a distance of 167.85 feet to the Point of Termination on the Easterly line of Tract 13, Blue Creek Acreage Tracts Subdivision, being  $S40^{\circ}04'30''W$ , a distance of 204.01 feet from the Northeast corner of said Tract 13, containing an area of 0.552 acres, more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

Together with a Temporary Easement for construction purposes 20.0 feet wide on each side being contiguous, adjacent and parallel to the previously described easement, containing an area of 1.102 acres, more or less, and all according to Exhibit A attached hereto.

#### **Parcel #4**

##### **LEGAL DESCRIPTION:**

A permanent sanitary sewer easement 25 feet in width located in Tract 12, Blue Creek Acreage Tract Subdivision, Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Beginning at the Southwest corner of said Tract 12, being on the Northerly right of way line of State Highway No. F.A.P. 416-1(3)1; thence  $N27^{\circ}48'30''E$  along the line common to Tracts 11 and 12 of said Blue Creek Acreage Tracts Subdivision, a distance of 25.00 feet; thence  $S62^{\circ}09'45''E$ , a distance of 1.23 feet; thence along a curve to the right with a radius of 1221.00 feet, delta of  $8^{\circ}10'15''$ , arc length of 174.1 feet and chord of  $S58^{\circ}04'38''E$ , a distance of 173.97 feet to the Easterly line of said Tract 12, also being the Westerly right of way of Colleen Drive; thence  $S27^{\circ}48'30''W$  along the Easterly line of said Tract 12 and Westerly right of way of Colleen Drive, a distance of 25.26 feet to the Northerly right of way of said State

Highway No. F.A.P. 416-1(3)1; thence along a curve to the left on said Northerly right of way with a radius of 1196.00 feet, delta of 8°20'36", arc length of 174.16 feet and chord of N57°59'27"W, a distance of 174.01 feet; thence continuing along said Northerly right of way, N62°09'45"W, a distance of 1.23 feet to the Point of Beginning, containing 0.101 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcel #5**

**LEGAL DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tract 11, Blue Creek Acreage Tracts Subdivision, in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tract 11 coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.080 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcels #9 & #10**

**LEGAL DESCRIPTION:**

A permanent 20 foot wide sanitary sewer easement in Tracts 6 and 7, Blue Creek Acreage Tracts Subdivision, in Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tracts 6 and 7, coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.136 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcel #11**

**LEGAL DESCRIPTION:**

A permanent sanitary sewer easement of varying widths across the W½NW¼, Section 28, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Commencing at the Northwest corner of said Section 28: thence N89°16'43"E along the line common to Sections 21 and 28, a distance of 378.78 feet, to the Point of Beginning, said point also being on the Northerly right-of-way line of State Highway No. F.A.P. 416-1(3)1; thence continuing N89°16'43"E along the line common to said Sections 21 and 28, a distance of 41.84 feet; thence S62°09'45"E, a distance of 233.33 feet; thence N27°34'27"E, a distance of 15.00 feet; thence S62°09'45"E, a distance of 659.98 feet; thence S27°53'25"W, a distance of 15.00 feet; thence S62°09'45"E, a distance of 141.75 feet to the West line of Tract 6, Blue Creek Acreage Tracts Subdivision; thence S00°40'30"E along the West line of said Tract 6, a distance of 22.76 feet to the Northerly right-of-way line of said State Highway; thence along the following (5) courses of said State Highway, N62°09'45"W, a distance of 152.62 feet; thence N48°28'24"W, a distance of 42.26 feet; thence N62°09'45"W, a distance of 515.80 feet; thence S27°50'15"W, a distance of 10.00 feet; thence N62°09'45"W, a distance of 370.13 feet to the Point of Beginning on the line common to Sections 21 and 28, containing 0.588 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

**Parcel #12**

**LEGAL DESCRIPTION:**

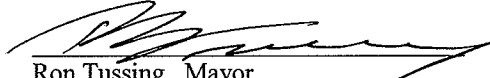
A permanent 20 foot wide sanitary sewer easement in Tract B-2B, Tract B-2 Amended of 2<sup>nd</sup> Amended Certificate of Survey No. 646, in Section 21, T.1S., R.26E., P.M.M., Yellowstone County, Montana, where said easement runs across, adjoins or touches the aforementioned tract:

Being the Southerly 20 feet of said Tract B-2B, coincident with the Northerly right-of-way of State Highway No. F.A.P. 416 1(3)1, containing 0.035 acres more or less, and subject to easements either of record or apparent on the ground, and all according to Exhibit A attached hereto.

4. AUTHORIZATION TO PROCEED: That the appropriate City officials are hereby directed and authorized to proceed with condemnation of said real property as provided by law.

**PASSED AND ADOPTED** by the City Council of the City of Billings, Montana, at a regular session thereof held on the 26th day of March, 2007.

THE CITY OF BILLINGS



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Ron Tussing, Mayor

ATTEST:



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Cam Trudeau, Deputy City Clerk