

RESOLUTION NO. 10-18908

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 a perpetual easement and a temporary construction access easement over certain real property for purposes of redirecting the flow of Alkali Creek because the creek is now eroding and undermining the roadway of Alkali Creek Road, which is an arterial roadway in the City of Billings, in the vicinity of Morningside Homeowners Association property; and

WHEREAS, it is urgent that this work be completed as expeditiously as possible since the failure of Alkali Creek Road, which is imminent, would be contrary to the best interests of the public who live in the area and use that roadway as a primary route to and from their daily employment; and

WHEREAS, it is also urgent that this work be completed no later than September 30, 2010 because the City of Billings has a one-time opportunity to obtain \$1.6 million in funding from the American Recovery and Reinvestment Act of 2009 to assist with the cost of this public work if the work is completed by that date, and in order to complete the work by that date, it is necessary to obtain a permit for the work from the United States Army Corps of Engineers, and in order to receive a permit to do the work, the preliminary grubbing work for the project will have to be completed by May 15, 2010 to avoid the nesting season for migratory birds; and

WHEREAS, moving the channel of Alkali Creek to stabilize the roadbed for Alkali Creek Road is the preferred manner of proceeding because it will be the least costly manner of solving the engineering problem presented, because, after considering available alternative solutions, the Council believes that moving the creek channel the most lasting manner of solving the problem due to the fact that building a retaining wall for the roadbed or rip rapping the creek bed alongside the roadway will only slow the erosion of the road bed by the creek waters while moving the channel will increase the distance from the road bed to the creek waters, and because the reclamation of the land at the end of construction would produce a more scenic right-of-way for the Homeowners Association and the motoring public alike, and it will permit construction of the planned 20-foot wide multi-use trail adjacent to the roadway and away from the home sites rather than constructing the trail through the Morningside Homeowners Association common area, which is the only other viable route for the trail, thereby reducing conflicts between recreational and residential uses in the same vicinity and enhancing the privacy of the homeowners.

WHEREAS, the real property to be acquired, and the temporary construction easements necessary to

complete these improvements is described in Exhibit "A" attached hereto and by this reference incorporated herein; and

WHEREAS, various City officials acting in their official capacities have met numerous times with members and representatives of the Morningside Homeowners Association to explain the project to them and to secure their cooperation but that cooperation has been refused, members of the Association objecting to a survey team entering on their common area to do a cultural survey to determine if there are articles of significant importance that would be disturbed by this work on the creek bed, and

WHEREAS, the City officials have attempted to purchase said real property at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to sell said real property; 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 for said completion of redirecting the flow of Alkali Creek in the City of Billings in the flow of Alkali Creek in the City of Billings, in the vicinity of Morningside Homeowners Association property; and

WHEREAS, it is necessary to condemn the subject parcels for the purposes of obtaining a perpetual easement interest in said private real property and for a temporary construction access permit as described in Exhibit "A" for the purpose of redirecting the flow of Alkali Creek in the City of Billings, in the vicinity of Morningside Homeowners Association property; 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 property, and necessary easements, for the purposes of redirecting the flow of Alkali Creek where it is now eroding and undermining the roadway of Alkali Creek Road, which is an arterial roadway in the City of Billings, in the vicinity of Morningside Homeowners Association property;

2. **PUBLIC PURPOSE AND NECESSITY:** It is hereby declared that said real property is

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 fee simple, a perpetual easement and temporary construction easement described in Exhibit "A" shall be taken for the above-described public purpose.

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 11th day of January, 2010.



CITY OF BILLINGS

BY: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Cari Martin
Cari Martin City Clerk

EXHIBIT "A"

Parcel 1 – East of Morningside Lane

A tract of land for a perpetual ingress and egress easement to maintain Alkali Creek and its associated drainage facilities discharging from Alkali Creek Road, all situated in a portion of Tract 2, Certificate of Survey No. 2055, located in the E1/2 of Section 29, Township 1 North, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana as filed in the Official Records of Yellowstone County under Document No. 1191103, said parcel being more particularly described as follows:

BEGINNING at a point on the east line of said Tract 2 from which the southeast corner of said Tract 2 bears South 0°15'40" East, 31.46 feet; thence along the north line of a Quit Claim Deed, filed May 30, 2007 in the Official Records of Yellowstone County under Document No. 3424439 the following two (2) courses: South 72°13'47" West, 224.74 feet; thence South 84°22'47" West, 218.34 feet; thence departing said north line, North 43°42'13" East, 145.77 feet; thence North 70°14'06" East, 60.21 feet; thence North 83°24'15" East, 65.38 feet; thence North 48°12'26" East, 92.87 feet; thence North 80°08'18" East, 72.55 feet; thence North 88°36'59" East, 32.99 feet; thence South 72°55'38" East, 36.39 feet; thence South 00°15'40" East, 107.71 feet to the POINT OF BEGINNING. Containing 1.05 acres, more or less. Together with a map exhibit referenced hereto and made a part hereof.

Parcel 2 – West of Morningside Lane

A tract of land for a perpetual ingress and egress easement to maintain Alkali Creek and its associated drainage facilities discharging from Alkali Creek Road, all situated in a portion of Tract 2, Certificate of Survey No. 2055, located in the E1/2 of Section 29, Township 1 North, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana as filed in the Official Records of Yellowstone County under Document No. 1191103, said parcel being more particularly described as follows:

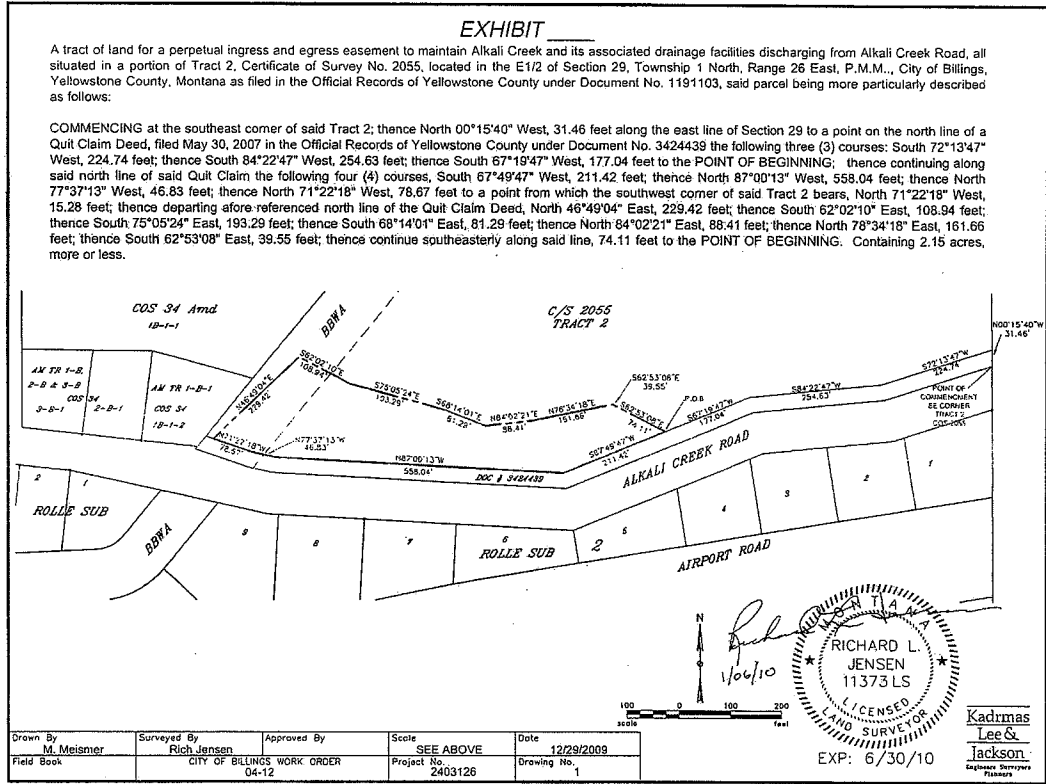
COMMENCING at the southeast corner of said Tract 2; thence North 0°15'40" West, 31.46 feet along the east line of Section 29 to a point on the north line of a Quit Claim Deed, filed May 30, 2007 in the Official Records of Yellowstone County under Document No. 3424439 the following three (3) courses: South 72°13'47" West, 224.74 feet; thence South 84°22'47" West, 254.63 feet; thence South 67°19'47" West, 177.04 feet to the POINT OF BEGINNING; thence continuing along said north line of said Quit Claim the following four (4) courses, South 67°49'47" West, 211.42 feet; thence North 87°00'13" West, 558.04 feet; thence North 77°37'13" West, 46.83 feet; thence North 71°22'18" West, 78.67 feet to a point from which the southwest corner of said Tract 2 bears, North 71°22'18" West, 15.28 feet ; thence departing afore reference north line of the quit claim, North 46°49'04" East, 229.42 feet; thence South 62°02'10" East, 108.94 feet; thence South 75°05'24" East, 193.29 feet; thence South 68°14'01" East, 81.29 feet; thence North 84°02'21" East, 88.41 feet; thence North 78°34'18" East, 161.66 feet; thence South 62°53'08" East, 39.55 feet; thence continue southeasterly along said line, 74.11 feet to the POINT OF BEGINNING. Containing 2.15 acres, more or less. Together with a map exhibit referenced hereto and made a part hereof.

Parcel 3 – Construction Access

A tract of land for a temporary construction easement situated in a portion of Tract 2, Certificate of Survey No. 2055, located in the E1/2 of Section 29, Township 1 North, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana as filed in the Official Records of Yellowstone County under Document No. 1191103, said parcel being more particularly described as follows:

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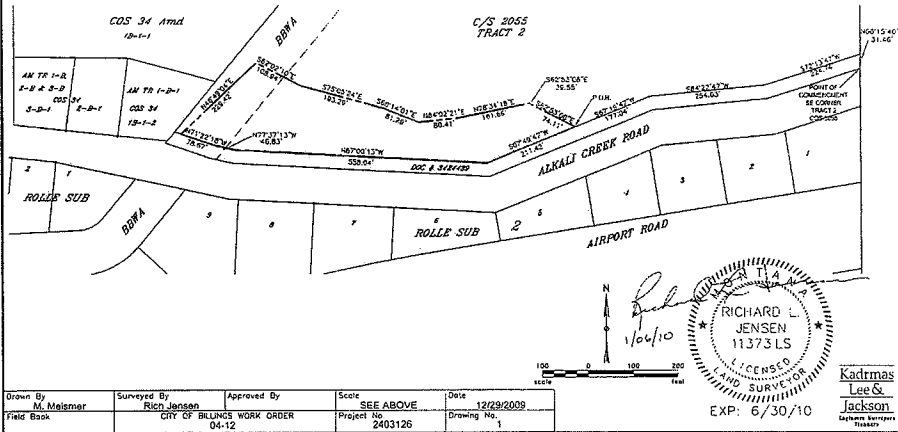
feet; thence departing said northerly line of Parcel 2, North 78°34'18" East, 22.02 feet; thence North 18°25'30" East, 152.83 feet; thence South 80°31'40" East, 19.31 feet; thence South 56°29'26" East, 41.33 feet; thence South 51°37'55" East, 27.03 feet; thence South 29°48'40" East, 28.24 feet; thence South 07°13'40" East, 25.79 feet; thence South 07°41'53" West, 24.87 feet; thence South 23°53'50" West, 73.70 feet; thence South 00°21'01" East, 5.07 feet to the POINT OF BEGINNING. Containing 0.20 acres, more or less. Together with a map exhibit referenced hereto and made a part hereof.



EXHIBIT

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