

REVISED
FINAL DRAFT

COMPENSATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20____ between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "City", M&K BLUE ONE, LLC., PO Box 3494, Billings, Montana 59103, hereinafter referred to as the "Developer."

WITNESSETH:

WHEREAS, the City's Water/Wastewater Extension Policy outlines the procedure and criteria the City uses in approving extensions of the public water and wastewater systems; and

WHEREAS, M&K Blue One, LLC. have completed the required sanitary sewer, water, and storm drain improvements along the King Avenue West frontage of Certificate of Survey No. 2063, Tract 1A; and

WHEREAS, Existing sanitary sewer, water, and storm drain must be extended prior to construction of the King Avenue West street improvements; and

WHEREAS, Developer agrees to extend the existing sanitary sewer, water, and storm drainage improvements necessary to construct the surface improvements provided the City compensates the Developer for said extension in accordance with the terms of this agreement; and

WHEREAS, Developer agrees to extend the existing sanitary sewer, water, and storm drain improvements in accordance with plans and specifications approved by the City on the _____ day of _____, 20____; and

NOW, THEREFORE, City and Developer, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

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1. The water, wastewater and storm water facilities which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.
2. With respect to Developers' entitlement to compensation, the City and Developer agree that the conditions set forth hereinafter must be met before Developer is entitled to or will receive any compensation. Said conditions are:
 - A. The extent, timing, and manner of the City's participation in a water and wastewater facilities extension is determined in conformance with the City's Water/Wastewater Extension Policy and the City's Utilities Fees Practice. Extensions or replacements not eligible for compensation according to these City policies and practices must be constructed by the Developer at his expense.
 - B. The extent, timing, and manner of the City's participation in a storm drainage facilities extension is determined by the terms set forth in this agreement. It is understood that the Developers choose to proceed with the storm drainage improvements even though the compensation funding may or may not be included in the City's Capital Improvements Plan. It is further understood that inclusion into the City's Capital Improvements Plan and subsequent payment of compensation to the Developer will be delayed several years after installation of the improvements. Extensions or replacements not eligible for compensation in accordance with this agreement must be constructed by the Developer at his expense.
 - C. Developer shall provide to the City sufficient verifiable cost data to determine the appropriate amount of compensation within 30 days of final inspection of the water, wastewater and storm drain facilities and approval and acceptance by the City that all construction was completed according to the approved plans and specifications.
 - D. Upon completion of the extension of the water, wastewater, and storm drain facilities, the Developer must convey all right, title and interest in the facilities to the City.
 - E. Developer shall, at all times, provide to the City a current address for purposes of mailing compensation to Developer.

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E. Extension of water, waste water, and storm drain facilities eligible for compensation must comply with all city, state and federal laws, rules and regulations including, but not limited to, standards for design and construction, competitive bidding and contract requirements for cities, prevailing wage rates, and non-discrimination requirements.

Developer agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. Developer's violation of any of the conditions set forth herein may, at the option of the City, result in denial of any and all compensation to the Developer.

3. In addition, it is expressly agreed that any compensation is conditioned upon the following:

A. Compensation is limited to costs attributable to storm water and/or wastewater facilities described in Exhibit 1, less all administrative costs incurred by the City. In no event will compensation exceed the actual cost to the Developer of extending the storm water and/or wastewater facilities.

B. Compensation shall not include any interest charges.

Acceptance of the water, wastewater, and storm drain facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the City and directed to the Developers at the addresses set forth in the first paragraph of this agreement.

4. Compensation shall be based upon the final total project costs.

5. The addresses for mailing compensation to the Developer shall be the address specified in the first paragraph of this agreement. Any change in address of the Developers shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, Montana 59103. The designation of a new address shall be accompanied by a copy of this Agreement.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

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DATED this _____ day of _____, 20_____.

CITY:

CITY OF BILLINGS

By: _____

Its: _____

ATTEST:

City Clerk

DEVELOPER:

M&K BLUE ONE, LLC.

By: _____

Its: _____

EXHIBIT 1
King Avenue West Improvements
West End of St. Vincents Property to 44th Street West

Storm Drain Oversizing

ITEM NO.	EST. QTY	DESCRIPTION	UNIT PRICE	CITY COMPENSATION	AMOUNT DUE CAL KUNKEL
126	428 LF	60-inch Storm Drain Pipe 36-inch Storm Drain Pipe Storm Drain Oversizing Delta	\$187.00 / LF \$92.00 / LF \$95.00 / LF =	\$40,660.00	\$40,660.00
Sub Total Storm Drain Oversizing				\$40,660.00	\$40,660.00

Sanitary Sewer Main Extension

ITEM	EST. QTY	DESCRIPTION	UNIT	CITY COMPENSATION	AMOUNT DUE M&K BLUE ONE, LLC.
505	1 LS	Dewatering	\$29,000.00 / LS =	\$29,000.00	\$29,000.00
506	1 EA	Basic Sanitary Sewer Manhole	\$6,600.00 / EA =	\$6,600.00	\$6,600.00
507	24.6 VF	Extra Depth Manhole	\$180.00 / VF =	\$4,428.00	\$4,428.00
508	400 EA	27-inch Sanitary Sewer Pipe	\$130.00 / EA =	\$52,000.00	\$52,000.00
509	1 EA	27-inch Cap	\$500.00 / EA =	\$500.00	\$500.00
530	905 SY	Remove Street Section	\$9.00 / SY =	\$8,145.00	\$8,145.00
531	905 SY	Asphalt Restoration (6 inch/12.5 inch)	\$26.50 / SY =	\$23,982.50	\$23,982.50
532	1 LS	Striping Restoration	\$1,000.00 / LS =	\$1,000.00	\$1,000.00
533	1 LS	Borrow Ditch Regrading	\$2,000.00 / LS =	\$2,000.00	\$2,000.00
TOTAL SANITARY SEWER REIMBURSEMENT COST				\$127,655.50	\$127,655.50

Water Main Extension

ITEM	EST. QTY	DESCRIPTION	UNIT	CITY COMPENSATION	AMOUNT DUE M&K BLUE ONE, LLC.
102	1 LS	Traffic Control During Construction	\$3,500.00 / LS =	\$3,500.00	\$3,500.00
103	1 EA	Connect to Existing 24-inch Water Main	\$2,200.00 / EA =	\$2,200.00	\$2,200.00
104	1 EA	Connect to Existing 24 x 12-inch Cross	\$2,970.00 / EA =	\$2,970.00	\$2,970.00
105	400 LF	24-inch Ductile Iron Water Main Pipe	\$100.00 / LF =	\$40,000.00	\$40,000.00
106	1 EA	24-inch Butterfly Valve	\$5,784.00 / EA =	\$5,784.00	\$5,784.00
107	1 EA	24-inch Plug and Thrust Block	\$1,500.00 / EA =	\$1,500.00	\$1,500.00
108	0 EA	6-inch Fire Hydrant Assembly from New 24-inch Main	\$3,000.00 / EA =	\$0.00	\$0.00
109	0 EA	24 x 24 x 6 inch Tee	\$2,800.00 / EA =	\$0.00	\$0.00
110	2 EA	24-inch Bend	\$2,905.00 / EA =	\$5,810.00	\$5,810.00
111	27 SY	Asphalt Restoration	\$65.00 / SY =	\$1,755.00	\$1,755.00
TOTAL WATER REIMBURSEMENT COST				\$63,519.00	\$63,519.00

