

COMPENSATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20__ between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "CITY", and MRK Blue One LLC of PO Box 3494, Billings, MT 59103, hereinafter referred to as "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, the CITY'S Utilities Fees Practice outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater system development fees to developments; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement; and

WHEREAS, DEVELOPER has agreed to extend or replace water and/or wastewater facilities for the purpose of providing service through plans and specifications approved by the City on the 25th day of June, 2009. Said plans and specifications generally provide for the construction of water and/or wastewater facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water and/or wastewater facilities hereafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for a portion of such water and/or wastewater facilities.

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

1. The water and/or wastewater 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 DEVELOPER'S 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/or wastewater facilities extension or replacement 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) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
 - (c) Upon completion of the extension or replacement of the water and/or wastewater facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
 - (d) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.

- (e) Extension or replacement of water and/or wastewater facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities.

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 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 or replacing the water and/or wastewater facilities.

- (b) Compensation shall not include any interest charges.

Acceptance of the water and/or wastewater 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 DEVELOPER at the address set forth in the first paragraph of this agreement.

- 4. Compensation does not apply to additional extensions or replacements of the water and/or wastewater facilities described in Exhibit 1. Compensation shall be based upon the final total project costs.
- 5. The address for mailing compensation to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, MT 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.

DATED this _____ day of _____, 20__.

DEVELOPER

By _____

CITY OF BILLINGS

By _____
Mayor

ATTEST:

City Clerk

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EXHIBIT 1
4th Street West Improvements along Lots 4 and 5, Lenhard Square Subdivision, First Filing
Sanitary Sewer Improvements

Sanitary Sewer Main Extension

NO.	EST. QTY	DESCRIPTION	PRICE	CITY COMPENSATION	AMOUNT DUE MAX BLUE ONR, LLC
102	1 IS	Deventing	\$3,500.00 / IS =	\$3,500.00	\$3,500.00
103	1 BA	Connect to Existing 18-inch Sanitary Sewer Main Stub	\$900.00 / BA =	\$900.00	\$900.00
104	3 BA	Basic Sanitary Sewer Manhole	\$2,250.00 / BA =	\$6,750.00	\$6,750.00
105	3 V/F	Extra Depth Manhole	\$20.00 / V/F =	\$694.00	\$694.00
106	622 BA	18-inch Sanitary Sewer Pipe	\$42.00 / BA =	\$26,124.00	\$26,124.00
107	1 EA	18-inch Cap	\$50.00 / EA =	\$50.00	\$50.00

TOTAL SANITARY SEWER REIMBURSEMENT COST \$38,018.00 \$38,018.00

PROJECT: Private Contract No. 610 - Lenhardt Square Subdivision
S.S. PROJECT NO.: 07054.03

BID DATE: March 17, 2009
BID TIME: 2:00 p.m.

BY: SANDERSON STEWART
FOR: M&K Blue One, LLC

ITEM NO.	EST. QTY.	DESCRIPTION	Engineer's Estimate		Castlerock Excavating, Inc.		Western Municipal Const., Inc.		W Construction. LLC	
			UNIT PRICE \$	TOTAL PRICE \$	UNIT PRICE \$	TOTAL PRICE \$	UNIT PRICE \$	TOTAL PRICE \$	UNIT PRICE \$	TOTAL PRICE \$
BASE BID										
101	1	LS Mobilization and Insurance	5,674.00 / LS =	5,674.00	3,200.00 / LS =	3,200.00	11,218.00 / LS =	11,218.00	12,000.00 / LS =	12,000.00
102	1	LS Dewatering	25,000.00 / LS =	25,000.00	3,500.00 / LS =	3,500.00	22,150.00 / LS =	22,150.00	26,838.86 / LS =	26,838.86
103	1	EA Connect to Existing 18-inch Sanitary Sewer Main Stub	2,500.00 / EA =	2,500.00	900.00 / EA =	900.00	2,596.00 / EA =	2,596.00	4,952.16 / EA =	4,952.16
104	2	EA Basic Sanitary Sewer Manhole	2,500.00 / EA =	5,000.00	2,250.00 / EA =	4,500.00	2,920.00 / EA =	5,840.00	7,267.45 / EA =	14,534.90
105	23.1	VF Extra Depth Manhole	105.00 / VF =	2,425.50	20.00 / VF =	462.00	81.00 / VF =	1,871.10	166.86 / VF =	3,854.47
106	622	LF 18-inch Sanitary Sewer Pipe	70.00 / LF =	43,540.00	42.00 / LF =	26,124.00	57.00 / LF =	35,454.00	65.25 / LF =	40,585.50
107	1	EA 18-inch Cap	400.00 / EA =	400.00	50.00 / EA =	50.00	190.00 / EA =	190.00	450.78 / EA =	450.78
108	1	EA 6-inch Sanitary Sewer Service	1,000.00 / EA =	1,000.00	400.00 / EA =	400.00	794.00 / EA =	794.00	968.79 / EA =	968.79
109	34	LF 6-inch Sanitary Sewer Service Pipe	35.00 / LF =	1,190.00	20.00 / LF =	680.00	78.00 / LF =	2,652.00	72.36 / LF =	2,460.24
TOTAL BASE BID				\$86,729.50		\$39,816.00		\$82,765.10		\$106,645.70

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S.S. PROJECT NUMBER: 07054.03
 PROJECT NUMBER: PRIVATE CONTRACT NO. 610
 PROJECT DESCRIPTION: LENHARDT SQUARE SUBDIVISION

CONTRACTOR: CASTLEROCK EXCAVATING, INC.
 APPLICATION FOR PAYMENT NO: THREE - FINAL

TIME PERIOD: September 30, 2009
 SUBMITTED BY: SANDERSON STEWART

RELEASING RETAINAGE

ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT BID PRICE \$	CONTRACT DOLLAR AMOUNT \$	QUANTITY THIS ESTIMATE	AMOUNT THIS ESTIMATE \$	QUANTITY PRIOR ESTIMATES	AMOUNT PRIOR ESTIMATES \$	QUANTITY TO DATE	AMOUNT TO DATE \$	PERCENT OF BID TO DATE	UNIT CMPTE (X)
BASE BID													
101	Mobilization and Insurance	LS	1.00	3,200.00	3,200.00	0.00	0.00	1.00	3,200.00	1.00	3,200.00	100%	X
102	Dewatering	LS	1.00	3,500.00	3,500.00	0.00	0.00	1.00	3,500.00	1.00	3,500.00	100%	X
103	Connect to Existing 18-inch Sanitary Sewer Main Stub	EA	1.00	900.00	900.00	0.00	0.00	1.00	900.00	1.00	900.00	100%	X
104	Basic Sanitary Sewer Manhole	EA	2.00	2,250.00	4,500.00	0.00	0.00	3.00	6,750.00	3.00	6,750.00	150%	X
105	Extra Depth Manhole	VF	23.10	20.00	462.00	0.00	0.00	34.70	694.00	34.70	694.00	150%	X
106	18-inch Sanitary Sewer Pipe	LF	622.00	42.00	26,124.00	0.00	0.00	622.00	26,124.00	622.00	26,124.00	100%	X
107	18-inch Cap	EA	1.00	50.00	50.00	0.00	0.00	1.00	50.00	1.00	50.00	100%	X
108	6-inch Sanitary Sewer Service	EA	1.00	400.00	400.00	0.00	0.00	1.00	400.00	1.00	400.00	100%	X
109	6-inch Sanitary Sewer Service Pipe	LF	34.00	20.00	680.00	0.00	0.00	34.00	680.00	34.00	680.00	100%	X

TOTAL CONTRACT	\$39,816.00	\$0.00	\$42,298.00	\$42,298.00	106.23%
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CHANGE ORDER NO. ONE

CO1-1 Reconcile Contract to Reflect Actual Quantities Installed

104	Basic Sanitary Sewer Manhole	EA	1.00	2,250.00	2,250.00
105	Extra Depth Manhole	VF	11.60	20.00	232.00

TOTAL CONTRACT CHANGE ORDER NO. ONE	\$2,482.00	\$0.00	\$0.00	\$0.00
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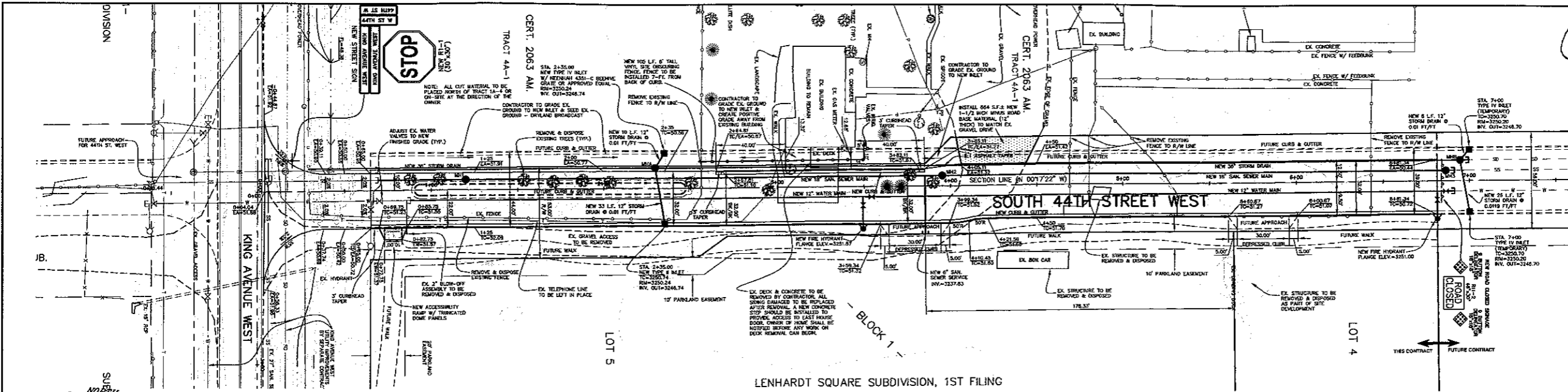
ADJUSTED CONTRACT TOTAL	\$42,298.00	\$0.00	\$42,298.00	\$42,298.00	100.00%
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PRIVATE CONTRACT No. 610
TO PROVIDE WATER, SANITARY SEWER, STORM DRAIN AND STREET IMPROVEMENTS
FOR LOTS 4 & 5, BLOCK 1, LENHARDT SQUARE SUBDIVISION, 1ST FILING
BILLINGS, MONTANA

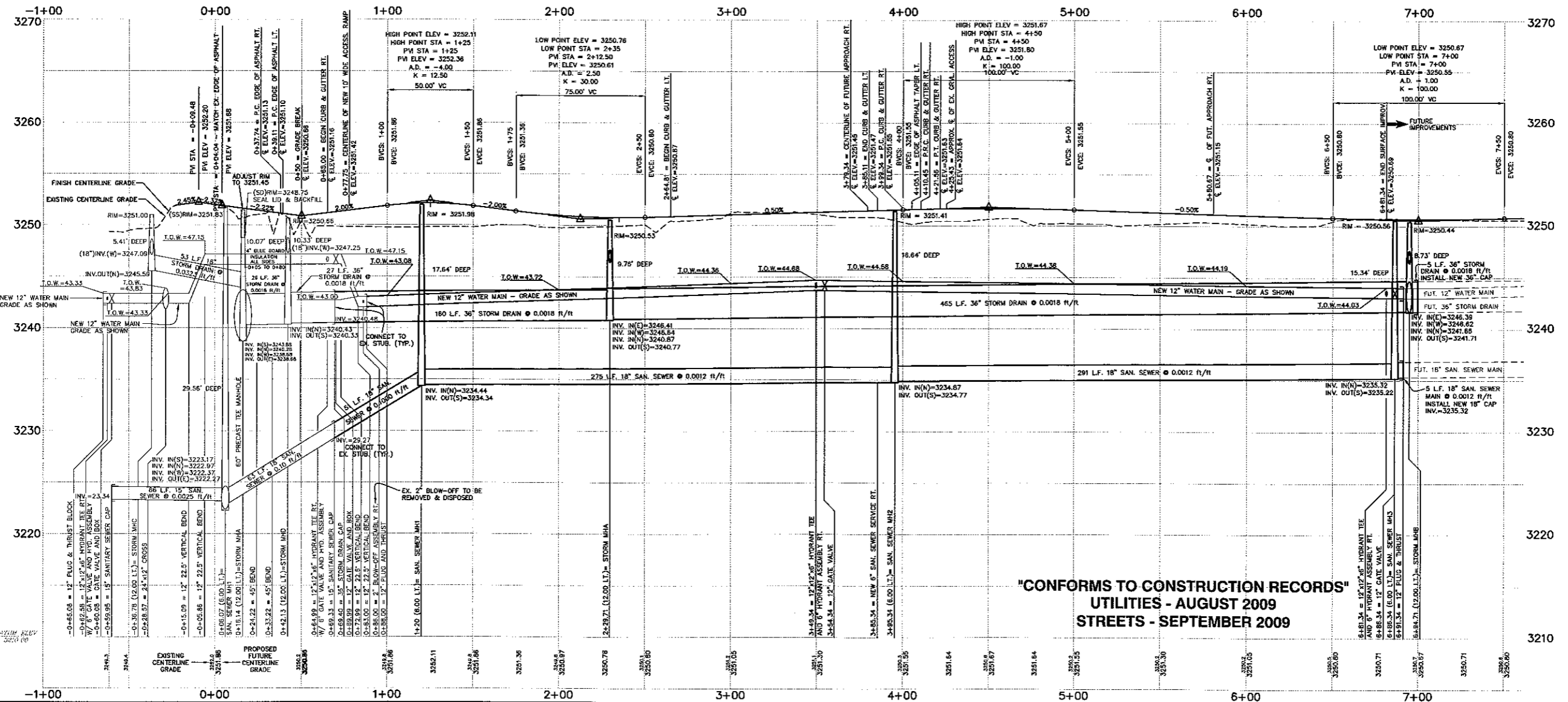
SCALE: AS SHOWN
FILE: SARATOV_PRO
PROJECT NO.: 07054.03
SHEET 3 OF 4



LENHARDT SQUARE SUBDIVISION, 1ST FILING

SCALE
PLAN : 1" = 30'
PROFILE
HORIZ. : 1" = 30'
VERT. : 1" = 5'

NOTE:
-EXISTING UNDERGROUND INSTALLATIONS & PRIVATE UTILITIES SHOWN ARE INDICATED ACCORDING TO THE BEST INFORMATION AVAILABLE TO THE ENGINEER. THE ENGINEER DOES NOT GUARANTEE THE ACCURACY OF SUCH INFORMATION. SERVICE LINES (WATER, POWER, GAS, STORM, SEWER, TELEPHONE & TELEVISION) MAY NOT BE STRAIGHT LINES OR AS INDICATED ON THE PLANS. STATE LAW REQUIRES CONTRACTOR TO CALL ALL UTILITY COMPANIES BEFORE EXCAVATION FOR EXACT LOCATIONS.
-ALL IMPROVEMENTS SHALL BE PERFORMED IN ACCORDANCE WITH MONTANA PUBLIC WORKS STANDARD SPECIFICATIONS 5TH EDITION, MARCH, 2003, AND THE CITY OF BILLINGS STANDARD MODIFICATIONS, DATED MARCH, 2006; INCLUDING REVISIONS DATED 8/08.
-UNLESS OTHERWISE SPECIFIED, ALL CONSTRUCTION LAYOUT AND STAKING SHALL BE PERFORMED UNDER THE RESPONSIBLE CHARGE OF A LAND SURVEYOR LICENSED IN THE STATE OF MONTANA AND BY A PARTY CHIEF OR ENGINEERING TECHNICIAN EXPERIENCED IN CONSTRUCTION LAYOUT AND STAKING TECHNIQUES AS ARE REQUIRED BY THE SPECIFIC TYPE OF WORK BEING PERFORMED.



"CONFORMS TO CONSTRUCTION RECORDS"
UTILITIES - AUGUST 2009
STREETS - SEPTEMBER 2009