

COMPENSATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 2014 between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "CITY", and TRAILS WEST HOMES, LLC, 5807 Mountain Front Avenue, Billings, Montana, 59106, 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 Fee Practice outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater construction fees and 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 24th day of September, 2014. Said plans and specifications generally provide for the construction of water facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water main extension in 56th Street West south of Grand Avenue; 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 is determined in conformance with the CITY'S Water/Wastewater Extension Policy, the CITY'S Utilities Fees Practice, and the DEVELOPER'S compliance with city, state, and federal laws, rules, and regulations. These policies require necessary funds to be included in the current, approved Capital Improvements Projects (CIP) budget in order to be eligible for

compensation back to the DEVELOPER. The DEVELOPER may choose to proceed with an extension or replacement project without waiting for funds to be made available in the CIP budget; in this case, the DEVELOPER is responsible for paying the entire cost of the construction. 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) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.
- (d) 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.
- (e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.
- (f) Extension or replacement of water 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, competitive bidding, and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.

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 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. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under its Water/Wastewater Extension Policy and Utilities Fees Practice that will recommend that compensation for water and/or wastewater facilities which have been extended or replaced at the DEVELOPER'S expense will be made as set forth herein.

Compensation does not apply to additional extensions or replacements of the water facilities. 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, 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.

DATED this 15th day of OCTOBER, 2014.

TRAILS WEST HOMES, LLC

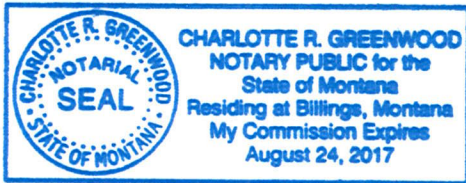
By: Rod Wilson

Its: Member

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 15th day of October, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Rod Wilson known to me to be the Member of Trails West Homes, LLC, the person who signed the foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year herein above written.



Charlotte R. Greenwood
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

CITY OF BILLINGS

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year hereinabove written.

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

EXHIBIT 1

**City of Billings Monetary Compensation for
Private Contract No. 693 – 56th Street West Water Main Extension**

Project Description: Private Contract No. 693 consists of extending 2,050 lineal feet of 20-inch water main and associated appurtenances in 56th Street West south of Grand Avenue

Schedule I – 56th Street West Water Main Extension

Williams Civil Division, Inc. Total Bid Price: \$ 340,716.00
(see attached bid tabs)

DEQ Review Fee

Fee Amount: \$ 510.50

Private Contract Fee

3.5% of Total Bid Price: \$ 11,925.06

Engineering Fees & Construction Administration Services

Total Cost: \$ 49,950.00

Grand Total: \$ 403,101.56

City Compensation to Trails West Homes, LLC \$ 403,101.56