

RESOLUTION NO. 08-18703

**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 real property to allow it to utilize such property for purposes of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings; and

**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**, 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 traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in Billings; and

**WHEREAS**, it is necessary to condemn the right of way in said private real property in fee simple and for a temporary construction easement as described in Exhibit "A" for the purpose of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings; 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 construction easements, for the purposes of traffic lane widening improvements on King Avenue East between Orchard Lane and South Billings Boulevard in the City of Billings;
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 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 28th day of April, 2008.



ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk

CITY OF BILLINGS

BY: Ron Tussing  
Ron Tussing, Mayor

## EXHIBIT "A"

### LEGAL DESCRIPTION OF KING AVENUE EAST PROPERTY ACQUISITION

1. A Tract of land situated in Lot 2, Star Subdivision as recorded in Document No. 1023306, in the SW1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of said Lot 2, thence S90°00'00"W, a distance of 295.35 feet; thence along a curve to the right having a Radius of 10.00 feet, a Delta of 90°00'00", and an Arc Length of 15.71 feet; thence N00°00'00"E, a distance of 23.17 feet; thence S56°19'15"E, a distance of 41.78 feet; thence N90°00'00"E, a distance of 270.56 feet to the East line of said Lot 2; thence S00°02'34"E along the East line of said Lot 2, a distance of 10.00 feet to the Point of Beginning, containing an area of 3434.8 square feet, more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing an area of 3126.4 Sq.Ft., more or less.

2. A Tract of land situated in Lot 1, Star Subdivision as recorded in Document No. 1023306, in the SW1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southwest corner of said Lot 1, thence N00°02'34"W along the Westerly line of said Lot 1, a distance of 10.00 feet; thence N90°00'00"E, a distance of 260.91 feet; thence N28°41'50"E, a distance of 30.00 feet to the Westerly Right-of-Way of Newman Lane; thence S00°03'00"E along said Westerly Right-of-Way of Newman Lane, a distance of 26.31 feet; thence along a curve to the right having a Radius of 10.00 feet, a Delta of 90°03'00", and an Arc Length of 15.71 feet; thence S90°03'00"W, a distance of 265.34 feet to the Point of Beginning, containing 2762.1 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 2941 Sq.Ft., more or less.

3. A Tract of land situated in Lot 1, Block 5, Pinnick Subdivision 3rd Filing as recorded in Document No. 779769, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of said Lot 1, thence S90°00'00"W, a distance of 389.40 feet to the Easterly Right-of-Way of Newman Lane; thence N00°03'00"W along said Easterly Right-of-Way of Newman Lane, a distance of 25.62 feet; thence S87°12'20"E, a distance of 135.68 feet; thence N90°00'00"E, a distance of 253.90 feet to the Easterly line of said Lot 1; thence S00°00'00"E along the Easterly line of said Lot 1, a distance of 19.00 feet to the Point of Beginning, containing 7847.3 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 3886.8 Sq.Ft., more or less.

4. A Tract of land situated in Lot 24, Sugar Subdivision as recorded in Document No. 15136, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Pinnick Subdivision 3rd Filing, thence N00°00'00"W, a distance of 19.00 feet; thence N90°00'00"E, a distance of 187.61 feet; thence N54°26'59"E, a distance of 28.39 feet to the Westerly Right-of-Way of Calhoun Lane; thence S00°00'00"E along said Westerly line of Calhoun Lane, a distance of 35.51 feet; thence S90°00'00"W, a distance of 210.71 feet to the Point of Beginning, containing 4194.3 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the previously described Right-of-way Acquisition Description, containing 2135.9 Sq.Ft., more or less.

5. A Tract of land situated in Tract 1, Certificate of Survey No. 2350 as recorded in Document No. 1372518, in the S1/2 SW1/4 SE1/4 SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southwest corner of said Tract 1, thence N00°09'49"W along the Easterly Right-of-Way of Calhoun Lane, a distance of 35.84 feet; thence S54°36'53"E, a distance of 32.49 feet; thence N89°51'37"E, a distance of 85.44 feet; thence S83°00'53"E, a distance of 88.69 feet; thence N89°51'37"E, a distance of 66.88 feet; thence S88°59'59"E, a distance of 80.74 feet; thence S87°51'35"E, a distance of 109.57 feet to the existing Northerly Right-of-Way of King Avenue East; thence S89°51'37"W along said Northerly Right-of-Way of King Avenue East, a distance of 456.96 feet to the Point of Beginning, containing 4232.5 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the South line of said Tract 1 and the previously described Right-of-way Acquisition Description, containing 6408.8 Sq.Ft., more or less.

6. A Tract of land situated in Lot 1, Block 9, Orchard Lane Subdivision 3rd Filing as recorded in Document No. 537746, in the SW1/4 Section 9, T.1S., R.26E., P.M.M., Yellowstone County, Montana being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Orchard Lane Subdivision 3rd Filing, thence S89°55'30"W along the Northerly Right-of-Way of King Avenue East, a distance of 11.47 feet; thence N70°54'10"E, a distance of 12.13 feet to the Westerly Right-of-Way of Orchard Lane; thence S00°11'30"E along said Westerly Right-of-way of Orchard Lane, a distance of 3.95 feet to the Point of Beginning containing 22.7 Sq.Ft., more or less.

Together with a Temporary Easement for construction purposes 10 feet wide being Northerly of, contiguous, adjacent, and parallel to the South line of said Lot 1 and the previously described Right-of-Way Acquisition Description, containing an area of 639.2 Sq.Ft., more or less.