



Item: Public Hearing – Resolution 9994 to Annex, Ordinance 3095 to assign City Zoning and Annexation Agreement all pertaining to 1359 13th Ave SW, legally described as Mark 1, Sun River Bridge Garden Tracts, Section 15, Township 20 North, Range 3 East, Cascade County, MT and portion of abutting 13th Ave SW right-of-way and Sun River

From: Jana Cooper, RLA, Planner II, Planning and Community Development

Initiated By: Deloris M. Russell Trust, Property Owner

Presented By: Mike Haynes, AICP, Director of Planning and Community Development

Action Requested: City Commission adopt Resolution 9994, Ordinance 3095 and Annexation Agreement all pertaining to 1359 13th Ave SW.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motions: (Each motion to be separately considered)

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 9994 and (approve/disapprove) the Annexation Agreement all pertaining to 1359 13th Ave SW.”

and;

“I move that the City Commission (adopt/deny) Ordinance 3095.”

2. Mayor calls for a second, discussion, and calls for the vote after each motion.

Recommendation: At the conclusion of a public hearing held June 26, 2012, the Planning Advisory Board conditionally approved the annexation of 1359 13th Ave SW, and the Zoning Commission approved assigning a zoning classification of R-1 Single-family low density residential district to the property upon annexation to the City. Public Notice for the Planning Advisory Board/Zoning Commission Public Hearing was published in the *Great Falls Tribune* on June 10, 2012. Staff received one comment from a neighboring property regarding the annexation and how it would affect their property.

Staff recommends approval of the proposed annexation and zoning of ±1.85 acres of unincorporated land legally described as Mark 1, Sun River Bridge Garden Tracts, Section 15, Township 20 North , Range 3 East, Cascade County, MT and portions of abutting 13th Ave SW right-of-way and Sun River.

City Commission set a Public Hearing for said annexation and zoning on July 17, 2012, but that hearing was vacated by the Commission on August 7, 2012. The Applicant was working on financial issues related to the project, which have since been resolved.

Ordinance 3095 to assign City zoning to the subject property was accepted by the City Commission on first reading on September 4, 2012. Notice of Public Hearing before the City Commission for the annexation and establishment of City zoning was published in the *Great Falls Tribune* on September 16, 2012 and September 23, 2012.

Background: The owner of 1359 13th Street Southwest is requesting annexation of their property that consists of ±0.67 acres. There is a single family residence on the property and the owner is making the request in order to extend and connect to City water services and utilize existing City sewer services.

In addition to the subject property, a portion of the Sun River abutting the subject property consisting of ±0.55 acres and, per MCA, the abutting portions of 13th Avenue Southwest, comprised of ±0.63 acres, are also being annexed as a part of the request. In total ±1.85 acres will be annexed into the City.

The subject property abuts 13th Avenue Southwest, which is paved without curb, gutter or sidewalks. Properties west of the subject property are already annexed into the City, but the adjacent right-of-way has not been annexed. In order to simplify maintenance responsibility, the City's Street Division requires 13th Avenue Southwest be annexed from 14th Street Southwest to the eastern property line of the subject property. As a condition of annexation, any roadway section (paving, gravel and subgrade) that is disturbed during construction activities of the project shall be restored to their original condition. Public Works is not requiring any escrow of funds for the improvement of 13th Avenue Southwest. The owners will waive their right to protest a future special improvement district for roadway improvements as a condition of annexation.

There is an existing 8-inch water main located in 14th Street Southwest. The applicant proposes to extend an 8-inch City water main from the existing main to the eastern boundary of the subject property and connect service to this line. There is an existing 14-inch sewer in 13th Avenue Southwest. The applicant will be required to connect to the existing sewer and pay any reimbursement owed for the installation of this line. As a condition of annexation, the owner will be required to install a fire hydrant in a location determined by Public Works and the Fire Department. The existing properties adjacent to 13th Avenue Southwest that are already annexed into the City will be responsible for their portion of the new water main per existing agreements on file at the Planning and Community Development office and the owner will be eligible for reimbursement of the water main and hydrant as the remaining properties which are not currently in the City are annexed.

The request does not include a proposal for any new development; therefore, it is reasonable to assume that there would be no increased traffic demands caused by this request.

The applicant will not be required to extend storm drain facilities in the area. Any future expansion of facilities is subject to review by the Department of Public Works for applicable storm water regulations. The owner will waive their right to protest a future special improvement district for any storm drain improvements as a condition of annexation.

Zoning of the subject property will enhance health, safety and welfare through application of City Codes and provision of municipal services.

Section 76-2-304 Montana Code Annotated lists criteria and guidelines which must be considered in conjunction with establishing municipal zoning on land:

- (1) Zoning regulations must be:
 - (a) made in accordance with a growth policy; and
 - (b) designed to:
 - (i) secure safety from fire and other dangers;
 - (ii) promote public health, public safety, and the general welfare; and
 - (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
- (2) In the adoption of zoning regulations, the municipal governing body shall consider:
 - (a) reasonable provision of adequate light and air;
 - (b) the effect on motorized and nonmotorized transportation systems;
 - (c) promotion of compatible urban growth;
 - (d) the character of the district and its peculiar suitability for particular uses; and
 - (e) conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Applicable policy statements include “residential land uses should be planned and located so that they do not result in adverse impacts upon one another.” Therefore, staff concludes the above-cited criteria are substantially met.

The proposed development is compatible with the 2005 Growth Policy, as it advances specific Goals, Policies, and Action Strategies contained within the related plan elements, and is also in line with the general themes and principles found in the document. Plan elements related to the proposed development include providing infill development and protecting and enhancing the character of existing neighborhoods. The Growth Policy also states that annexations should be logical and efficient extensions of the City’s boundaries and service areas, which applies to this project.

Patty Cadwell, Neighborhood Council Coordinator, presented the project to Neighborhood Council #1 on May 15, 2012. There were no comments from Neighborhood Council #1, but the Planning Department has received questions from adjacent property owners, which are located in the county, that wanted to know how the annexation would affect their property.

Concurrences: Representatives from the City’s Public Works, Park and Recreation and Fire Departments have been involved throughout the review and approval process for this project.

Fiscal Impact: The annexation will marginally expand the fire and police service area, which will have a minimal fiscal impact on the City. The City should see a slight increase in tax revenues by annexing an improved property.

Alternatives: If there are justifiable reasons to do so, the City Commission could deny the requested action to the extent allowed in City Code and State Statute.






Attachments/Exhibits:

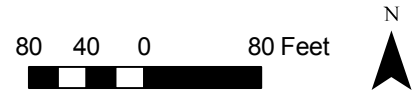
Aerial Photo
Ordinance 3095 with Attachment A
Resolution 9994 with Attachment A
Annexation Agreement

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Patty Cadwell, Neighborhood Council Coordinator
Deloris M. Russell Trust c/o Linda Stirling 1375 13th Ave SW #12, Great Falls, MT 59404
Sandy Mares, West Great Falls, Flood Control District, 429 19th St SW, Great Falls, MT 59404

Aerial Map



-  13th Ave SW ROW being Annexed
-  Sun River being Annexed
-  1359 13th Ave SW
-  City Limits
-  Tracts of Land



1359 13th Ave SW

ORDINANCE 3095

AN ORDINANCE ASSIGNING A ZONING CLASSIFICATION OF R-1 SINGLE-FAMILY LOW DENSITY RESIDENTIAL DISTRICT TO MARK 1, SUN RIVER BRIDGE GARDEN TRACTS, AND ABUTTING PORITON OF THE SUN RIVER AND 13TH AVENUE SOUTHWEST RIGHT-OF-WAY FROM 14TH STREET SOUTHWEST TO THE EASTERN BOUNDARY OF THE SUBJECT PROPERTY ALL LOCATED IN SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA

* * * * *

WHEREAS, Deloris M. Russell Trust has petitioned the City of Great Falls to annex Mark 1, Sun River Bridge Garden Tracts and abutting portion of the Sun River and 13th Avenue Southwest right-of-way from 14th Street Southwest to the eastern boundary of the subject property consisting of ±1.85 acres, located in Section 15, Township 20 North, Range 3 East, Cascade County, Montana, herein referred to as Subject Property, and;

WHEREAS, Deloris M. Russell has petitioned Mark 1, Sun River Bridge Garden Tracts be assigned a zoning classification of R-1 Single-family low density residential district upon annexation to the City; and,

WHEREAS, the abutting portion of the Sun River shall be assigned a zoning classification of PLI – Public Lands and Institutional upon annexation; and,

WHEREAS, the portion of 13th Avenue Southwest from 14th Street Southwest to the eastern boundary of Mark 1, Sun River Bridge Garden Tracts shall be assigned zoning consistent with the adjacent properties including R-1 Single-family low density, R-6 Multi-family high density and C-2 General commercial upon annexation; and,

WHEREAS, notice of assigning said zoning classifications to Subject Property was published in the *Great Falls Tribune* advising that a public hearing on this zoning designation would be held on the 2nd day of October, 2012, before final passage of said Ordinance herein; and,

WHEREAS, following said public hearing, it was found and decided that the said zoning designation be made;

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF GREAT FALLS, STATE OF MONTANA:

Section 1. It is determined that the herein requested zoning designation will meet the criteria and guidelines cited in Section 76-2-304 Montana Code Annotated, and Section 17.16.40.030 of the Unified Land Development Code of the City of Great Falls.

Section 2. That the zoning of Mark 1, Sun River Bridge Garden Tracts, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, be designated as R-3 Single-family high density residential district classification attached hereto as Attachment "A" and by this reference made a part hereof.

Section 3. That the zoning of the Sun River abutting Mark 1, Sun River Bridge Garden Tracts, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, be designated as PLI Public Lands and Institutional district classification attached hereto as Attachment "A" and by this reference made a part hereof.

Section 4. That the zoning of a portion of 13th Avenue Southwest from 14th Street Southwest to the eastern boundary of Mark 1, Sun River Bridge Garden Tracts, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, be designated as R-1 Single-family low density, R-6 Multi-family high density and C-2 General commercial consistent with the adjacent properties upon annexation as attached hereto as Attachment "A" and by this reference made a part hereof.

Section 5. This ordinance shall be in full force and effect thirty (30) days after its passage and adoption by the City Commission or upon filing in the office of the Cascade County Clerk and Recorder the resolution annexing Mark 1, Sun River Bridge Garden Tracts and abutting portion of the Sun River and 13th Avenue Southwest right-of-way from 14th Street Southwest to the eastern boundary of the subject property consisting of ±1.85 acres, located in Section 15, Township 20 North, Range 3 East, Cascade County, Montana, whichever event shall occur later.

APPROVED by the City Commission on first reading September 4, 2012.

PASSED, APPROVED AND ADOPTED by the City Commission of the City of Great Falls, Montana on second reading October 2, 2012.

Michael J. Winters, Mayor

ATTEST:

Lisa Kunz, City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

David L. Nielsen, Interim City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3095 in three conspicuous places within the limits of said City to-wit:

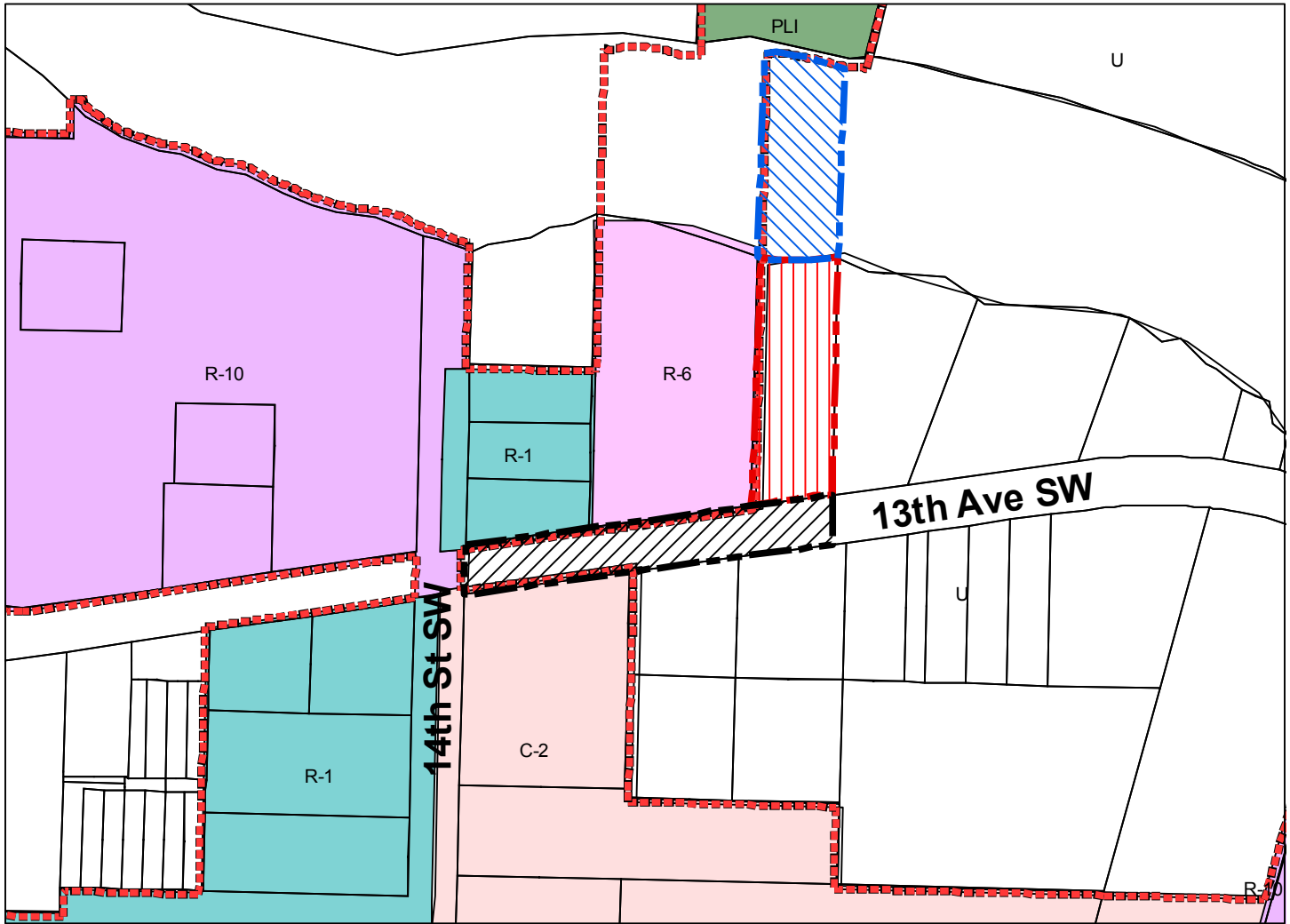
On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

Lisa Kunz, City Clerk

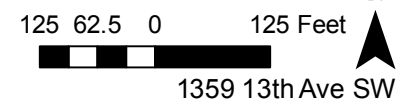
(CITY SEAL)

Attachment A

Ordinance 3095



- | | | |
|----------------------------------|--------------------------------|----------------------------------|
| 1359 13th Ave SW Annexation Area | C-3 Highway commercial | PUD Planned unit development |
| 13th Ave SW Annexation Area | C-4 Central business core | R-1 Single-family suburban |
| Sun River Annexation Area | C-5 Central business periphery | R-2 Single-family medium density |
| City Limits | I-1 Light industrial | R-3 Single-family high density |
| Tracts of Land | I-2 Heavy industrial | R-5 Multi-family medium density |
| ZONING | M-1 Mixed-use district | R-6 Multi-family high density |
| AI Airport Industrial | M-2 Mixed-use transitional | R-9 Mixed residential |
| C-1 Neighborhood commercial | PLI Public lands institutional | R-10 Mobile home park |
| C-2 General commercial | POS Park Open Space | Unincorporated Enclave |



RESOLUTION 9994

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO EXTEND THE BOUNDARIES OF SAID CITY TO INCLUDE ±1.85 ACRES CONSISTING OF MARK 1, SUN RIVER BRIDGE GARDEN TRACTS, A SEGMENT OF 13TH AVENUE SOUTHWEST AND A PORTION OF THE SUN RIVER, LOCATED IN SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA; ALL AS SHOWN ON THE MAP ATTACHED HERETO MARKED ATTACHMENT "A" AND BY THIS REFERENCE MADE A PART HEREOF.

* * * * *

WHEREAS, the City of Great Falls is a city incorporated under the laws of the State of Montana, and having a population of more than ten thousand (10,000) is a city of the first class; and,

WHEREAS, there is contiguous to said City, but without the boundaries thereof, certain tracts or parcels of land situated in the County of Cascade, State of Montana, and described as follows:

Mark 1, Sun River Bridge Garden Tracts, located in Section 15, Township 20 North, Range 3 East, Cascade County, Montana and containing ±0.67 acres;

And,

A segment of 13th Avenue Southwest, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, more particularly described as follows:

Commencing at the Northwest corner of Lot 3, Sun River Garden Tracts, said corner being the "True Point of Beginning", proceed thence northerly ±60.0 feet, crossing the 13th Avenue Southwest right-of-way to a point on

the easterly right-of-way line of 14th Street Southwest and the Southwest corner of Mark 2AC, Sun River Bridge Garden Tracts;

Thence Easterly ± 455 feet along the northerly right-of-way line of 13th Avenue Southwest, to a point on the easterly right-of-way of 13th Avenue Southwest and the Southeast corner of Mark 1, Sun River Bridge Garden Tracts;

Thence Southerly ± 60 feet, crossing the 13th Avenue Southwest right-of-way to a point on the southerly right-of-way line of 13th Avenue Southwest and the Northeast corner of Mark 2C Sun River Bridge Garden Tracts;

Thence Westerly ± 455 feet along the southerly right-of-way line of 13th Avenue Southwest, to a point on the eastern right-of-way of 14th Street Southwest and the Northeast corner of Lot 3 Sun River Bridge Garden Tracts, being the "True point of Beginning";

containing ± 0.63 acres more or less;

And,

A segment of the Sun River, Section 15, Township 20 North, Range 3 East, Cascade County, Montana, more particularly described as follows:

Commencing at the Northwest corner of Mark 1, Sun River Bridge Garden Tracts and the High Water Mark of the Sun River, said corner being the "True Point of Beginning", proceed thence northerly ± 266 feet, crossing the Sun River to a point along the northerly High Water Mark of the Sun River and the southern property line of the West Great Falls Flood Levee;

Thence Easterly ± 102 feet along the northerly High Water Mark of the Sun River, to a point along the High Water Mark of the Sun River and the southern property line of the West Great Falls Flood Levee;

Thence Southerly ± 235 feet, crossing the Sun River to a point along the High Water Mark of the Sun River and the Northeast corner of Mark 1, Sun River Bridge Garden Tracts;

Thence Westerly ± 93 feet along the northerly property line of Mark 1, Sun River Bridge Garden Tracts and the High Water Mark of the Sun River, to a point along the southern High Water Mark of the Sun River and the Northwest corner of Mark 1, Sun River Bridge Garden Tracts, being the "True Point of Beginning";

containing ± 0.55 acres more or less and containing in all ± 1.85 acres more or less and as shown on the Map attached hereto, marked Attachment "A" and by this reference made a part hereof; and,

WHEREAS, Section 7-2-4601, Montana Code Annotated, provides that whenever the owners of real property contiguous to any incorporated city of the first class petition to have said property made a part of the municipal corporation, such lands may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same; and,

WHEREAS, the owner of the hereinabove described property has submitted a petition to have said property annexed to the City of Great Falls; and,

WHEREAS, all of the proceedings herein have been conducted in strict compliance with and in conformity to the law and constitution of the State of Montana, and all conditions, acts, and things required to be done precedent to and in the passage and adoption of this resolution have been properly and legally done, and performed;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

That the boundaries of the City of Great Falls, Montana, be and the same are hereby extended so as to embrace and include within the corporate limits of said city all of the land hereinabove described, included as: " ± 1.85 ACRES CONSISTING OF MARK 1, SUN RIVER BRIDGE GARDEN TRACTS, A SEGMENT OF 13TH AVENUE SOUTHWEST AND A PORTION OF THE SUN RIVER, LOCATED IN SECTION 15, TOWNSHIP 20 NORTH, RANGE 3 EAST, CASCADE COUNTY, MONTANA."

BE IT FURTHER RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

The Cascade County Clerk and Recorder is hereby authorized and directed to change the appropriate district boundaries of the City of Great Falls, Montana, to include said tract of land; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that this Resolution shall become effective from and after the date of the filing of said document in the office of the Cascade County Clerk and Recorder.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana,
on this 4th day of October, 2012.

Michael J. Winters, Mayor

ATTEST:

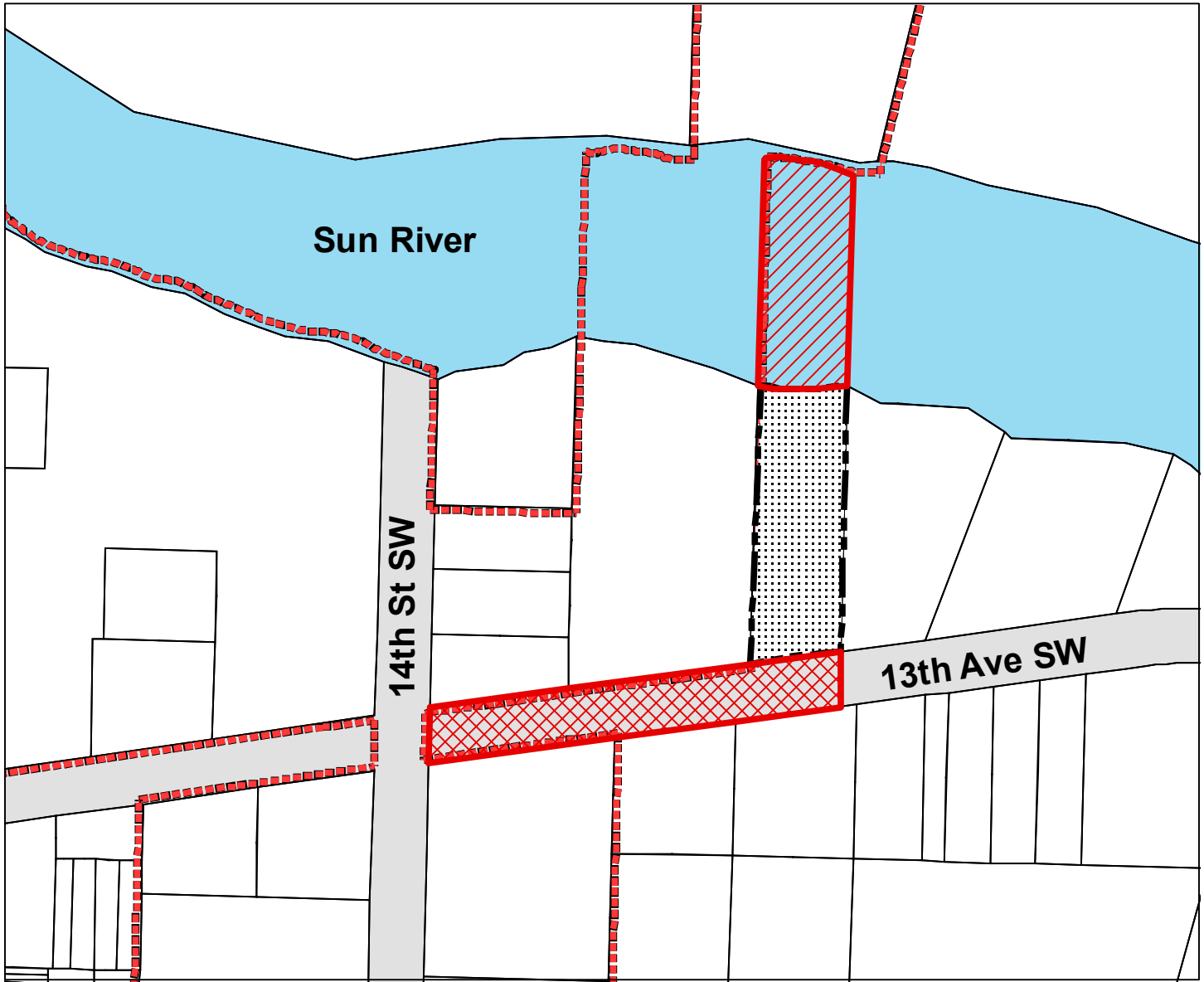
Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

David L. Nielsen, Interim City Attorney

Attachment A Resolution 9994



- City Limits
- ▨ 13th Ave SW ROW Related to Resolution 9994
- ▨ Sun River Related to Resolution 9994
- ▨ 1359 13th Ave SW
- Tracts of Land
- Right-of-Way



1359 13th Ave SW

**ANNEXATION AGREEMENT FOR
MARK 1, SUN RIVER BRIDGE GARDEN TRACTS AND
A PORTION OF 13TH AVENUE SOUTHWEST AND
A PORTION OF THE SUN RIVER ALL
LOCATED IN SECTION 15, TOWNSHIP 20 NORTH,
RANGE 3 EAST, CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2012, between Deloris M. Russell Trust, hereinafter referred to as “Owner,” and the CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as “City,” regarding the requirements for annexation to the corporate limits of City, Mark 1, Sun River Bridge Garden Tracts and a portion 13th Avenue Southwest and a portion of the Sun River all located in Section 15, Township 20 North, Range 3 East, Cascade County, Montana, hereinafter referred to as “Subject Property.”

2. PREVIOUS AGREEMENTS/RESTRICTIONS

- A. Agreement for a tract of land known as Tract C, Lot 1, Sun River Bridge Garden Tracts filed with the Cascade County Clerk and Records Office under Reel 15 Doc. No. 331.
- B. Agreement for a tract of land known as Tract D, Lot 1, Sun River Bridge Garden Tracts filed with the Cascade County Clerk and Records Office under Reel 15 Doc. No. 332.
- C. Annexation and Improvement Agreement for Tracts 2B & 3, Sun River Bridge Garden Tracts filed with the Cascade County Clerk and Records Office under Reel 332 Doc. No. 870.
- D. Reimbursement information related to installation of the sanitary sewer main filed at the City of Great Falls Public Works Department Office File 831.

3. SUPPORTING DOCUMENTS

- A. Final engineering drawings, specifications and cost estimates prepared by the City of Great Falls Engineering Division, consisting of documents for water mains and fire hydrants. Said drawings and specifications are on file in the City Engineer’s office, as office file 1514.
- B. Regarding the bonding requirements to ensure construction of public improvements as referenced in Section 76-3-507, MCA, and Owner shall provide, in conjunction with

submittal and approval of the annexation, a financial surety to ensure the construction and installation of public improvements to serve the area within said amended plat.

- C. Loan commitment letter dated _____, 2012, by _____ Bank of _____, to indicate the capability of Owner to pay for the public improvements referenced in Paragraph 3.B. hereinabove. A copy of the same is filed in the office of the Great Falls Planning Department.

4. AMENDMENTS

Minor changes to engineering documents and such revisions to the engineering drawings as are deemed appropriate and necessary by City's Engineer and City's Public Works Department and which do not materially affect the hereinabove mentioned Subject Property, can be made as follows:

- A. The proposed revision will be submitted to City's Public Works Department for review and, if approved, the City Engineer or Public Works Director will sign and adequately annotate the change.
- B. The annotated revision becomes a part of this Agreement upon City's Public Works Department approval.
- C. Changes during construction shall be made by change order approved by City's Public Works Department.
- D. "As Built" reproducible drawings shall be supplied by City Engineer upon completion of the construction.
- E. All amendments to this Agreement, except as allowable above in this section, shall be in writing and approved by City and Owner.

5. UNFORESEEN POTENTIALITIES

It is mutually recognized, understood and agreed by City and Owner that subsequent to the time this agreement was entered into, events may occur and actions may be taken which were unforeseen by either party or both parties hereto. In this perspective, it is, therefore, agreed that the parties may by mutual subsequent agreement modify the terms, conditions and covenants of this Agreement.

6. FEES AND CHARGES

- A. Prior to annexation of Subdivision, Owner shall pay, in addition to the \$300.00 fee for final plat, \$100.00 fee for Annexation Application, \$200.00 fee for Annexation Agreement, and \$100.00 fee for Resolution, \$700.00 for Establishing City Zoning, which have been paid, pay the following fees as provided by City policy and resolution;

a. Storm Sewer Fee (\$250/acre x 0.67 acres)	\$ 167.50
b. Reimbursement existing sanitary sewer in 13 th Ave SW (18.50 x 100 L.F.)	\$ 1,850.00
c. Recording fees for Agreement and Resolution (\$11 per page x 11 pages)	\$ 121.00

Total fees made payable to City of Great Falls \$ 2,138.50

- A. Owner or its successors or assigns shall pay City for its expenses incurred in construction, testing, inspection and acceptance of public utilities to serve Subject Property at the rates charged by City for said work at the time performed.
- B. Water tapping, water connection, sewer service tapping, and sewer connection fees will be assessed at the time of installation.
- C. The absence of any fee from this agreement lawfully charged by the City in connection with construction activity associated with Subject Property shall not constitute a waiver by the City.

7. PUBLIC IMPROVEMENTS

Owner agrees to pay for and complete within two (2) years of the date of this Agreement, the installation of the water main and fire hydrant improvements related to the annexation of the Subject Property, according to plans referenced in Paragraph 3.A above and filed in the City Engineer's office and in accordance with standards of City.

8. WATER MAIN REIMBURSEMENT

- A. In coordination with the City, the Owner shall be entitled to reimbursement for the full cost of the eight (8") inch diameter water main installed from its existing location in 14th Street Southwest east to the eastern property line of the Subject Property consisting of approximately 178.32 feet from the abutting property owner(s) that have already annexed into the City per Agreements listed in Paragraph 2.A and 2.C at such time as actual improvements have been completed by City and actual costs of the improvement have been calculated by the City.
- B. Owner shall be entitled to reimbursement for actual cost of the installation of the above mentioned water main at such time as reimbursement is made to the City from the abutting property owners that have already annexed into the City per Agreements listed in Paragraph 2.A and 2.C.

9. FUTURE REIMBURSEMENTS

- A. Owner shall pay the full cost of the eight inch (8") water main and associated fire hydrants to be immediately installed in 13th Avenue Southwest abutting Subject Property, but shall be entitled to reimbursement for one-half of the cost of the eight inch (8") water from the abutting property owners to the south (Tract D, Lot 2, and Tract C, Lot 2, Sun River Bridge Garden Tracts), upon annexation of same to City.
- B. Owner shall be entitled to reimbursed for actual cost of the installation of the above mentioned water main at such time as reimbursement is made to the City from the abutting property owners to the south (Tract D, Lot 2, and Tract C, Lot 2, Sun River Bridge Garden Tracts).

10. SOIL AND/OR GROUNDWATER CONDITIONS

The owner of the property in the Subdivision shall indemnify, hold harmless and defend the City of Great Falls, its officers, agents, servants and employees and assigns from and against all claims, debts, liabilities, obligations and costs including reasonable attorney fees, that arise from, result from or relate to adverse soil or groundwater conditions on the owner's property in the Subdivision. This indemnity obligation runs with the land. Upon the transfer of ownership of the property in the Subdivision, the prior owner's (whether the

Owner that made this annexation agreement or a subsequent owner) indemnity obligation for adverse soil or adverse groundwater conditions for the transferred property is released and the indemnity obligation runs to the new owner of the property. Only the owner of the parcel of property with the adverse conditions at the time the City incurs the claim, debt, liability, obligation or cost is obligated to indemnify and no owner of property in the Subdivision is obligated to indemnify for adverse conditions on property owned by someone else.

This indemnification by the owner of the property in the Subdivision shall apply unless such damage or injury results from the negligence, gross negligence or willful misconduct of the City.

11. MAINTENANCE DISTRICTS

Owner waives its right to protest the lawful creation by City of maintenance districts for any proper purpose including, but not limited to, fire hydrant and street maintenance and shall pay the proportionate share of the costs associated with said maintenance districts as they may be applied to lots in Subject Property.

12. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive right to protest any future area wide special improvement district for storm drainage facilities and further agrees to pay for proportionate share of any future storm drainage improvements which service Subject Property that may be installed with or without an area wide special improvement district. The term “area wide” as used herein, means any area larger than that covered by Subject Property which is a contributor to the drainage sub-basin of which Subject Property is a part.

13. FUTURE ROADWAY IMPROVEMENTS

Owner hereby agrees to waive right to protest creation of any future special improvement district for the Subject Property and further agrees to pay when deemed necessary by the City for proportionate share of said roadway improvements, including sidewalk, that may be installed with or without a special improvement district.

14. PUBLIC ROADWAY LIGHTING

Owner hereby agrees to waive its right to protest any future special lighting district for public roadway lighting facilities that service Subject Property, and further agrees to pay for proportionate share of the costs associated with roadway lighting which service Subject Property that may be installed with or without a special lighting district.

15. WAIVER OF PROTEST OF ANNEXATION

Owner does hereby waive any and all statutory procedure notice on right of protest to annexation of Subject Property, as provided for by State law.

16. WARRANTY, OWNERSHIP AND INSPECTION OF UTILITY AND STREET IMPROVEMENTS

After the public utilities improvements described in Paragraph 3.A hereof have been installed and accepted by City, the same shall be in all respects treated, owned and maintained as though the same had been constructed and installed by City. However, to the

extent installed by Owner, Owner or its contractor shall guarantee said improvements against defective work and materials for a period of two (2) years from date of acceptance of the completed improvements by City.

Installation of the public utilities and street improvements described in Paragraph 3.B hereof, shall be subject to City's infrastructure inspection policy in place at the time of installation.

17. ANNEXATION PREREQUISITES

Subject Property is contiguous to City; is not included within the boundary of any other incorporated municipality; and is not a part of any fire district existing or organized under any of the provisions of Chapter 33, Title 7, of the Montana Code Annotated. Subject Property, upon annexation to City, will be provided fire protection services by City comparable to that provided incorporated properties.

18. CITY ACCEPTANCE AND ZONING

In consideration of the foregoing, City hereby accepts and approves Mark 1, Sun River Bridge Garden Tracts and a portion 13th Avenue Southwest and a portion of the Sun River all located in Section 15, Township 20 North, Range 3 East, Cascade County, Montana, and will approve the property contained within the boundaries of said lot for incorporation by annexation into the corporate limits of the City of Great Falls, Montana with an assigned zoning classification of R-1 Single-family suburban residential district. It is hereby understood that the preceding language regarding zoning of lots in the Subject Property does not preclude City from reclassifying lots if an area wide reclassification is undertaken, in which event City agrees to reclassify said lots as a conforming use.

19. BINDING EFFECT

The provisions, covenants and terms of this Agreement shall run with the land and bind the present owners, their devisees, heirs, successors, and assigns; and any and all parties claiming by, through, or under them, shall be taken to agree and covenant with each of the parties to the Agreement, their devisees, heirs, successors and assigns, to conform to the provisions, covenants and terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal the day, month and year first hereinabove written.

CITY OF GREAT FALLS

Party of the First Part

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

James W. Santoro, City Attorney

OWNER
Party of the Second Part

By: _____
Linda Stirling, Trustee, Deloris M. Russell Trust

State of Montana)
County of Cascade) :ss.
City of Great Falls)

On this _____ day of _____, 2012, before me, a Notary Public in and for the State of Montana, personally appeared Linda Stirling, known to me to the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year certificate first above written.

(NOTARIAL SEAL)

Notary Public for the State of Montana
Printed Name: _____
Residing at: _____
My commission Expires: _____, 20_____