



**Item:** Resolution 9957, Closure of a portion of 6<sup>th</sup> Street Northeast.

**From:** Jana Cooper, RLA, Planner II

**Initiated By:** Montana Refining Company, Adjacent Property Owner

**Presented By:** Wendy Thomas, AICP, Deputy Director of Planning and Community Development

**Action Requested:** City Commission conduct public hearing, adopt Resolution 9957 and approve agreement.

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**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 9957.”

and;

“I move that the City Commission (approve/disapprove) the Agreement for Closure of Portion of 6<sup>th</sup> Street Northeast.”

2. Mayor calls for a second, discussion, and calls for the vote after each motion.
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**Staff Recommendation:** At the conclusion of a public hearing held January 10, 2012, the Planning Advisory Board passed a motion recommending the City Commission approve the request to close a short segment of 6<sup>th</sup> Street Northeast right-of-way in the vicinity of 17<sup>th</sup> Avenue Northeast and BNSF Railroad right-of-way. MRC requested the street closure in order to be able to better secure their property in the interests of public safety.

Representatives from Public Works concurred in recommending the Planning Advisory Board approve the request to close the rights-of-way. The approval is subject to the applicant meeting conditions of approval that include:

1. A Development Agreement shall be prepared containing terms and conditions for the closure of 6th St. NE including but not limited to provisions for:
  - A. Access by City's Public Works Department as necessary for inspection, maintenance, replacement or abandonment of the existing utilities. Utilities shall be protected from damage caused by any activities by the applicant and no permanent structures may be located within 10 feet of the centerline of any utility (railroad tracks exempted). Refer to attached memo from Public Works dated 12/22/2011.
  - B. Provide fire access for emergency vehicles and fire apparatus as necessary by the City's Fire Department.
  - C. All new fencing/gating proposed for site shall be reviewed and approved by the City's Public Works and Fire Department.
  - D. Provide access to the City owned lot south of 17th Ave. NE that is agreeable to the City. This access shall be a minimum of 30 feet wide, paved to meet City needs and provided in an easement to the City. The existing railroad spur on the parcel owned by MRC shall be shortened to not block City access to its parcel at any time.
  - E. If street segment is ever reopened, the applicant shall return the closed segment of 6th St. NE to its existing condition. Acceptance of the street to its original condition will be approved by Public Works.

The Planning & Community Development Department is in receipt of one email in opposition to the project because of outstanding issues regarding MRC as a customer of Electric City Power (ECP). Two citizens spoke at the Public Hearing in favor of the street closure, two citizens spoke in opposition to the street closure and there were two general comments on the proposed action.

In response to the assertion that the Planning Advisory Board should defer action on the street closure until ECP matters were resolved, board members correctly asserted that their role was to consider and make recommendations to the City Commission on land use issues and there was no nexus between the proposed street closure and MRC's relationship with ECP.

**Background:** The applicant has submitted a request to close a segment of 6th St. NE generally located south of 17th Ave. NE extending approximately 300 feet south to the terminus of the street at the BNSF railroad tracks. The entire area to be closed is approximately 0.41 acres.

The segment of 6th St. NE requested for closure is public right-of-way and is paved without curb or gutter. The City's Public Works Department does not have a need to retain the 6th St. NE street segment to maintain adequate public traffic flows. MRC, owner of the property adjacent to the street proposed to be closed, will maintain access to adjoining properties for utility and emergency vehicles, as necessary, from 6th St. NE. The applicant is proposing to use the closed portion of 6th St. NE as a connection between their existing properties on the east and west side of the subject ROW.

There are three lots adjacent to the street segment that is proposed for closure. Two are owned by the applicant (MRC) and the third is owned by the City of Great Falls. Full and uninterrupted access to the City-owned lot is required by the City Public Works Department as a condition of approval (See Traffic Analysis). With an alternate access to the City property, the adjacent property owners would not be adversely affected by the proposed closure.

The City may approve the closure per Montana State Code section 7-14-4114, that states:

**Procedure to discontinue streets.**

1. The council may discontinue a street or alley or any part of a street or alley in a city or town, if it can be done without detriment to the public interest, upon:
  - (a) a petition in writing of all owners of lots on the street or alley; or
  - (b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and
  - (ii) approval by a majority vote of the council.
2. Where the street or alley is to be closed for school purposes, the council may discontinue the street or alley upon a petition signed by 75% of the lot owners on the whole street or alley to be closed.
3. Before acting upon the petition, a notice must be published, stating when the petition will be acted on and what street or alley or part of a street or alley is asked to be vacated. The notice must be published as provided in 7-1-4127.

Improvements

City water mains (8-inch), sewer mains (15-inch) and storm drains are located in 6th St. NE. These utilities must be protected from damage and the City must have access to these utilities for inspection, maintenance, replacement and/or abandonment as the need arises. No permanent structures may be located within 10 feet of the centerline of any utility (railroad tracks are exempted). Further conditions for the closure required by the City Department of Public Works/Engineering can be found in the attached memo supplied by the department.

The applicant will also be required to provide fire access for emergency vehicles and fire apparatus as necessary by the Fire Department. The owners shall submit any plans for fencing or gating the property to the City's Public Works and Fire Departments for review for access requirements.

Traffic Analysis

The subject ROW proposed for closure has never been formally developed. It dead-ends at the BNSF spur line to MRC, and only serves property owned by MRC and the City of Great Falls. To facilitate access to the property owned by the City, MRC has agreed to construct a new access off 17<sup>th</sup> Ave. NE. This new access shall be a recorded easement, a minimum 30 feet in width.

The access shall include a shortening of the spur line that straddles the north boundary line of the City property to eliminate any need by the City to cross the rail line. This will ensure full and continuous access by the City to its property, without any potential blockage due to stored railroad cars. MRC must provide proof of the ownership/existence of the railroad easement. Finally, MRC must design and construct a paved access to the City property, with review and approval by the City Engineering Office.

### 2005 City of Great Falls Growth Policy

The transportation element of the City of Great Falls Growth Policy establishes strategies and actions to implement sound traffic and roadway management. The City of Great Falls Public Works Department has determined the only need for the subject ROW is to access the existing utilities located in the street if an alternate access to the City property is constructed; the right-of-way is not needed for future street development or general public transportation use.

### Neighborhood Council Input

The subject property is located in Neighborhood Council #3. The applicant presented to the Council on January 5, 2012. At the meeting, Neighborhood Council #3 voted in support of the street closure. There was one question regarding increased traffic in the area.

### City Commission

On February 7, 2012, the City Commission adopted Resolution of Intent 9956 to adopt the street closure and set the public hearing for March 6, 2012. Public comments were made regarding the developer agreement, road closure versus abandonment and whether the road closure might accommodate expansion of the refinery.

Notice for this public hearing was published in the Great Falls Tribune on February 19, 2012.

**Concurrences:** Representatives from the City's Public Works and Fire Departments have been involved throughout the review and approval process for this request.

**Fiscal Impact:** Closure of the right-of-way will have minimal fiscal impact to the City. MRC will be required to maintain the closed portion of the street.

**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:**

Resolution 9957 with Exhibit "A"  
Aerial Photo  
Public Works Memo  
Agreement of Closure

Cc:

Jim Rearden, Public Works Director

Dave Dobbs, City Engineer

Patty Cadwell, Neighborhood and Youth Council Coordinator

Jeff Short, Montana Refining Company, 1900 10<sup>th</sup> St NE, Great Falls, MT 59404-1955

RESOLUTION 9957

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO CLOSE A PORTION OF 6<sup>th</sup> STREET NORTHEAST, IN THE VICINITY OF 17<sup>TH</sup> AVENUE NORTHEAST AND BURLINGTON NORTHERN SANTA FE (BNSF) RIGHT-OF-WAY, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-14-4114, MONTANA CODE ANNOTATED AND DIRECTING NOTICE TO BE GIVEN AS PROVIDED BY LAW AS SHOWN IN EXHIBIT "A"

\* \* \* \* \*

WHEREAS, the subdivision plat of 4<sup>th</sup> Supplement to Riverview Tracts, dedicated right-of-way of 6<sup>th</sup> Street Northeast, in the vicinity of 17<sup>th</sup> Avenue Northeast and BNSF right-of-way; and,

WHEREAS, Montana Refining Company, owns the property adjoining 6<sup>th</sup> Street Northeast to the east and northwest and has petitioned the City of Great Falls to have said right-of-way be closed; and,

WHEREAS, the City of Great Falls owns the property adjoining 6<sup>th</sup> Street Northeast to the southwest and does not object to the closure of said right-of-way; and,

WHEREAS, the purpose of the requested closure is to provide unimpeded access to Montana Refining Company Properties on either side of said right-of-way; and,

WHEREAS, the City Commission of the City of Great Falls, Montana, passed and adopted on the 7<sup>th</sup> day of February, 2012, Resolution 9956, titled "A RESOLUTION OF INTENTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO CLOSE A PORTION OF 6<sup>th</sup> STREET NORTHEAST;" and,

WHEREAS, the City Manager of said City pursuant to said Resolution 9956 and in accordance with the provisions of section 7-14-4114, Montana Code Annotated, forthwith caused noticed of said Resolution 9956 to be published in the Great Falls Tribune; and,

WHEREAS, the publication of said notice was published in the Great Falls Tribune on the 19<sup>th</sup> and 26<sup>th</sup> days of February, 2012; and

WHEREAS, in a written determination, it has been concluded that closure of said portion of 6<sup>th</sup> Street Northeast will not be detrimental to public interest; and,

WHEREAS, it is determined retention and eventual improvement of 6<sup>th</sup> Street Northeast serves no practical or functional traffic related purpose; and,

WHEREAS, it is determined that 6<sup>th</sup> Street Northeast will be retained for use for utility purposes for existing public utilities; and,

WHEREAS, the conditions for said closure, including the date effective, shall be specified in an agreement by and between the City of Great Falls and Montana Refining Company.

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

That Tuesday, the 6<sup>th</sup> day of March, 2012, at 7:00 P.M. in the Commission Chambers of the Civic Center, Great Falls, Montana, be and the same is hereby set as the time and place at which the City Commission shall hear all persons relative to the proposed closure of right-of-way; and,

BE IT FURTHER RESOLVED BY SAID CITY COMMISSION that the City Clerk of the City shall forthwith cause notice of the Resolution to close be: (1) published twice in the Great Falls Tribune, the newspaper published nearest such land; and (2) posted in three public places.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana,  
on this 6<sup>th</sup> day of March, 2012.

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Michael J. Winters, Mayor

ATTEST:

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Lisa Kunz, City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

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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 hereby certify that I did  
post, as required by law and as prescribed and directed by the City Commission, Resolution 9957  
in three places within the limits of said City to-wit:

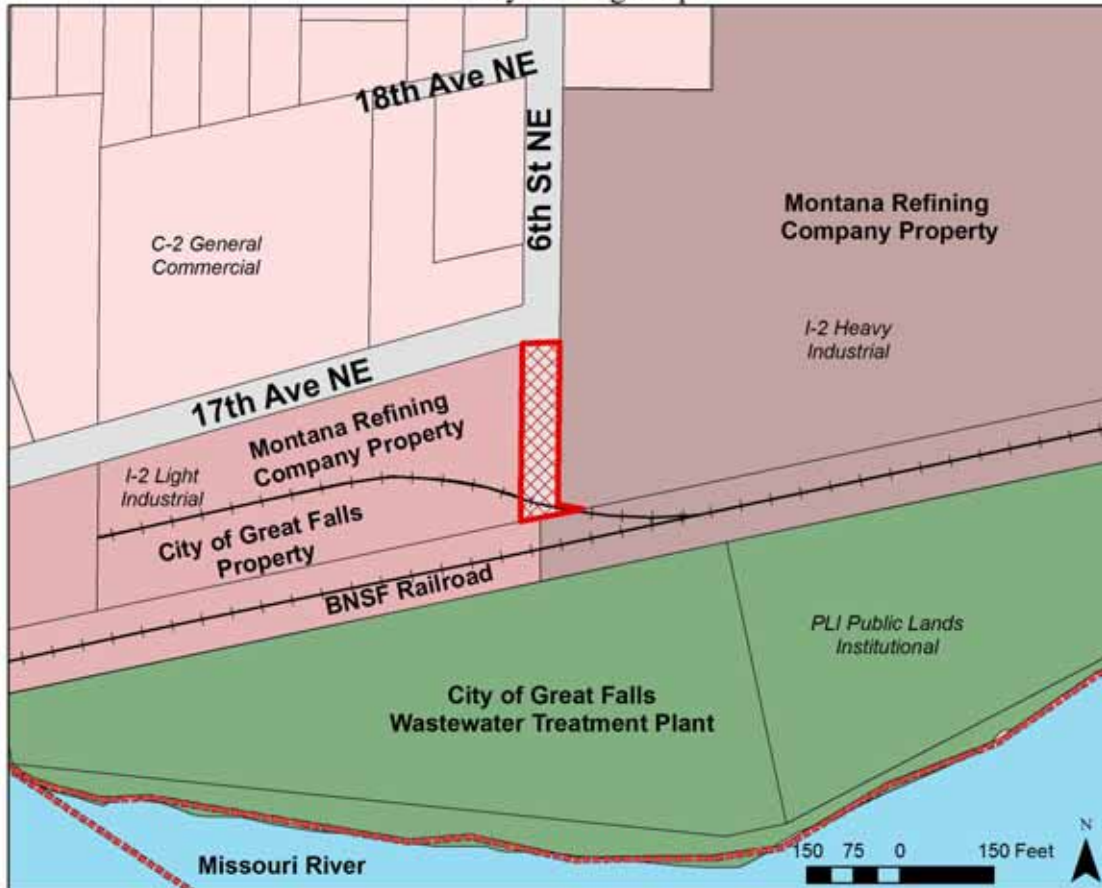
On the Bulletin Board, first floor, Civic Center Building  
On the Bulletin Board, first floor, Cascade County Court House  
On the Bulletin Board, Great Falls Public Library

(Seal of the City)

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Lisa Kunz, City Clerk

Exhibit A  
Vicinity/Zoning Map

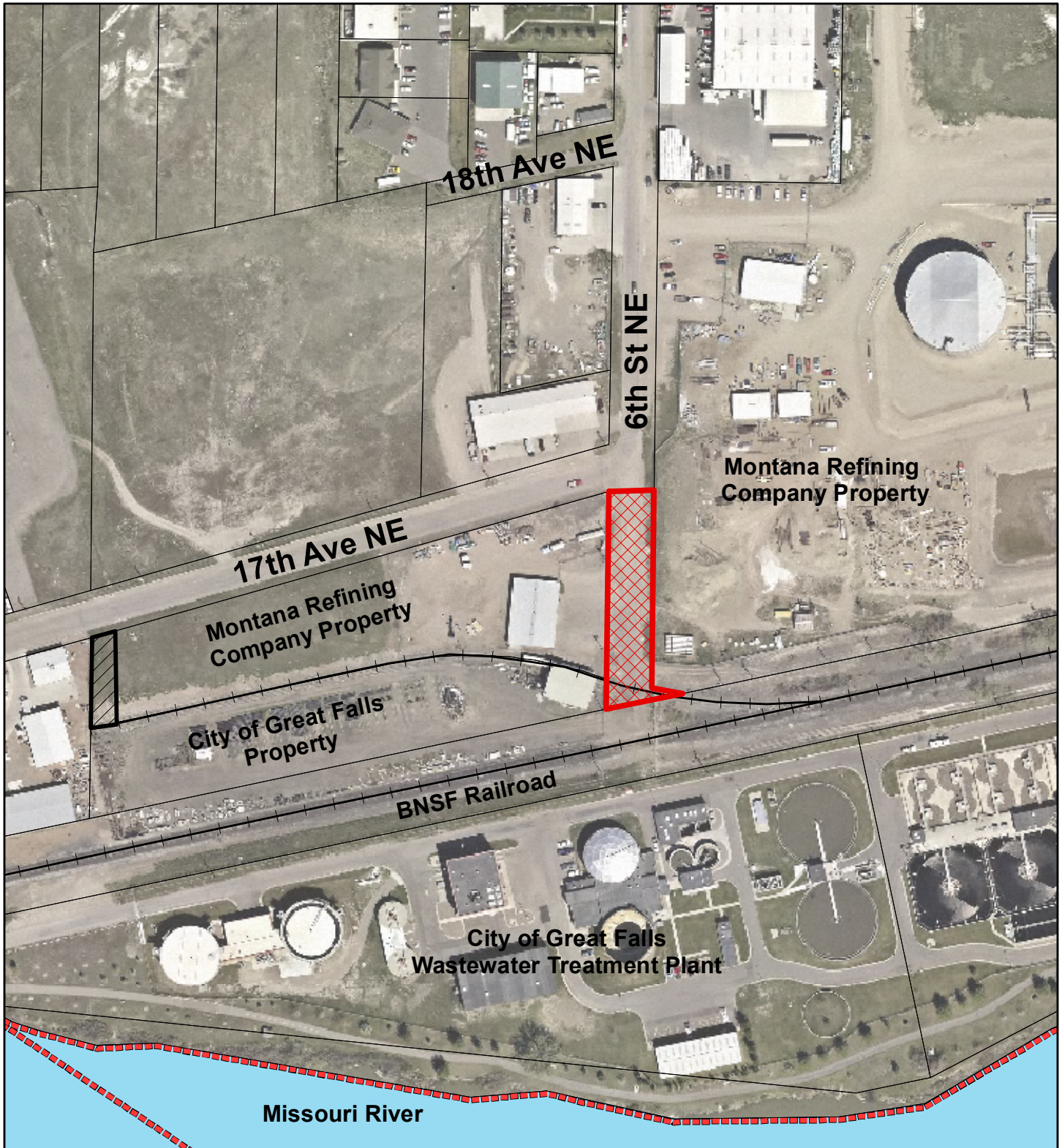







City Limits	C-4 Central business core	R-1 Single-family suburban
6th St NE	C-5 Central business periphery	R-2 Single-family medium density
Tracts of Land	I-1 Light industrial	R-3 Single-family high density
Railroad Lines	I-2 Heavy industrial	R-5 Multi-family medium density
<b>ZONING</b>	M-1 Mixed-use 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
C-3 Highway commercial	PUD Planned unit development	

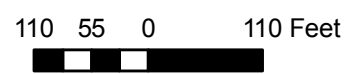
MRC 6th St NE Closure - Zoning Map



# Aerial Photo



-  6th St NE Closure Area
-  City Limits
-  Proposed City Access
-  Tracts of Land
-  Railroad Lines



**City of Great Falls**  
**Public Works/Engineering**

**INTER-OFFICE MEMORANDUM**

December 22, 2011

TO: Jana Cooper, Current Planner II

FROM: Dave Dobbs, City Engineer *DD*

SUBJECT: Public Works Department Requirements for 6<sup>th</sup> Street NE (south of 17<sup>th</sup> Avenue NE) Closure to Montana Refining Company (MRC)

The Public Works Department is supportive of the proposed closure of 6<sup>th</sup> Street NE from the south right-of-way line (projected east) of 17<sup>th</sup> Avenue NE, to the north right-of-way line of the BNSF railroad spur. Since essential utilities are present and there is an access issue to the City's pipe yard property, we must insist on the following conditions:

1. There are existing water, sanitary sewer, and storm drain utilities within this right-of-way. These utilities must be protected from damage caused by MRC activities. The City must have access to these utilities for inspection, maintenance, replacement and/or abandonment as the need arises. We would also insist that no permanent structures be located within 10 feet on the centerline of any utility (railroad tracks exempted).
2. Access to the City's pipe yard property will be limited by this closure. In order to assure uninhibited access, a new driveway must be provided in an easement. The proposed location is from 17<sup>th</sup> Avenue NE to the northwest corner of the pipe yard (just east of the General Distributing property at 430 17<sup>th</sup> Avenue NE). This is acceptable to Public Works as long as MRC builds the driveway to City Specifications at MRC expense. If the closure of 6<sup>th</sup> Street NE is relinquished, this easement can also be released.
3. It is highly unlikely that access to the wastewater treatment plant via 6<sup>th</sup> Street will ever be reestablished. However, if this was to occur, the abandonment of 6<sup>th</sup> Street NE would have to be relinquished, reopening 6<sup>th</sup> Street NE. Prior to reopening, any removed or damaged asphalt on 6<sup>th</sup> Street would have to be replaced by MRC.

Currently, City utilities in this portion of 6<sup>th</sup> Street NE include an 8-inch water main (with a vault and valves); 15-inch sanitary sewer main (with a manhole); and a storm drain with an inlet. There are also non-city utilities including overhead power cables in this corridor. Public Works will not require relocation of these utilities as a condition for approving this closure. If MRC alters the surface elevation over the utilities in the future, the City must be notified and approve the alteration before this work starts.

cc. Jim Rearden, Public Works Director; Jim Young, Senior Civil Engineer; Jim Turnbow, Street Supervisor; Mike Judge, Utilities Supervisor

AGREEMENT FOR  
CLOSURE OF 6<sup>TH</sup> STREET NORTHEAST  
LOCATED IN GOVERNMENT LOT 3,  
SECTION 1, TOWNSHIP 20 NORTH,  
RANGE 3 EAST, P.M.M., CASCADE COUNTY, MONTANA

PREFACE

The following is a binding Agreement dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between CITY OF GREAT FALLS, MONTANA, a municipal corporation of the State of Montana, hereinafter referred to as "City," and MONTANA REFINING COMPANY, hereinafter referred to as "Petitioner," regarding the requirements for the closure and subsequent use of a portion of the Right-of-Way of 6<sup>th</sup> Street Northeast located in Government Lot 3, in Section 1, Township 20 North, Range 3 East, P.M.M., Cascade County, Montana, hereinafter referred to as "Subject right-of-way."

WITNESSETH:

WHEREAS, the Great Falls City Commission passed and adopted on the 7th day of February, 2012, Resolution No. 9956, titled A RESOLUTION OF INTENTION TO CLOSE THAT PORTION OF 6<sup>TH</sup> STREET NORTHEAST BETWEEN 17<sup>TH</sup> AVENUE NORTHEAST AND THE BURLINGTON NORTHERN SANTA FE RAILWAY (hereinafter, "BNSF") RIGHT OF WAY; and

WHEREAS, said Resolution set the 6th day of March, 2012, at 7:00 p.m. in the Commission Chambers of the Great Falls Civic Center, Great Falls, Montana, as the time and place at with the City Commission of the City would hear all interested parties relative to the proposed closure; and,

WHEREAS, the purpose of the closure is to allow for a secure connection between properties owned by the Petitioner on the east and west sides of 6<sup>th</sup> Street Northeast; and,

WHEREAS, the proposed closure will be accomplished in a coordinated manner between the City and Petitioner and the purpose of this Agreement is to document the intent and specific responsibilities of each party.

NOW, THEREFORE, for and in consideration of the covenants, conditions and agreements herein contained, IT IS MUTUALLY UNDERSTOOD AND AGREED by and between the City and Petitioner as follows:

1. The City hereby agrees to close that portion of 6<sup>th</sup> Street Northeast between 17<sup>th</sup> Avenue Northeast and the BNSF Right-of-Way by adopting Resolution 9957. The effective date of this closure shall be March 8, 2012.
2. All plan(s) for all proposed improvements will be reviewed and approved by the City prior to the commencement of any construction.

3. The Petitioner shall protect all existing water, sanitary sewer, and storm drain utilities within Subject right-of-way from damage that may be caused by Petitioners activities.
4. The Petitioner will allow full access by authorized City personnel, at all times, to these utilities for inspection, maintenance, replacement and/or abandonment as needed.
5. The Petitioner shall not place any permanent structures within the subject right-of-way. Existing railroad tracks are exempt from this-provision.
6. The Petitioner shall provide fire access for emergency vehicles and fire apparatus as necessary by the City's Fire Department.
7. All fencing/gating proposed on the subject right-of-way shall be reviewed and approved by the City's Public Works, Fire and Planning and Community Development Departments before construction.
8. The subject right-of-way dead-ends at the BNSF right-of-way, and only serves one property other than that owned by the Petitioner. To facilitate access to this one property, owned by the City, the Petitioner shall grant an easement and construct a new access from 17<sup>th</sup> Avenue Northeast across property owned by the Petitioner. This easement shall be a minimum of 30 feet in width and shall be granted to the City. The Petitioner shall ensure full and continuous access by the City to its property by eliminating/removing the portion of the existing spur line across the easement. The Petitioner must provide proof of the existence of the railroad easement on the City's north property line. Once this has been established the Petitioner shall eliminate the railroad easement across at least the width of the new access easement and shall prohibit blockage of the new access easement by removing the railroad tracks across the access easement, installing stop blocks in the rail line, or by other methods acceptable to the City. The Petitioner shall design and construct, at its expense, a paved access to the City property on the new access easement, with review and approval by the City Engineering Office. If the closure of 6<sup>th</sup> Street Northeast is revoked, the Petitioner (or its heirs or assigns) would be allowed to extinguish the easement provided to the City for access to its property, at its discretion.
9. If there is a need by the City to reestablish access to the wastewater treatment plant via 6<sup>th</sup> Street Northeast, the closure of 6<sup>th</sup> Street Northeast shall be revoked. Prior to reopening, any removed or damaged asphalt on 6<sup>th</sup> Street Northeast shall be replaced at Petitioners expense.
10. UNFORESEEN POTENTIALITIES  
It is mutually recognized, understood and agreed by City and Petitioner 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.

11. 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.

THE CITY OF GREAT FALLS, MONTANA

A Municipal Corporation of the State of Montana

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Gregory T. Doyon, City Manager

ATTEST:

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Lisa Kunz, City Clerk

(Seal of City)

APPROVED FOR LEGAL CONTENT:

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James W. Santoro, City Attorney

OWNERS

By: *Dana Leach*

Dana Leach, Montana Refining Company

State of Montana )

:ss.

County of Cascade)

On this 17th day of February, in the year A. D. Two thousand and twelve, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Dana Leach, Montana Refining Company, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

*Karin M. Osborn*

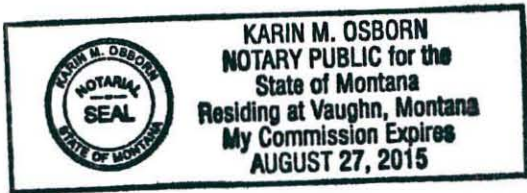
Notary Public for the State of Montana

Karin M. Osborn

Notary Public (Printed)

Residing at Vaughn, Montana

My commission Expires August 27, 2015



(NOTARIAL SEAL)