



Item: Amendments to Annexation Agreement for Northview Addition, Phase 7 regarding the fees for Payment in Lieu of Parkland, and the Soils and/or Groundwater Conditions language

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

Initiated By: Jim Workman Construction Co., Property Owner and Developer

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

Action Requested: City Commission approve the Amendments to the Annexation Agreement for Northview Addition, Phase 7.

Suggested Motions:

1. Commissioner moves:

“I move that the City Commission (approve/disapprove) the Amendments to Annexation Agreement of Northview Addition, Phase 7.”

2. Mayor calls for a second, discussion, inquiries from the public and calls for the vote.

Recommendation: Staff recommends approval of the Amendments to the Annexation Agreement for Northview Phase 7.

Background: The Planning Advisory Board conditionally approved the preliminary plat of Northview Addition, Phases 2-7 at the conclusion of a public hearing held January 9, 2007, and the Zoning Commission approved assigning a zoning classification of PUD Planned unit development district to each phase upon annexation to the City. During a meeting held February 6, 2007, the City Commission conditionally approved the Preliminary Plat of Northview Addition, Phases 2-7, as recommended by the Planning Board.

Ordinance 3083 to assign City zoning for Northview Addition, Phase 7, was accepted by the City Commission on first reading on December 6, 2011. Notice of Public Hearing before the City Commission for the annexation, establishment of City zoning, and Final Plat for Northview Addition, Phase 7, was published in the Great Falls Tribune on December 18, 2011.

City Commission, at a public hearing held January 3, 2012, approved Resolution 9950, Ordinance 3083, Annexation Agreement and Final Plat, all pertaining to Northview Addition Phase 7.

The applicant disagreed with some of the terms of the Annexation Agreement that was approved on January 3, 2012. The disagreement was related to Item 6 of the Agreement regarding the payment in lieu of providing parkland and Item 10 related to the language of the Soil and/or Groundwater Conditions. The applicant and Marty Basta, Director of Parks and Recreation, have come to an agreement on the amount owed for the payment in lieu of parkland. The applicant provided Mr. Basta an appraisal with current market values to determine the revised payment amount. The City Attorney, Jim Santoro, has developed new language regarding the Soil and/or Groundwater Conditions, which is acceptable to the applicant. The proposed amendments to the Annexation Agreement are attached. Language that has been removed is shown with a strike through and language that has been added is bolded.

Concurrences: Representatives from Public Works, Park and Recreation and the City Attorney's office concur with the proposed changes to the Annexation Agreement.

Fiscal Impact: Amending the Annexation Agreement will impact fees for the Park and Recreation Department; however, Mr. Basta has agreed the change in fees meets State Statute. Amending the Soils and/or Groundwater Conditions language in the agreement should have no fiscal impact on the City.

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:

Amended Annexation Agreement

Cc: Jim Rearden, Public Works Director
Dave Dobbs, City Engineer
Marty Basta, Director of Parks and Recreation
Patty Cadwell, Neighborhood Council Coordinator
Jim Workman Construction Co., 1024 36th Avenue Northeast, Great Falls, MT 59404
Woith Engineering, 1725 41st St S, Great Falls, MT, 59405

**AMENDED
ANNEXATION AGREEMENT FOR
NORTHVIEW ADDITION, PHASE 7
IN SECTION 25,
TOWNSHIP 21 NORTH, RANGE 3 EAST,
CASCADE COUNTY, MONTANA**

1. PREFACE

The following is a binding Agreement dated this _____ day of _____, 2012, between JIM WORKMAN CONSTRUCTION CO., 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, of NORTHVIEW ADDITION, PHASE 7, in Section 25, Township 21 North, Range 3 East, Cascade County, Montana, hereinafter referred to as “Subdivision.”

2. PRIOR ACTIONS

- A. The Preliminary Plat of Northview Addition, Phases 2-7, prepared by Woith Engineering, was conditionally approved by City on February 6, 2007.
- B. City Commission approved the agreement dated February 2, 2010, providing for the extension of the approval of the Preliminary Plat of Northview Addition Phases 2-7 until February 6, 2015.

3. SUPPORTING DOCUMENTS

- A. Final Plat of Northview Addition, Phase 7, prepared by Woith Engineering, and to be filed of record in the Clerk and Recorder’s Office of Cascade County, Montana.
- B. Final engineering drawings, specifications and cost estimates prepared by Woith Engineering, consisting of documents for sanitary sewer mains, water mains, storm drainage improvements, paving, conduit for wiring for potential future public roadway lighting facilities, curb and gutter. Said drawings and specifications are on file in the City Engineer’s office.
- C. Final offsite temporary easement documents prepared by Woith Engineering, granting easement to the City of Great Falls perpetual right-of-way easement for construction, access, and maintenance of temporary roadway and for the water and sewer mains

located on the remaining portion of property legally described as Mark 5B, Section 25, Township 25 North, Range 3 East, Cascade County.

- D. Legal documents, including articles of incorporation, bylaws and covenants, establishing and outlining responsibilities of the Homeowner’s Association, shall be filed in the Clerk and Recorder’s Office of Cascade County, Montana.

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 final plat, 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 to City’s 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, which have been paid, pay the following fees as provided by City policy and resolution;

a. Storm Sewer Fee (\$250/acre x 3.2 acres)	\$ 800.00
b. Park Fee in Lieu of Land Dedication	\$ 5,366.59
Park Fee in Lieu of Land Dedication	\$ 2,112.00
c. Proportionate share of cost for:	
Future Regional Storm Water Detention Pond	\$ 13,899.74
(\$4,343.67/acre x 3.2 acres)	
12 th Street Northeast Extension	\$ 2,539.68
(\$793.65/acre x 3.2 acres)	
d. Recording fees for Agreement and Resolution (\$11 per page x 11 pages)	\$ 121.00

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 hereby agrees to waive 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 Subdivision.

12. FUTURE STORM DRAINAGE FACILITIES

Owner hereby agrees to waive its 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 that service Subdivision 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 Subdivision, which is a contributor to the drainage sub-basin of which Subdivision is a part.

13. PUBLIC ROADWAY LIGHTING

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

14. SIDEWALKS

It is hereby agreed that the following exception to the strict adherence of Subdivision requirements will be permitted: sidewalks serving and abutting any lot in Subdivision shall be installed as a condition of final occupancy by the then lot owner within six (6) months (allowing for unfavorable weather conditions only) of occupancy. It is understood that the above provision regarding sidewalks shall not preclude City from exercising its authority provided by Chapter 12.28, Municipal Code of the City of Great Falls pertaining to sidewalks.

15. WAIVER OF PROTEST OF ANNEXATION

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

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

- A. After the public utilities, drainage and street improvements described in Paragraph 3.B. 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.
- B. 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

Subdivision 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. Subdivision, 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 the final plat of Subdivision and will approve the property contained within the boundaries of Subdivision for incorporation by annexation into the corporate limits of the City of Great Falls, Montana, with an assigned zoning classification of PUD Planned unit development district. It is hereby understood that this does not preclude City from reclassifying Subdivision if an area wide reclassification is undertaken, in which event City agrees to reclassify said Subdivision as a conforming use.

19. ADHERENCE TO SITE PLAN

Owner hereby agrees that development upon lots within Subdivision shall be substantially in accordance with the Site Plan attached to the zoning Ordinance approved in conjunction with said Subdivision and applicable City Codes, and the terms and conditions contained in this Agreement.

20. 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

Gregory T. Doyon, City Manager

ATTEST:

Lisa Kunz, City Clerk

(Seal of City)

APPROVED FOR LEGAL CONTENT:

James W. Santoro, City Attorney

JIM WORKMAN CONSTRUCTION CO.
A Corporation of the State of Montana

Jim Workman, President

State of Montana)

:ss.

County of Cascade)

On this _____ day of _____, in the year Two Thousand and Twelve, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Jim Workman, known to me to the persons whose names are subscribed to the instrument within 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 first above written.

Notary Public for the State of Montana

(NOTARIAL SEAL)

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

JIM WORKMAN CONSTRUCTION CO.
A Corporation of the State of Montana

Kathleen Workman, Secretary

State of Montana)

:ss.

County of Cascade)

On this _____ day of _____, in the year Two Thousand and Twelve, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Kathleen Workman, known to me to be the persons whose names are subscribed to the instrument within 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 first above written.

Notary Public for the State of Montana

(NOTARIAL SEAL)

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