



Item: Closure Agreement for a Portion of 6th Street NE south of 17th Avenue NE, and Associated Easement Agreement for Access to City Pipe Yard, in Accordance with Resolution 9957

From: Planning & Community Development Department

Initiated By: Calumet Montana Refining, LLC

Presented By: Craig Raymond, CBO, Director of Planning & Community Development

Action Requested: Approve Closure Agreement and Easement Agreement

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (approve/not approve) a Closure Agreement between the City of Great Falls and Calumet Montana Refining LLC, and an Easement Agreement between the City of Great Falls and Calumet Montana Refining LLC, as the final actions necessary for closure of a portion of 6th Street NE, in accordance with Resolution 9957.”

2. Mayor Winters requests a second to the motion, Commission discussion, public comment, and calls for the vote.

Summary: The Montana Refining Company (now Calumet Montana Refining) petitioned the City to close a segment of 6th St. NE to provide better security between properties they own on either side of the street. The City Commission approved the closure, conditioned upon execution of a Closure Agreement. The Closure Agreement, in turn, requires an alternate access to the City-owned “pipe yard,” which is provided by the Easement Agreement. Approval of the two agreements would finalize the closure.

Background: In 2012, the Montana Refining Company (now Calumet Montana Refining) petitioned the City 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 segment of 6th St. NE requested for closure is public right-of-way (ROW), providing access only to Calumet properties on either side, as well as the City’s “pipe yard”, used by the Public Works’ Utility Division. The applicant wished it closed to provide a safe and secure connection between their existing properties on the east and west side of the subject ROW.

The City approved the closure on March 6, 2012 through its passage of Resolution 9957, which included a condition that an agreement outlining the conditions of the closure be executed. A further requirement of the closure was to provide full and uninterrupted access to the pipe yard.

The delay in execution of the Closure Agreement has been the provision of the access easement across Calumet's property immediately north of the City pipe yard. Calumet needed to shorten the railroad easement that extended the full length of that property in order to ensure access to the pipe yard would not be blocked.

Calumet has reduced the length of the railroad spur line, and has fulfilled all the required conditions required to effect the closure. Acceptance of the Easement and approval of the Easement Agreement will then allow the parties to execute the Closure Agreement. Because the two are related and interdependent, the City Commission is being asked to take action on both simultaneously.

Fiscal Impact: There will be no fiscal impact to the City, as all improvements associated with the new access and all improvements necessary to secure 6th St NE have been made by Calumet Montana Refining.

Alternatives: The City Commission could vote to not approve the Agreements. However, the Agreements fulfill the conditions of City Resolution 9957, and are necessary to effect the closure approved by said Resolution.

Concurrences: Representatives from the City Public Works Department and the City Attorney support the acceptance of the easement and conditions of the closure.

Attachments:

Attachment A – Resolution 9957

Attachment B – Easement Agreement

Attachment C – Closure Agreement

Cc: Dave Dobbs, City Engineering
Mike Judge, City Utilities
Dexter Busby, Calumet Montana Refining
Sara Sexe, City Attorney

Attachment A – Resolution 9957

Return to the City Clerk
P.O. Box 5021
Great Falls, MT 59403

R0251771 GRS
Total Pages: 4 R 28.00 By:mdailey 04/24/2012 02:05:07 PM
Cascade County, Rina Ft Moore - Clerk & Recorder

RE-RECORD TO CORRECT ZONING MAP

RESOLUTION 9957

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, TO CLOSE A PORTION OF 6th STREET NORTHEAST, IN THE VICINITY OF 17TH 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 4th Supplement to Riverview Tracts, dedicated right-of-way of 6th Street Northeast, in the vicinity of 17th Avenue Northeast and BNSF right-of-way; and,

WHEREAS, Montana Refining Company, owns the property adjoining 6th 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 6th 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 7th 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 6th 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,

R0248948 GRS
Total Pages: 4 R 28.00 By:mesickels 03/09/2012 09:02:49 AM
Cascade County, Rina Ft Moore - Clerk & Recorder

STATE OF MONTANA } SS
COUNTY OF CASCADE }
I HEREBY CERTIFY THAT THE INSTRUMENT TO WHICH THIS CERTIFICATE IS APPLIED, IS A TRUE, COMPLETE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.
WITNESS MY HAND AND SEAL OF OFFICE
Date MAR 12 2012
RINA FT MOORE
Clerk and Recorder, County Surveyor
By [Signature]
DEPUTY

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

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

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

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

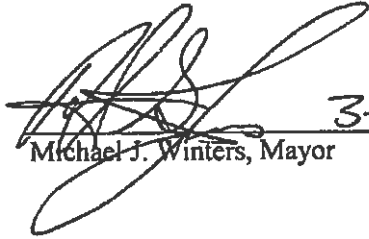
WHEREAS, the conditions for said closure, including the date effective, shall be specified in an agreement by and between the City of Great Falls and Montana Refining Company.

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

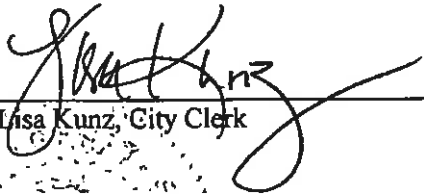
That Tuesday, the 6th day of March, 2012, at 7:00 P.M. in the Commission Chambers of the Civic Center, Great Falls, Montana, be and the same is hereby set as the time and place at which the City Commission shall hear all persons relative to the proposed closure of right-of-way; and,

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 6th day of March, 2012.

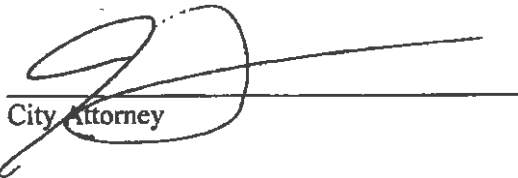

3-6-12
Michael J. Winters, Mayor

ATTEST:


Lisa Kunz, City Clerk



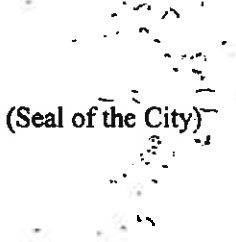
APPROVED FOR LEGAL CONTENT:


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



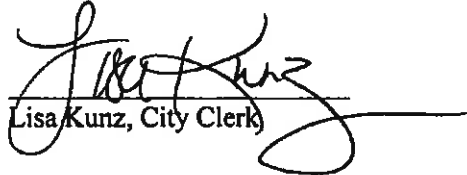
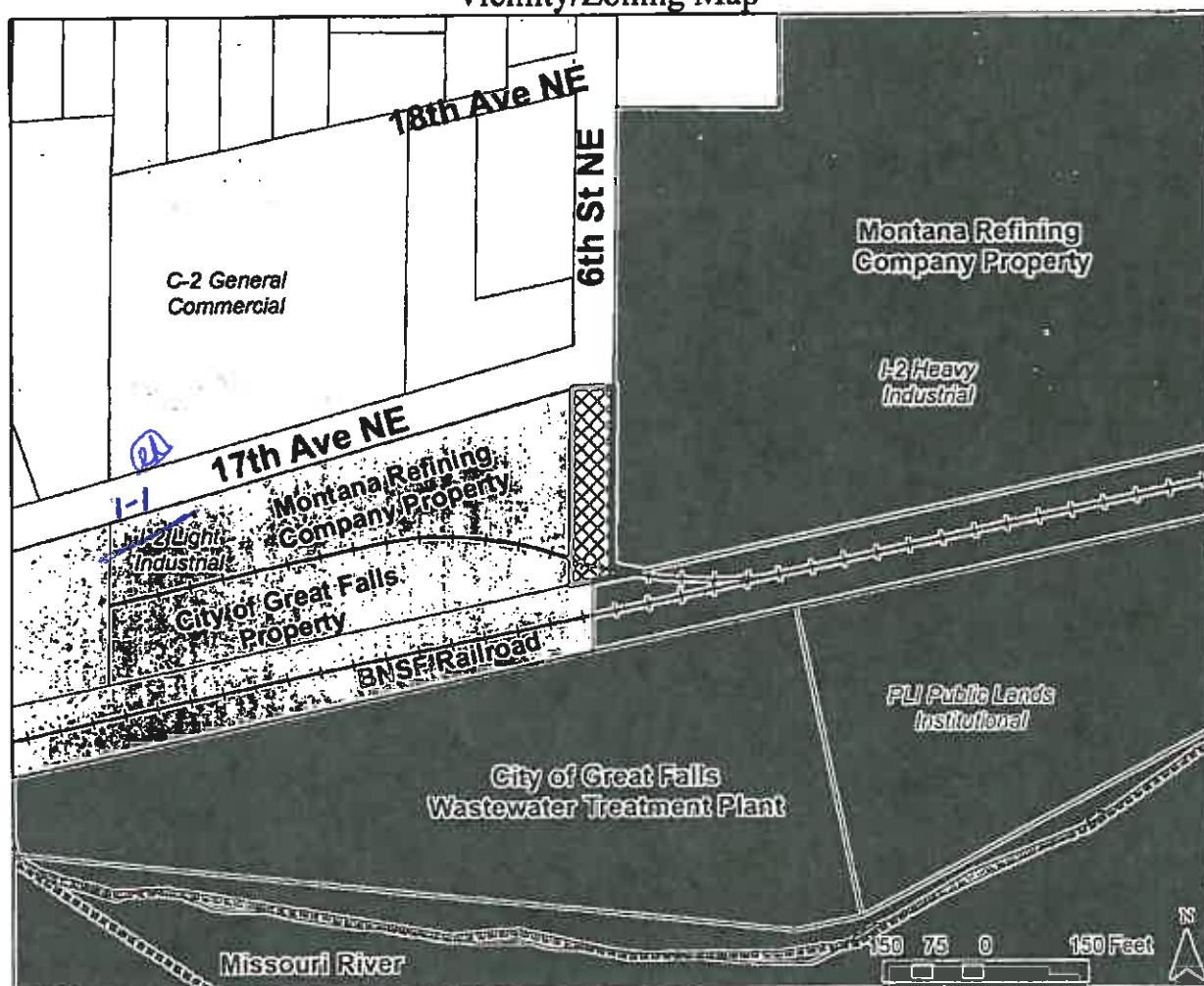

Lisa Kunz, City Clerk

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
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
C-3 Highway commercial	PUD Planned unit development	

MRC 6th St NE Closure - Zoning Map

Attachment B – Easement Agreement

EASEMENT AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2015, by and between Calumet Montana Refining, LLC, a Montana corporation, hereinafter “Grantor” and the City of Great Falls, a Montana municipal corporation, hereinafter “Grantee.”

RECITALS

1. Grantor is the owner of the real property situated in Cascade County, Montana, more particularly described as Lot 1, Block 2, Fourth Supplement to Riverview Tracts, located in Government Lot 4, Section 1, Township 20 North, Range 3 East, P.M.M., and depicted on Exhibit “A” attached hereto and incorporated herein by this reference, hereinafter the “Grantor Real Property;” and,
2. Grantee is the owner of the real property situated in Cascade County, Montana, more particularly described as Lot 1B, Block 2, Fourth Supplement to Riverview Tracts, located in Government Lot 4, Section 1, Township 20 North, Range 3 East, P.M.M., and depicted on Exhibit “A” attached hereto and incorporated herein by this reference, hereinafter the “Grantee Real Property;” and,
3. As demonstrated in an Assignment of Easements recorded with the Cascade County Clerk & Recorder on October 10, 2014, Grantor is the owner of a rail spur easement, hereinafter the “Rail Easement,” running ten feet (10’) in width on both sides of the full length of the common property line between the Grantor Real Property and the Grantee Real Property; and,
4. Grantee desires that Grantor grant it a perpetual non-exclusive easement and right-of-way (the “Easement”) across the Grantor Real Property for the purpose of constructing and maintaining an access road between 17th Avenue NE and Grantee Real Property, and as more fully described in Exhibit “A”; and,
5. Grantee desires that Grantor reduce the Rail Easement along the westernmost thirty feet (30’) of the Grantee Real Property and Grantor Real Property, for the purposes stated in item 4, above; and,
6. Grantee passed on the 6th day of March, 2012, that certain Resolution No. 9957 (hereinafter, the “City’s Street Closure”), in which the Grantee closed that portion of 6th Street Northeast between 17th Avenue Northeast and the Burlington Northern Santa Fe Railway Right of Way in consideration of the Easement being granted by Grantor to Grantee and subject to the terms of an agreement between the parties; and,
7. The City’s Street Closure allows for a secure connection between the properties owned by the Grantor on the east and west sides of 6th Street Northeast; and,

8. Grantor is willing to grant the Easement and reduce the length of the Rail Easement upon the terms and conditions described herein.

WITNESSETH

That:

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor has this day bargained, sold, and by these presents does hereby bargain, sell, convey and transfer unto Grantee, its successors and assigns forever, a perpetual easement and right-of-way thirty feet (30') in width, together with the right to install, repair, maintain, alter, erect and operate an access road on, over, and across the Grantor Real Property, subject to the termination rights contained herein. The perpetual easement and right-of-way shall be for the unrestricted right to enter at any time and from time to time to install, repair, maintain, alter, erect and operate an access road, together with all surfacing, fencing, gates, and other materials incidental thereto ("Improvements"). Said Easement is more fully illustrated on Exhibit "A," which is appended to and made a part of this Easement Agreement.

The Improvements shall be constructed at the sole expense of Grantor according to plans approved by Grantee and maintained at the sole expense of Grantee or its permitted assigns and shall be made and kept as safe as possible for the intended uses.

To ensure perpetual easement and right-of-way by the Grantee, Grantor also, by this instrument, extinguishes the westernmost thirty feet (30') of the Rail Easement, as shown on Exhibit "A."

Up to the limitations set forth in MCA. §2-9-108, Grantee shall indemnify and save harmless Grantor, its officers, managers, agents and employees, against and from any and all actions, lawsuits, claims, demands, damages, judgments, losses, fines, penalties, fees and expenses (including reasonable attorney fees and court costs incurred enforcing this obligation or a third party claim) or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, damages to the property, or violation of any federal, state or local statute, rule, regulation or ordinance (including, but not limited to, environmental, safety or health statute, rule regulation or ordinance) arising out of, resulting from, or occurring in connection with the Grantee's exercise of the rights and privileges herein granted; provided, however, Grantee shall not be liable to Grantor when such damage, injury or death results from the negligence or other breach of legal duty of Grantor.

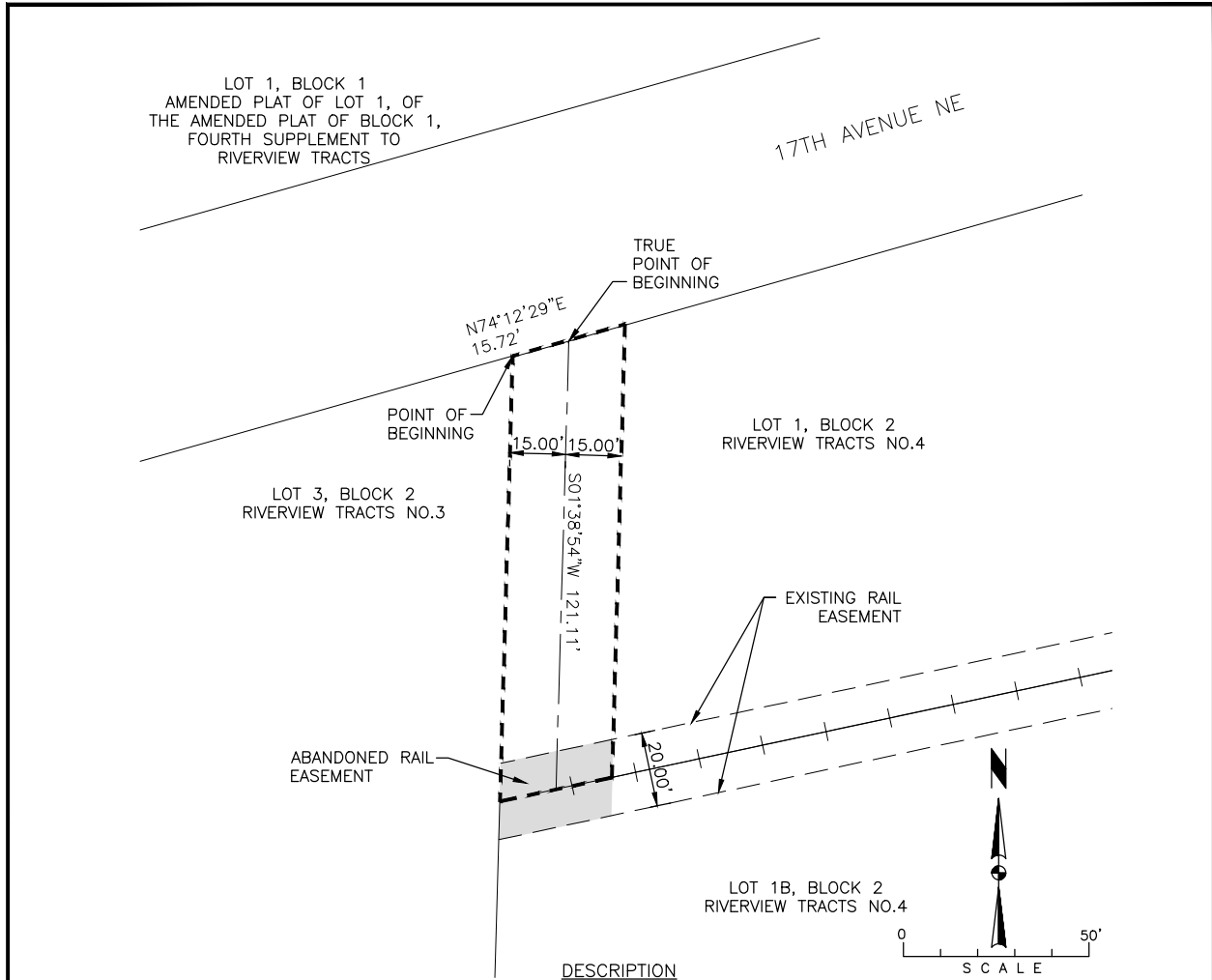
To the fullest extent permitted by law, Grantor shall fully indemnify, defend, and save Grantee, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to Grantor's performance and Grantee's work herein work of any subcontractor or supplier to Grantor.

Grantee and Grantor agree that the Easement is necessary as the sole access to the Grantee Real Property. Should Grantee, in Grantee's sole discretion, deem this access to the Grantee Real Property no longer necessary, or in the event the City's Street Closure is revoked, the Grantor may in its sole discretion terminate this Easement. In the event of termination, Grantee agrees to execute a written termination and abandonment of the Easement for title purposes.

Grantor and Grantee mutually recognize, understand and agree that subsequent to the time that this Easement is granted, events may occur and actions may be taken which were unforeseen by either party

or both parties hereto. In this respect, Grantor and Grantee agree that the Grantor and Grantee may modify this Easement by subsequent written agreement which is executed by both Grantor and Grantee; provided, however, that Grantor's termination rights set forth herein shall not be disturbed.

Grantor does hereby covenant with Grantee that it is lawfully seized and possessed of said Grantor Real Property and that it has the good and lawful right to convey said Easement or any part or parts thereof.



A 30 foot wide easement in Lot 1, Block 2, Fourth Supplement to Riverview Tracts, located in Government Lot 4, Section 1, Township 20 North, Range 3 East, P.M.M., City of Great Falls, Cascade County, Montana, and the centerline being more particularly described as follows:

Beginning at the Northwest Corner of said Lot 1, being a point on the Southerly right-of-way of 17th Avenue NE; thence North 74°12'29" East along said Southerly right-of-way, a distance of 15.72 feet to the True Point of Beginning, thence South 01°38'54" West, parallel to the Westerly line of said Lot 1, a distance of 121.11 to the Southerly line of said Lot 1, being the point of termination and containing 0.083 acres.

<p align="center">CALUMET MONTANA REFINING GREAT FALLS, MONTANA</p>	<p align="center">TD&H Engineering</p> <p align="center">tdsengineering.com GREAT FALLS-BOZEMAN-KALISPELL MONTANA SPOKANE WASHINGTON LEWISTON IDAHO</p>	<p>DRAWN BY: TWC DESIGNED BY: JPJ QUALITY CHECK: DATE: 7/15 JOB NO. 13-057 CAD NO. EXHIBIT A</p>	<p align="center">SHEET</p> <p align="center">1</p>
<p align="center">EXHIBIT "A"</p>			

Attachment C – Closure Agreement

CLOSURE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between Calumet Montana Refining, LLC, a Montana corporation, hereinafter referred to as "Calumet", and the City of Great Falls, a municipal entity in the State of Montana, hereinafter referred to as "City", and collectively referred to as "The Parties."

RECITALS

WHEREAS, Calumet petitioned the City to close a segment of dedicated right-of-way of 6th Street Northeast, south of 17th Avenue Northeast and north of the BNSF Railway right-of-way (hereinafter referred to as the "Street," and as shown on Exhibit "A", attached to and hereby made a part of this Agreement); and,

WHEREAS, the City Commission of the City of Great Falls, Montana passed and adopted Resolution 9957 on March 6, 2012, closing the Street, a copy of which is attached to this Agreement as Exhibit "B"; and,

WHEREAS, the reason for the closure, as stated in Resolution 9957, is to provide unimpeded access between Calumet's properties on either side of the Street; and,

WHEREAS, Resolution 9957 conditioned the closure, including the date effective, upon execution of a Closure Agreement between the Parties.

NOW THEREFORE, The Parties do hereby covenant and agree as follows:

GENERALLY

The closure provides Calumet secure access between properties it owns on either side of the Street, as well as to securely store rail cars on the rail spur crossing the Street.

Access and use of the Street may be restricted by Calumet. As the owner of properties on both sides, Calumet is to be the sole user of the closed Street, subject to conditions herein.

ALTERNATE ACCESS

To provide the City access to its property whose sole access is from the Street, Calumet has provided a

perpetual non-exclusive easement and right-of-way from 17th Avenue Northeast across Calumet's property described as Lot 1, Block 2, Fourth Supplement to Riverview Tracts, to the City's property described as Lot1B, Block 2, Fourth Supplement to Riverview Tracts, to replace access lost through the Closure.

Calumet has provided improvements to the above described easement access, to the satisfaction of the City and as stipulated in said easement.

Calumet has reduced the length of the rail spur and associated rail spur easement to ensure unimpeded access, as a part of said easement.

UTILITY EASEMENT AND ACCESS

Existing City water, sanitary sewer and storm drain utilities within the Street shall be protected from damage through Calumet's use of the closed Street. City shall have access to utilities for inspection, maintenance, replacement and/or abandonment as the need arises.

No permanent structure may be located upon the Street or within 10 feet of the centerline of any utility (railroad tracks exempted).

Non-public utilities currently existing in the Street shall be allowed to continue.

If Calumet alters the surface elevation over underground utilities, the City shall be notified and approve of the alteration before it will be allowed to commence.

Should damage to City utilities result from actions of Calumet, the cost to repair shall be at Calumet's expense.

ACCESS CONTROL

Calumet may secure the Street from non-authorized access; however, the City shall have access as follows:

1. Utility Department shall have access to utilities when necessary; and,
2. Emergency vehicles, law enforcement, and fire apparatus by Great Falls Fire Rescue, City Police Department or other law enforcement shall have access as necessary; and,
3. Existing private utilities shall have access when necessary.

INTENT TO RE-OPEN

Should the reason for the closure no longer be necessary, or if the City requires the use of the Street to access the City's wastewater treatment plant, the City may re-open the Street, as provided for by law.

If the City takes action to re-open the Street, any removed or damaged roadway asphalt surfacing shall be replaced or repaired by Calumet, to the satisfaction of the City.

SATISFACTION AND EFFECTIVE DATE

The City is satisfied that all conditions necessary to effect the closure have been met. The effective date

of the closure shall be the date of this Agreement.

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 caused their hands and seals to be fixed the day and year first hereinabove written.

CALUMET MONTANA REFINING, LLC

By: _____
Name

Its: _____
Title

STATE OF MONTANA)
 : ss:
County of Cascade)

On this _____ day of _____, in the year A. D. Two thousand and fifteen, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, 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.

(NOTARIAL SEAL)

Notary Public for the State of Montana

CITY OF GREAT FALLS

Gregory T. Doyon, Manager

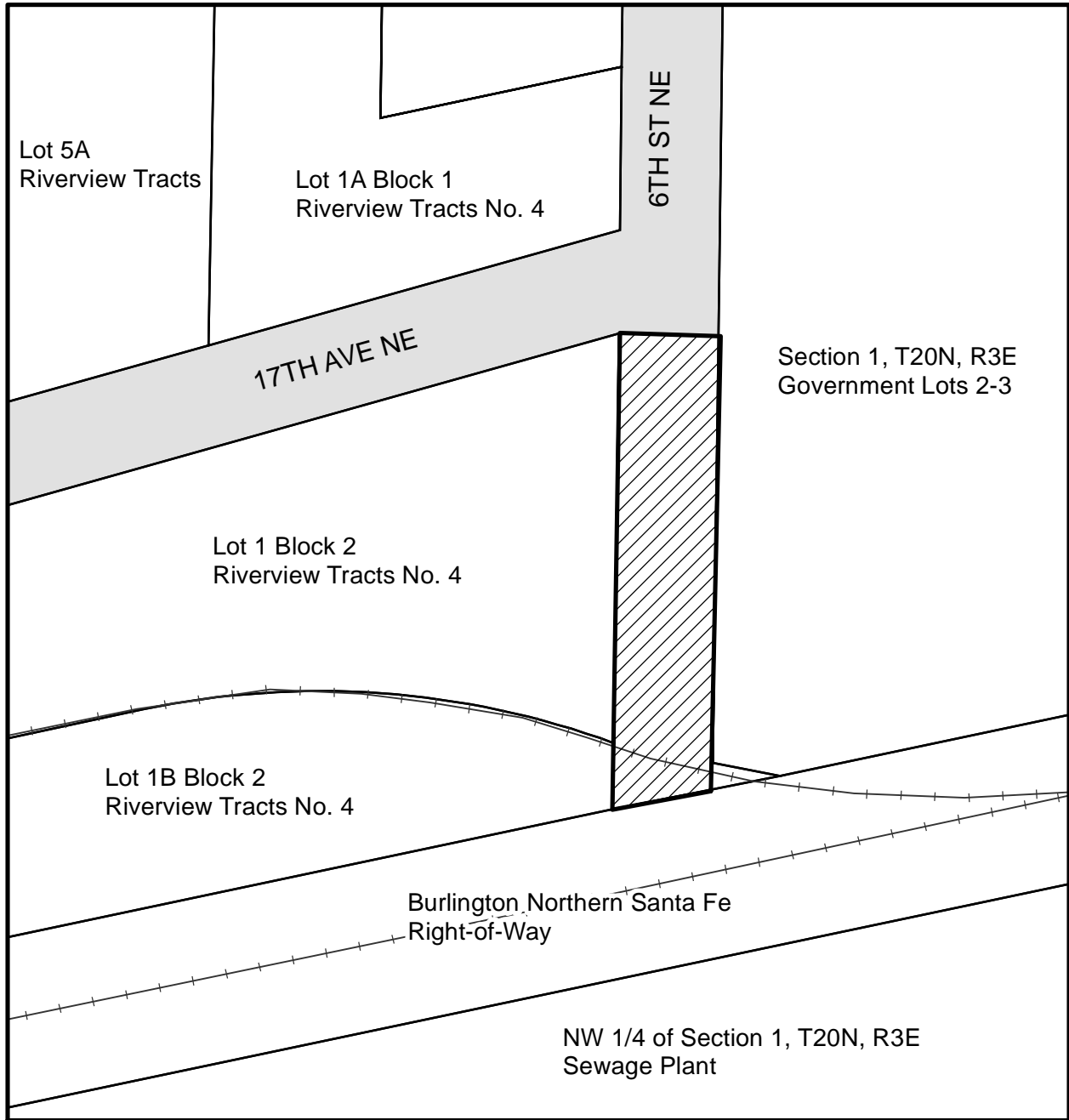
REVIEWED FOR LEGAL CONTENT

ATTEST

Lisa Kunz, City Clerk

Sara R. Sexe, City Attorney

Exhibit A



- +--- Railroad Line
 - ▭ Parcels
 - ▭ City Right-of-Way
 - ▨ 6th St NE Closure
- N
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