



**OFFICE OF THE CITY CLERK  
COUNCIL ACTION FORM**

**SUBJECT:** RESOLUTION 23-11100 Approving Annexation 21-15

**Council Meeting Date:** February 13, 2023

**Vote:** APPROVED 9-0, Choriki and Tidswell Absent/Excused

**Shaw, Gulick, Neese, Owen, Joy, Choriki, Tidswell,  
Purinton, Boyett, Rupsis, Mayor Cole**

Item 3. a. i.

Res. 23-1100

COUNCIL ACTION Approved 9/0  
 Tickwell + Choriki Absent/  
 Excused  
 FEB 13 2023  
 db  
 CITY COUNCIL

**City Council Regular**

Date: 02/13/2023  
 Title: Joint Public Hearing and Resolution- Annexation 21-15  
 Presented by: Monica Plecker  
 Department: Planning & Community Services  
 Presentation: Yes  
 Legal Review Not Applicable

**RECOMMENDATION**

Staff recommends the City Council hold a public hearing. In this case, a joint public hearing that considers both the annexation and the associated Zone Change 1021 a Mixed Residential Planned Neighborhood Development (PND) zone change. Upon completion of the hearing, staff recommends the City annex the petitioned property with the staff recommended conditions of approval.

NOTE: Though a joint hearing is being held, individual action will need to be taken on each item.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Dorn Property and Homes, LLC and Dorn/Lowe, LLC have petitioned for annexation using the provisions of Section 7-2-4600, MCA. The property is located south of Central Avenue and West of Shiloh Road. The property is described as Parcel 1 and 2 of Certificate of Survey 2828. The land is legally described as Tracts of Land situated in the NE 1/4 of Section 10, T.1S., R.25E, P.M.M., Yellowstone County, Montana, more particularly described as follows: Tracts 1 and 2 of Certificate of Survey No. 2828, recorded December 20th, 1994, under Document No. 1767966. Including the Drain Ditch Right-Of-Way being 55 feet in width and lying adjacent and between the south line of said Tracts 1 and 2 and the east-west mid-section line of said Section 10. Said annexation containing 27.810 gross and net acres, more or less. The property is zoned Agricultural Open Space, a zone not recognized by the City of Billings. Therefore, an associated zone change application is being submitted for the use of a Planned Neighborhood Development. The property owner intends to construct 2, 6 and 8-plexes, and apartment style buildings.

The applicant submitted the annexation petition in 2021 and the City Council was scheduled to take action in January 2022. The annexation petition was put on hold once the applicant withdrew the associated zone change. Now that activity has resumed on the project the petition may continue forward.

It is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. Staff finds the proposed annexation complies with the adopted Annexation Policy criteria as follows:

1. The area is located within the City's Annexation Petition Area on its Limits of Annexation Map: The property is confirmed to be in the red area, see attached map.
2. The City is able to provide adequate city services within a time period mutually agreed to by the property owners requesting annexation and the city: The Annexation Agreement (conditional approval) is the binding contractual agreement that identifies requirements of the City and the Developer to ensure services are provided in a mutually agreed to time. The Annexation Agreement will be considered at this same City Council meeting. The developer is required to meet this condition within 45 days per the attached resolution.
3. Existing or proposed public improvements within the area to be annexed will meet City standards: The existing property is vacant therefore and planned infrastructure will be new and is required to meet the City's regulations. The Annexation Agreement which is a condition of approval will outline public improvements required of the developer as part of developing the property. The only way this property could be developed in the city not according to adopted policies and regulations would require action from City Council or the Board of Adjustment to grant variances allowing deviations from adopted codes. In this case, there is a request for a variance as part of zone change 1021. The variance is specifically related to connectivity at Obie Lane and Bell Avenue. Staff has not recommended approval of this variance, but the Zoning Commission is forwarding a recommendation of approval. Additionally, It is required and standard practice that prior to the issuance of any building permit, the building and site plans will undergo planning review to confirm it is designed in accordance with zoning regulations.
4. All property owners within the area to be annexed must sign a Waiver of Right to Protest future Special Improvement Districts: A standalone waiver is required as a condition of approval for this annexation. This waiver is attached to the Annexation Agreement. The waiver is good in perpetuity and is not subject to the 20-year limitation as

identified in the Montana Subdivision and Platting Act.

5. All residential property owners within the area to be annexed must create or join an existing park maintenance district: This criteria is not applicable, as confirmed by the Parks Department as there is not a park maintenance district governing the area, nor is there a parkland dedication requirement at this time. The property is being subdivided, however, per the Montana Subdivision and Platting Act divisions of land that are First Minor Subdivisions are not subject to park dedication requirements.

6. Residential densities planned for development within the area to be annexed must meet an overall average density of at least 4-7 dwelling units per acre: The proposed Mixed Residential PND ensures this minimum density range is achieved. The criteria is intended to be a minimum standard as opposed to a minimum and maximum. A concept plan of the development has been provided with the Zone Change 1021 materials. There are a mix of 2,6 and 8 plex buildings and apartment style buildings. The concept coupled with assumptions based on the requirements of the NX districts identified in BMCC, 27-300.6 and 37-300.7 indicate the minimum range will be met or exceeded.

7. The proposed land use within the area to be annexed must conform to the goals of the Adopted City of Billings Growth Policy: Chapter 2 of the 2016 City of Billings Growth Policy outlines 7 growth guidelines. Essential Investments, Place Making, Community Fabric, Strong Neighborhoods, Home Base, Mobility and Access and Prosperity. Particularly this parcel with the proposed zoning is most in line with the following:

#### **Strong Neighborhoods:**

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, goodwill and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale streetlights, street trees and walkable access to public spaces
- Neighborhoods that are safe and attractive and provide essential services are much desired Implementation of the Infill Policy is important to encourage development of underutilized properties

#### **Home Base:**

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community

**Departmental Response:** City and County Departments were given the opportunity to comment on this annexation. City departments responded favorably and detailed responses are provided below. The County Public Works Department did not respond to this annexation request.

- Water and Sanitary Sewer: Public water and sanitary sewer service is available to this site. Developer Tracts will be served by extending the existing 24-inch sanitary sewer main within a 15-foot-wide public easement or public right-of-way along the entire south boundary of Tracts 1 and 2 of Certificate of Survey 2828 and along the entire south boundary of Tract 1 of Certificate of 3358. The Developer Tracts will be served by existing water mains located in Bell Avenue and Rocky Vista Way and stubbed to the Obie Lane terminus.
- Storm water: The developer will manage storm drainage within the Developer Tracts in accordance with the City of Billings Stormwater Management Manual (2018). The Developer shall dedicate to the public the area along Developer Tracts fronting Rocky Vista Way for the existing Monad Drain/Shiloh Drain.
- Transportation: The subject property can be accessed by way of Bell Avenue, Monad Road and Obie Lane.
- Fire Stations: The subject property is currently served by the Billings Fire Department through the Billings Urban Fire Service Area and the Billings Fire Department will continue to serve the property upon annexation. The Billings Fire Department stated that as this and other annexations are built out, additional fire department resources will be needed. This property will be served by Fire Station 7 located near Grand Avenue and 54th Street West. The subject property is approximately 5 minutes away from Fire Station 7 or 2.78 miles.
- Parks: 2% parkland is required as part of the Planned Neighborhood Development. Additional parkland could be dedicated if the developer chooses to go through subdivision, but this is not a requirement of development. The property could be developed as a master site plan, and no additional parkland would be required. If parkland is public, a maintenance RSID will be required. Private parkland may be maintained in other ways.

- School facilities: School District 2 does not generally provide recommendations on land-use applications, but rather provides broad statements regarding capacity issues. In this case, the development would be served by the following schools, Big Sky Elementary: current enrollment number is 368 and max capacity is 394; Ben Steele Middle: current enrollment number is 795 and max capacity is 750; and West High School: current enrollment number is 2,089 and max capacity is 1,731. The school district provided no additional comments.

**General City Services:** These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property, however emergency services in its comments above did note its concerns as additional property is annexed into the City. Those concerns did not warrant a recommendation of denial.

- Transit: Property is not directly served by a transit route; closest routes are: 7-Broadwater within .25 miles to the east, traveling north and south on Shiloh Rd, most likely access via Monad Rd and Shiloh and 13-Westend approximately .5 miles to the east traveling southbound through the intersection of Monad Rd and 38th St W. This route is also within .5 miles to the south, traveling East on King Ave W with most likely access to route occurring at King Ave W and Saint Mary's Way. The Transit Development plan does continue to keep service within similar proximity with service to the south being maintained on King Ave W and service to the east moving to 38th St W instead of Shiloh Rd. Frequency on this service is anticipated to be every 30 minutes, so frequency is increasing significantly from the existing hourly+ timeframe. Due to the growth in the area and the high proliferation of higher density housing, MET would anticipate service in the area to continue in the foreseeable future.
- Police: There is sufficient ingress/egress to this property if access/connectivity is provided per City requirements, and is close to properties already in the city. There would be no need to modify beat structure. Despite passage of a recent safety levy, continued development and annexation will affect our ability to deliver service.
- Public Utilities: The Public Works-- Distribution and Collection Division had no concerns with the annexation request.
- Public Works -Street and Traffic Division: The Street and Traffic Division stated that it has no concerns with serving the property.
- Public Works-Solid Waste: The Solid Waste Division had no concerns with annexing the property.
- Ambulance Service: The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This property may be within the area of acceptable response time.
- Legal and Finance: General Fund services, such as the Legal and Finance Departments should not be negatively impacted by this annexation.

**Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve the property whether it is in the City or the County. The Planning Division staff supports the annexation because staff finds the annexation policy criteria have been met.

## STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require that the City Council conduct a public hearing, advertise the hearing, and post the property with information on the annexation petition and public hearing. Notice of the public hearing was posted on the property. The hearing was legally advertised in the *Yellowstone County News*.

## ALTERNATIVES

The City Council may approve or deny the petition for annexation. Denial of the petition will mean the City Council cannot consider any other associated items with this annexation.

- On December 6, 2021, the annexation petition was submitted to the Planning Division by the owner's agent.
- On January 24, 2022, the City Council was scheduled to take action on the resolution but the applicant asked to withdraw the associated zone change. As such, the application was placed on hold.
- The Council is scheduled to hold a hearing and take action on February 13, 2023.

## FISCAL EFFECTS

This application has no impact on the Planning Division Budget.

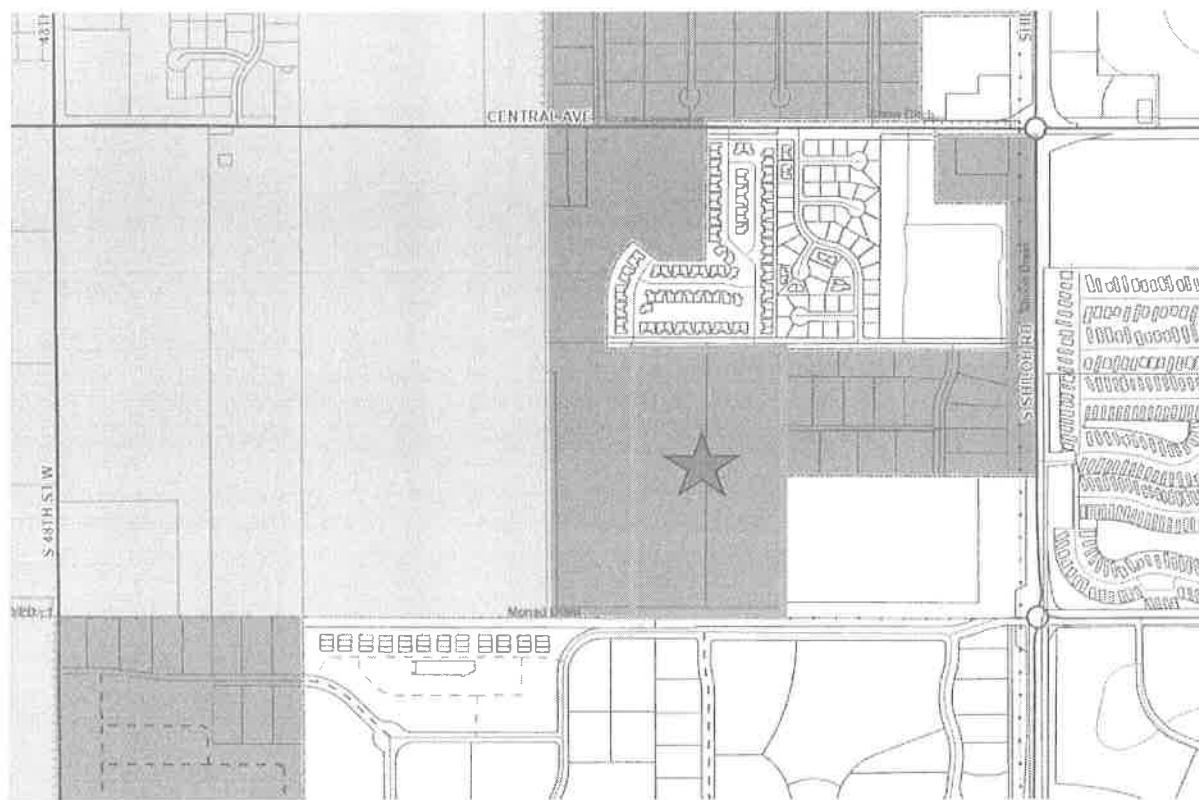
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## Attachments

Limits of Annexation Map

Resolution

Limits of Annexation Map



## RESOLUTION 23-11100

### A RESOLUTION APPROVING PETITION FOR ANNEXATION AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law; and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Tracts of Land situated in the NE 1/4 of Section 10, T.1S., R.25E, P.M.M., Yellowstone County, Montana, more particularly described as follows:

Tracts 1 and 2 of Certificate of Survey No. 2828, recorded December 20th, 1994, under Document No. 1767966.

Including the Drain Ditch Right-Of-Way being 55 feet in width and lying adjacent and between the south line of said Tracts 1 and 2 and the east-west mid-section line of said Section 10.

Said annexation containing 27.810 gross and net acres, more or less.  
(# 21-15) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:

- Within 45 working days and prior to site development, a mutually acceptable Annexation Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and right-of-way dedication, provide guarantees for said improvements, and include a Waiver of Right to Protest the Creation of Special Improvement Districts which will be recorded with the Yellowstone County Clerk and Recorder.

If the above conditions are not satisfied as set forth herein, the annexation will not be effective and any subsequent requests for annexation of the property

legally described within this resolution shall be processed as a new petition for annexation.

3. **EFFECTIVE DATE.** This resolution to annex the above-described territory shall be effective immediately upon satisfaction of all conditions. If the above condition(s) are not satisfied, this resolution shall be null and void and shall have no effect.
4. **PROCEDURE.** All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 13<sup>th</sup> day of February, 2023.

CITY OF BILLINGS



DS

DocuSigned by:

By William A. Cole

William A. Cole, Mayor

ATTEST:

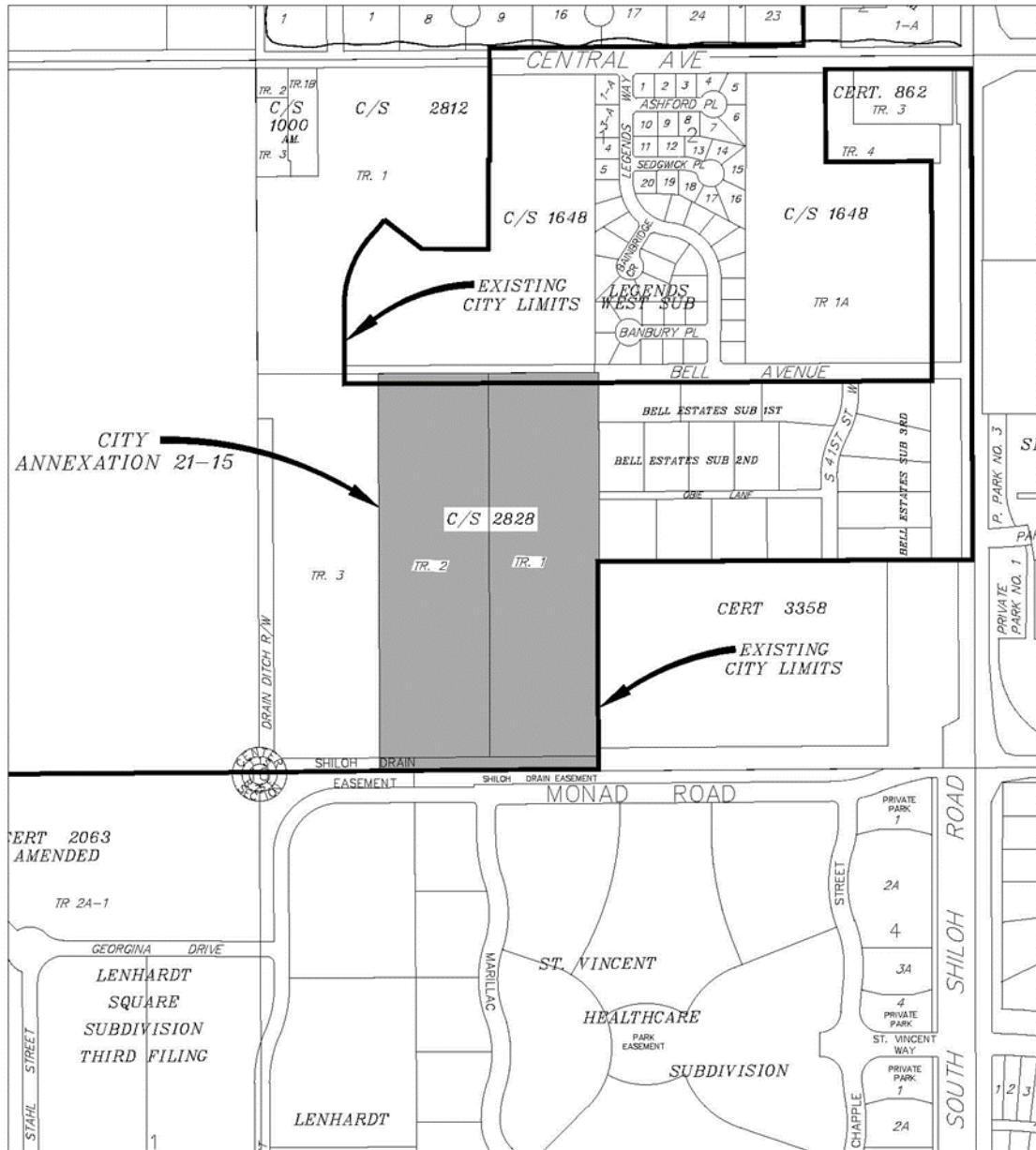
DocuSigned by:

By Denise R. Bohlman

Denise R. Bohlman, City Clerk

(# 21-15)

*EXHIBIT "A"*



**Certificate Of Completion**

Envelope Id: 553B135E8BAB4D4F8C14C5D8C93217C8

Status: Completed

Subject: Please DocuSign: RESOLUTION 23-11100 Approving Annexation 21-15

Source Envelope:

Document Pages: 9

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Denise R. Bohlman

AutoNav: Enabled

Stamps: 1

bohlmand@billingsmt.gov

Enveloped Stamping: Enabled

IP Address: 161.7.21.24

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

**Record Tracking**

Status: Original

Holder: Denise R. Bohlman

Location: DocuSign

2/13/2023 2:25:49 PM

bohlmand@billingsmt.gov

**Signer Events****Signature****Timestamp**

William A. Cole



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coleb@billingsmt.gov

Viewed: 2/14/2023 2:23:48 PM

Mayor

Signed: 2/14/2023 2:24:10 PM

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style  
Using IP Address: 72.175.160.94**Electronic Record and Signature Disclosure:**

Accepted: 12/3/2020 8:46:12 AM

Sent: 2/14/2023 2:24:12 PM

ID: 235dd76e-a3c9-4e23-89f5-aedaeb3b241a

Denise R. Bohlman



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bohlmand@billingsmt.gov

Signed: 2/14/2023 2:25:43 PM

City Clerk



City of Billings

Signature Adoption: Pre-selected Style  
Using IP Address: 161.7.21.24**Electronic Record and Signature Disclosure:**

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**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Toni Keehner

keehnert@billingsmt.gov

Deputy City Clerk

City Clerk

Security Level: Email, Account Authentication (None)

COPIED

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Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/14/2023 8:08:27 AM
Envelope Updated	Security Checked	2/14/2023 8:27:53 AM
Certified Delivered	Security Checked	2/14/2023 2:25:33 PM
Signing Complete	Security Checked	2/14/2023 2:25:43 PM
Completed	Security Checked	2/14/2023 2:25:46 PM
Payment Events	Status	Timestamps
<b>Electronic Record and Signature Disclosure</b>		

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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To contact us by email send messages to: [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov)

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To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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- ii. send us an email to [kampal@billingsmt.gov](mailto:kampal@billingsmt.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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- Until or unless you notify Carahsoft OBO City of Billings as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Carahsoft OBO City of Billings during the course of your relationship with Carahsoft OBO City of Billings.