

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. **02-17842** entitled: **"A RESOLUTION RELATING TO W.O. 99-07: LAKE ELMO DRIVE IMPROVEMENTS, PHASE II; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND"** (the "Resolution"), on file in the original records of the City Council of the City at a meeting on May 28, 2002, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____

_____.

Voted against the same: _____

;
Abstained from voting thereon: _____

;
or were absent: _____

;

WITNESS my hand officially this 28th day of May, 2002.

Marita Herold, CMC/AAE

CITY CLERK

RESOLUTION NO. **02 – 17842**

A RESOLUTION RELATING TO W.O. 99-07: LAKE ELMO DRIVE IMPROVEMENTS, PHASE II; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO ORDER IN THE PROGRAM FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SIDEWALK, CURB AND GUTTER IMPROVEMENT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND.

WHEREAS, the city is granted the power pursuant to M.C.A. 7-14-4109 to order certain improvements without creation of a special improvement district and certain sections of curb and gutter, sidewalks, drive approaches, alley approaches and/or appurtenant features have deteriorated, settled and cracked, or none exist, or some of the foregoing do not exist; and

WHEREAS, the safety and convenience of the public require installation, construction, reconstruction, repair or replacement of curbs and gutters, sidewalks, drive approaches, alley approaches, and/or appurtenant features or combinations thereof; and

WHEREAS, said improvements should be ordered as provided by law.

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

1. INTENTION TO ORDER IN. It is the intention of the Council to order the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, alley approaches and appurtenant improvements in certain locations, which improvements and locations are more fully described in Exhibits "A" and "B" attached hereto.
2. AFFECTED PROPERTIES. All properties, which will be required to pay any portion of the costs of the improvements identified herein, are listed and the owners of those properties are identified on Exhibit "B" attached hereto.
3. ESTIMATED COSTS. The estimated assessed costs of the proposed improvements, including construction costs, incidental expenses, engineering fees, legal fees, administrative fees and bond issuance costs, but exclusive of interest charges, will be \$160,000.00 as described below:

Construction Costs	\$130,400.00
(w/contingencies)	
Engineering & Administration	\$ 16,000.00
Bond Revolving Fund (5%)	\$ 8,000.00
Bond Discount Costs (3.5%)	<u>\$ 5,600.00</u>
TOTAL ASSESSED COSTS	\$160,000.00

Estimated unit costs for construction only, not including engineering, legal, administrative and bond costs as follows:

<u>Removal and Replacement of:</u>	<u>Unit Price:</u>
Remove and Replace Sidewalk	\$4.50/sq. ft.
Remove and Replace Curb Gutter	\$23.00/lin. ft.
Remove and Replace Drive Approach	\$5.50/sq. ft.
Remove and Replace Alley Approach	\$5.50/sq. ft.
Street Reconstruction	\$20.00/sq. yd.
 <u>New Construction:</u>	
New Sidewalk	\$3.50/sq. ft.
New Curb and Gutter	\$16.00/lin. ft.
New Drive Approach	\$4.50/sq. ft.
New Alley Approach	\$4.50/sq. ft.
Street Reconstruction	\$20.00/sq. yd.

The actual cost to be assessed against any benefited property will be determined by the actual amount of work done adjacent to the property.

4. ASSESSMENT OF COSTS. All costs of constructing the curbs, gutters, sidewalks, and drive approaches, including engineering, administrative and bond costs, will be assessed against the properties which are adjacent to the improvements installed. As shown on Exhibit "B", assessments will be levied against 21 separate lots, parcels, or tracts.

The costs for each property will vary depending upon the actual construction that is required adjacent to each property. The estimated costs, for construction only, for a typical 100-foot lot requiring construction for new sidewalk, appurtenant structures and alley approaches, are \$6,273.92. The average total assessment, including engineering, administrative, and bond costs is estimated to be \$6,339.18, with a high of \$21,982.20, low of \$0.00, and a median of \$7,442.93.

5. PERIOD OF ASSESSMENT. The assessments for all improvements and costs shall be paid in not more than twelve (12) annual installments, plus interest, provided however, that payment of one-half of each annual installment, plus interest, may be deferred to May 31 of the year following the assessment.
6. PROPERTY OWNER OPTION TO CONSTRUCT IMPROVEMENTS. In the event that the City Council orders in the above-described improvements following the public hearing, then the owners of all properties to be assessed for the costs of said improvements will be notified of such action in writing. Said owners will have thirty (30) days from the date of said notice in which to install the required improvements at their own expense. In the event the owners do not install these improvements, the City will do so and will assess the costs against the benefited properties as described herein.

7. METHOD OF FINANCING; PLEDGE OF REVOLVING FUND; FINDINGS AND DETERMINATIONS.

The City will issue **Sidewalk, Curb, and Gutter Improvement Bonds** in an aggregate principal amount not to exceed \$160,000 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the Project. This Council further finds it is in the public interest, and in the best interest of the City and the Project, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect to the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

- (a) Estimated Market Value of Parcels. The estimated total market value of the lots, parcels, or tracts in the Project, as of the date of adoption of this resolution, as estimated by the County Assessor, is \$6,667,291. The average market value is \$317,490, with a high of \$1,515,800, a low of \$66,700, and median value of \$156,100. The special assessments to be levied against each lot, parcel, or tract are less than the increase in the estimated market value of the properties as a result of the construction of the improvements.
- (b) Diversity of Property Ownership. For the 21 total lots, parcels, or tracts in the Project, there are 17 separate owners. Popelka Enterprises, LLC, owns three (3) parcels; Reiters Marina, Inc. owns two (2) parcels; and Lindsey Lumber and Hardware Company owns two (2) parcels. All other parcels are under separate ownership. Given the commercial nature of the properties and the diversity of ownership, it is unlikely that financial difficulties would arise that would require a loan to be made from the Revolving Fund.
- (c) Comparison of Special Assessments, Property Taxes and Market Value. Currently, six (6) parcels have SID's levied against them. The six parcels, the SID numbers, payoff amounts, and payoff dates are as follows:

<u>Parcel</u>	<u>SID</u>	<u>Payoff Amount</u>	<u>Payoff Date</u>
A-7439	9809	\$2,935.59	2009
A-8541	1258	\$736.89	2004
A-17026	9809	\$1,216.08	2009
A-17027-1	9809	\$967.73	2009
D-5560	1258	\$683.15	2004
D-5563	1258	\$1,653.59	2004

As noted in Section 4, the estimated average assessment levied by this project will be \$6,339.18. With an average market value of \$317,490, and an average

yearly principal payment of \$528 (monthly principal of \$44), the amount of assessment versus the value of the property would appear acceptable. As such, no unusual need for loans from the Revolving Fund would be expected. Further information comparing the total cost (estimate) to the market value for each parcel is listed in Exhibit "C".

- (d) Delinquencies. For tax years 1996 through 2000, one parcel was delinquent. This represents a 95% collection rate within the project area. This rate equals the average city collection rate of 95%.

Therefore, given the delinquency history of this Project area, no unusual need for loans from the Revolving Fund would be expected.

- (e) The Public Benefit of the Improvements. The subject section of Lake Elmo Drive is classified as a collector street by the Billings Urban Area Functional Classification Study and the City's Transportation Plan. This section of Lake Elmo Drive serves a combination of residential and commercial properties.

The proposed project would install pedestrian and bicycle facilities where none exist. This is expected to have a positive social impact for the pedestrians and cyclists using the facilities and the various businesses fronting these improvements. Under City policy, construction of pedestrian and bicycle facilities along collector and arterial streets are a high priority. Further, the costs of the installation of new curb and gutter, sidewalks, drive approaches, and street widening on collector streets are to be borne by the adjoining property owners.

On September 9, 1996, the Billings City Council approved a phased improvement plan for Lake Elmo Drive between Main Street and Pemberton Road. This project was specifically identified as the second phase of the plan; the first phase has been completed. Further, it was identified that the adjoining property owners would be assessed for the costs of the improvements.

8. REIMBURSEMENT EXPENDITURES.

- (a) Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the

expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

(b) Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

(c) Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$160,000 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

(d) Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

(e) Reimbursement Allocations. The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

9. PUBLIC HEARING. On Monday, June 24, 2002, at 7:30 p.m., in the Council Chambers located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, MT, the City Council will conduct a public hearing concerning this project

and all interested parties will be allowed to testify. The City Council will also consider all written comments submitted to the City Clerk prior to the hearing or submitted to the Council during the hearing.

10. NOTICE OF PASSAGE OF RESOLUTION OF INTENTION. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of this Resolution in the BILLINGS TIMES, a newspaper of general circulation in the county on May 30 and June 6, 2002, in the form and manner prescribed by law, and to mail or cause to be mailed, a copy of said Notice to every person, firm corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his last-known address, on or before the same day such notice is published.

PASSED by the City Council and APPROVED this 28th day of May, 2002.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

Marita Herold, CMC/AE CITY CLERK

RE: W.O. 99-07, Lake Elmo Drive Improvements, Phase II