

July 11-12, 2007

ITEM 136-1001-R0707

**Grant of Easement to Northern Lights Development Company, Fort Missoula Property; The University of Montana – Missoula**

**THAT:**

Pursuant to Board of Regents Policy 1003.6, the Board of Regents of Higher Education authorizes The University of Montana – Missoula to grant a road and utility easement, consistent with this Item, to Northern Lights Development No. 1, LLC, a Montana limited liability company (“NLD” herein), to construct and maintain water and sewer lines on two Board of Regents Fort Missoula properties: the College of Technology (“COT”) parcel and the 28-acre parcel adjoining the COT parcel at the southeastern edge (see map included as Attachment #1). The terms of this easement have been reviewed and found acceptable by the Office of Facilities Services and The University of Montana Legal Counsel.

**EXPLANATION:**

**Easement Description**

The University of Montana – Missoula is requesting the Board of Regents grant NLD a variable width (70’ – 91’) road and utility easement along the entire western portion of the COT property owned by the Board of Regents located off South Avenue. See Attachment #1, property identified as Geocode #0421993620109000. This easement is required to complete the 40<sup>th</sup> Avenue road re-alignment as well as for the installation of utilities to include water, sewer, and dry utilities. The area bound by this easement encompasses approximately 0.42 acres.

In addition, The University of Montana – Missoula is requesting the Board of Regents grant a 30’ public utility easement to NLD along the entire southern edge of the COT property owned by the Board of Regents located off South Avenue. See Attachment #1, property identified as Geocode #0421993620109000. The area bound by this easement in this parcel encompasses approximately 2.22 acres.

The easement will also extend across the northern portion of the 28-acre parcel adjoining the COT parcel at the southeastern corner. See Attachment #1, property identified as Geocode # 04219936101070000. The area bound by

this easement in this parcel encompasses approximately 0.85 acres.

The proposed 30' public utility easement would contain the following facilities: water main, gravity sewer main, sewer manholes, sewer force main, sewer force main cleanouts, service lines (water & sewer) to service the COT, and appurtenances. Materials and sizing are yet to be determined.

The University of Montana – Missoula is requesting the Board of Regents grant a temporary construction easement to the property for the purpose of constructing said facilities.

### **Fair Value**

By granting the easement requests, The University of Montana – Missoula will benefit from infrastructure improvements at the Missoula College of Technology's west campus property.

Specifically, Northern Lights Development will provide appropriately sized water and sewer mains in the 30' easement to service the three (3) existing structures at the College of Technology's campus. Additionally, the mains will be sized to accommodate a potential future educational building (up to 80,000 square feet) at the COT campus.

Northern Lights Development Company will pay for all expenses related to the design, construction, maintenance, and recording of said right-of-ways, and indemnify and hold the University harmless against all legal liabilities and costs arising from activities in connection with the proposed right-of-way easements.

Northern Lights will return the property to a condition equal to or better than the existing condition once the infrastructure has been completed.

### **Heritage Property Concerns**

The 28-acre parcel adjacent to the COT parcel has previously been identified as heritage property. As such, the State Antiquities Act and Board of Regent Policy 1003.5 will be complied with prior to commencement of easement construction. The University of Montana – Missoula has

initiated action to comply with these regulations including written notice to the Montana Historical Society, the local chapter of the Montana Historical Society, and published an on-site posted notice of the planned easement.

With respect to concerns on our protocol relative to unearthing additional cultural materials, NLD agrees to employ an archeologist on site any time materials from the 28- acres are to be removed or relocated. The onsite archeologist will have the authority to stop the excavation in the event of Native American cultural materials or human remains are uncovered. If these types of materials are uncovered, a cultural resource professional employed would conduct an investigation and submit a report for consideration by The University of Montana, the State Historic Preservation Office and the Confederated Salish Kootani Tribe Preservation Office before excavation could be resumed.

In addition, The University of Montana – Missoula will operate in accordance with direction from the Department of Environmental Quality if it determines an environmental assessment is required under the Montana Environmental Protection Act. Inquiry is currently underway and easement construction would not begin until clearance is received from that state agency.