

# RESOLUTIONS OF THE CITY OF HELENA, MONTANA

## RESOLUTION OF INTENTION NO. 20281

### A RESOLUTION OF INTENTION TO ENTER INTO A LAND EXCHANGE AGREEMENT TO EXCHANGE LOT 4 FOR LOT 3 IN THE SWANEY MINOR SUBDIVISION

**WHEREAS, Kenneth V. Eden and Elizabeth J. Eden** own Lot 3 in the Swaney Minor Subdivision in the City of Helena, Lewis and Clark County, Montana as shown on Certificate of Survey No. 3036912 on file with the Lewis and Clark County Clerk and Recorder, generally located west of Charlie Russell Drive; and

**WHEREAS,** the City of Helena owns Lot 4 in the Swaney Minor Subdivision, in the City of Helena, Lewis and Clark County, Montana as shown on Certificate of Survey No. 3036912 on file with the Lewis and Clark County Clerk and Recorder, generally located north and west of Charlie Russell Drive; and

**WHEREAS,** the City's lot is subject to deed restrictions which limit use of Lot 4 to the general public's non-motorized access and open space use, as reflected in the Warranty Deed between Prickly Pear Land Trust, Grantor, to the City of Helena, Grantee, and recorded in M Book 36 of Records, page 7358; and

**WHEREAS,** the Edens and the City desire to exchange ownership of their respective lots described above; and

**WHEREAS,** Section 1-4-17 of the Helena City Code governs the process for the disposition of real property owned by the City; and

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**WHEREAS**, the exchange of the property more particularly described above appears to be in the best interests of the present owners of the property and the City of Helena, Montana.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, AS FOLLOWS:**

**Section 1.** It is the intention of the Helena City Commission to exchange ownership of Lot 4 with Kenneth V. Eden and Elizabeth J. Eden for Lot 3, both in the Swaney Minor Subdivision in the City of Helena, Lewis and Clark County, Montana as shown on Certificate of Survey No. 3036912 on file with the Lewis and Clark County Clerk and Recorder, generally located west of Charlie Russell Drive.

**Section 2.** This property exchange is conditioned upon final Commission approval after compliance with the public notice procedures in Section 1-4-17 of the Helena City Code, the holding of a public hearing, and approval of the Prickly Pear Land Trust to eliminate the deed restrictions on Lot 4 and transfer it to the Edens.

**Section 3.** The City Manager is hereby authorized to enter into the Land Exchange Agreement attached hereto as Exhibit "A."

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**Section 4.** A public hearing on this proposed land exchange shall be held before the Helena City Commission in its chambers at 316 North Park Avenue in Helena, Montana, on **the 26<sup>th</sup> day of September, 2016 at 6:00 p.m.**

**PASSED AND EFFECTIVE BY THE COMMISSION OF THE CITY OF HELENA, MONTANA, 22<sup>nd</sup> DAY OF AUGUST, 2016.**

/S/ JAMES E. SMITH  
MAYOR

ATTEST:

/S/ DEBBIE HAVENS  
CLERK OF THE COMMISSION

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## EXHIBIT “A”

### LAND EXCHANGE AGREEMENT

The **CITY OF HELENA, MONTANA**, a municipal corporation, 316 North Park Avenue, Helena, Montana 59623 (“City”), and **Kenneth V. Eden and Elizabeth J. Eden**, 1030 LeGrande Cannon Boulevard, Helena, Montana 59601 (“Edens”), hereby enter into this agreement to exchange property.

#### RECITALS

**WHEREAS**, Edens own Lot 3 of the Swaney Minor Subdivision in the City of Helena, Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Document No. 3036912; and

**WHEREAS**, the City owns Lot 4 of the Swaney Minor Subdivision in the City of Helena, Lewis and Clark County, Montana, as shown on the Certificate of Survey filed under Document No. 3036912; and

**WHEREAS**, in order for the parties to achieve the optimum use and enjoyment of their respective properties, they desire to exchange their property with each other.

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the terms and provisions of this agreement, the parties hereto agree as follows:

1. City will convey all its interest in and to Lot 4 in the Swaney Minor Subdivision as

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described above by quitclaim deed as shown on Exhibit A attached hereto.

2. Edens will convey all their interest in Lot 3 in the Swaney Minor Subdivision as described above to the City by quitclaim deed, as shown on Exhibit B attached hereto.

3. Each party assumes all responsibility for payment of taxes and assessments on their property up to the date of closing. Each party assumes all responsibility for payment of taxes and assessments on the exchanged property from and after the date of closing.

4. Except for the cost of filing the amended plat or certificate of survey, each party will pay any necessary recording or filing fees for deeds or other documents filed or recorded on behalf of that party due to this transaction.

5. Each party assumes responsibility for obtaining title insurance at their own expense.

6. All other closing costs will be equally split by the Parties.

7. The parties acknowledge that they have inspected the respective properties, that no representations or inducements have been made other than those expressed herein, and that this contract contains the entire agreement between the parties.

8. Edens understand and agree that this land exchange is subject to final Commission approval after following public notices procedures and holding a public hearing as required by Helena City Code. Edens further understand and agree that Lot 4 is currently subject to deed restrictions that allow the general public's non-motorized access to and across Lot 4 and limit the use of Lot 4 to open space uses (Book M36, page 7358). Accordingly, release of the deed restrictions by

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Prickly Pear Land Trust is a condition precedent to the City exchanging Lot 4 for Lot 3.

9. If either party fails to perform any condition of this agreement, the other party is entitled to all remedies provided by law, including, but not limited to, damages and specific performance.

10. If any action is brought by either party to enforce the terms of this agreement, the prevailing party is entitled to reasonable attorney fees as a court may determine.

11. Time is of the essence of this agreement and it is binding upon the parties hereto and their heirs, successors, and assigns.

**DATED** this \_\_\_\_ day of August, 2016.

**CITY OF HELENA, MONTANA**

By \_\_\_\_\_  
**Ronald J. Alles, City Manager**

**ATTEST:**

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**Debbie Havens, City Clerk**

By \_\_\_\_\_  
**Thomas Jodoin, City Attorney**

By \_\_\_\_\_  
**Kenneth V. Eden**

By \_\_\_\_\_  
**Elizabeth J. Eden**

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