

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

AGENDA

COUNCIL CHAMBERS

June 13, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

**STATE OF ALLEGANCE May 1963
INVOCATION – Councilmember Larry Brewster**

INVESTIGATOR ROLL CALL

MINUTES – May 23, 2005

MINUTES COURTESIES

COURTIES PROCLAMATIONS

BOARD & COMMISSION REPORTS – Public Utilities Board

BOARD & COMMISSION REPORTS – Public ADMINISTRATOR REPORTS – Kristoff Bauer

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: #1- and #16-

ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. Mayor's Appointments

Name		Board/Commission	Term	
			Begins	Ends
1.		Zoning Commission	06/13/05	12/31/07
2.		Community Development	06/13/05	12/31/08
3.		Board of Adjustments	06/13/05	12/31/05
4.		Parks/Rec/Cemetery	06/13/05	12/31/08

1. Unexpired term of David Gelder
2. Unexpired term of Aldo Rowe
3. Unexpired term of Danny Graves
4. Unexpired term of Sandy Graves

[\(Corresponding Staff Memo A\)](#)

B. Bid Awards:

(1) Gillig Bus Powerplant. (Opened 5/24/05). Recommend Gillig Corporation, \$59,425.00.
[\(Corresponding Staff Memo B1\)](#)

(2) Demand Response Software Package with AVL and MDT Integrated Modules. (Opened 4/26/05). (Delayed from 5/9/05). Recommend Routematch, \$126,800.00.
[\(Corresponding Staff Memo B2\)](#)

(3) Billings Logan International Airport, AOC-Fire Alarm Upgrade. (Opened 5/24/05). Recommend Yellowstone Electric, \$28,105.00.
[\(Corresponding Staff Memo B3\)](#)

(4) W.O. 04-12: Alkali Creek Road Improvements, CTEP Project #STPE 1099(46). (Opened 5/31/05). Recommend JTL Group, Inc. for Schedules 1-5, \$1,876,403.70 and 190 calendar days, contingent on CTEP concurrence.
[\(Corresponding Staff Memo B4\)](#)

(5) W.O. 04-29: Trans Tech Trail. (Opened 5/131/05). Recommend JTL Group, Inc. for Schedules 1 and 1A, \$154,364.00 and 45 calendar days.
[\(Corresponding Staff Memo B5\)](#)

(6) Billings Wastewater Treatment Plant Administration Building Electrical Improvements. (Opened 6/7/05). Recommend delaying award to 6/27/05.
[\(Corresponding Staff Memo B6\)](#)

C. Amendment #6, Airport Miscellaneous Capital Projects, Professional Services Contract, Morrison-Maierle, Inc., \$29,140.00.
[\(Corresponding Staff Memo C\)](#)

D. Amendment #3, W.O. 04-13: Water Treatment Plant Filter Building Expansion and Improvements, Professional Services Contract, HDR Engineering, Inc., \$933,419.00.
[\(Corresponding Staff Memo D\)](#)

E. Vehicle Lease Agreement for City/County Special Investigations Unit (CCSIU), Underriner Motors, \$25,200.00, term: 7/1/05 to 6/30/06.
[\(Corresponding Staff Memo E\)](#)

F. Library HVAC Maintenance Agreement, Conditioned Air Systems, \$71,300.00, term: 3 years.
[\(Corresponding Staff Memo F\)](#)

G. Interlocal Library Agreement between Yellowstone County and the City of Billings to operate Parmly Billings Library.

[\(Corresponding Staff Memo G\)](#)

H. FY2005/2006 Landfill Use Agreements:

- (1) Bighorn County
- (2) Town of Bridger
- (3) Carbon County
- (4) Town of Columbus
- (5) Town of Fromberg
- (6) Town of Hysham
- (7) Town of Joliet
- (8) City of Laurel
- (9) Musselshell County
- (10) City of Red Lodge
- (11) Stillwater County
- (12) Treasure County
- (13) Yellowstone County – Amendment #2

[\(Corresponding Staff Memo H\)](#)

I. Renewal of Limited Commercial Building and Ground Lease, DHL Express, Inc., 1 year term and 1 year renewal option, \$11,628.00 for first year, adjusted by CPI if renewed.

[\(Corresponding Staff Memo I\)](#)

J. Limited Commercial Building and Ground Lease, Jack Bolme, term: 7 months to 12/31/05, \$9,240.00.

[\(Corresponding Staff Memo J\)](#)

K. Agreement for Library Security Guard Service, Guardian Security, term: 3 years.

[\(Corresponding Staff Memo K\)](#)

L. Tax Increment Façade Grant, MCS LLC for O'Donnell Building Project at 2401 2nd Avenue North, \$35,000.00.

[\(Corresponding Staff Memo L\)](#)

M. Acceptance of Quit Claim Deed from United Blood Services for public improvements on Grand Avenue, \$0.00.

[\(Corresponding Staff Memo M\)](#)

N. Approval of Recreational Trails Program Grant application for an additional \$5,000.00 for a portion of the Gabel Road Connector Trail Project. (20% match required, \$1,250.00).

[\(Corresponding Staff Memo N\)](#)

O. Cancellation of Checks and Warrants, \$9,730.38 and receivable balances, \$21,076.78.

[\(Corresponding Staff Memo O\)](#)

P. Resolution making annual all-purpose mill levy and mill levies for library operating, transit operating and public safety for FY 2005-2006.

[\(Corresponding Staff Memo P\)](#)

Q. Resolution to close the Special Improvement District debt funds and Sidewalk Special Assessment debt funds to the Special Improvement District revolving fund, \$12,454.18.

[\(Corresponding Staff Memo Q\)](#)

R. Resolution of Intent to sell City-owned property described as Lots 5-10, Block 92, O.T., located in the 100 Block of N. 27th Street and setting a public hearing date for 7/11/05.

[\(Corresponding Staff Memo R\)](#)

S. Resolution designating a blighted area within the City and the necessity of rehabilitation and redevelopment of said area to establish a Tax Increment Finance District within the City, boundaries: tract within Block 92, consisting of Lots 5-10, the W2 of N. 27th Street measured from the easterly border of Lots 5-10 to the center line of N. 27th Street, together with the E2 of the alley that divides Block 92 measures from the western border of Lots 5-10 to the center line of the alley.

[\(Corresponding Staff Memo S\)](#)

T. Resolution assessing residential/commercial collection, disposal and landfill fees for FY2005-2006.

[\(Corresponding Staff Memo T\)](#)

U. Resolution relating to Pooled Special Improvement District Refunding Bonds, Series 2005, determining the form and details and authorizing the execution and delivery.

[\(Corresponding Staff Memo U\)](#)

V. Resolution relating to \$2,520,000 Pooled Special Improvement Districts Bonds, authorizing the issuance and calling for the public sale thereof.

[\(Corresponding Staff Memo V\)](#)

W. Resolution of intent to expand Park Maintenance District #4012: Village West Subdivision and setting a public hearing date for 7/11/05.

[\(Corresponding Staff Memo W\)](#)

X. Resolution of intent to create Park Maintenance District #4027: Ironwood Estates Subdivision and setting a public hearing date for 7/11/05.

[\(Corresponding Staff Memo X\)](#)

Y. Second/final reading of an ordinance extending the boundaries of Ward IV to include the recently annexed properties in Annex #05-02: a portion of the

W2W2SW4 of Section 32, T1N-R25E containing 40.5 acres located on the east side of 54th Street West, north of Grand Avenue.

[\(Corresponding Staff Memo Y\)](#)

Z. Second/final reading of an ordinance extending the boundaries of Ward V to include the recently annexed properties in Annex #05-03: approximately 25 acres located south of the intersection of 52nd Street West and Grand Avenue.

[\(Corresponding Staff Memo Z\)](#)

AA. Preliminary Plat of McKay Acres Subdivision Amended, Amended Lot 18B; conditional approval of plat and adoption of the findings of fact.

[\(Corresponding Staff Memo AA\)](#)

BB. Final Plat of Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing.

[\(Corresponding Staff Memo BB\)](#)

CC. Final Plat of King Place Subdivision.

[\(Corresponding Staff Memo CC\)](#)

DD. Bills and Payroll.

(1) April 1 – May 15, 2005 (Court)

[\(Corresponding Staff Memo DD1\)](#)

(2) May 13, 2005

[\(Corresponding Staff Memo DD2\)](#)

(3) May 20 , 2005

[\(Corresponding Staff Memo DD3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION approving budget amendments for the 4th quarter of FY 2004-2005. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)

3. PUBLIC HEARING AND FIRST READING ORDINANCE adopting the NFPA1/UFC, 2003 edition. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. **PUBLIC HEARING AND RESOLUTION** approving and adopting the FY 2005-2006 annual budget. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. **PUBLIC HEARING AND RESOLUTIONS** levying and assessing annual assessments and fees for FY 2006 on properties within the City, providing for notice, hearing and final adoption. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

(A) Storm Sewer Maintenance
Arterial Construction Fees
Light Maintenance Districts

[\(Corresponding Staff Memo 5A\)](#)

(B) Park Maintenance Districts

[\(Corresponding Staff Memo 5B\)](#)

(C) Fire Hydrant Maintenance

[\(Corresponding Staff Memo 5C\)](#)

6. **PUBLIC HEARING AND RESOLUTION** creating expanded Park Maintenance District #4005 to include High Sierra Subdivision, 3rd and 4th filings. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 6\)](#)

7. **PUBLIC HEARING AND RESOLUTION** creating expanded Park Maintenance District #4014 to include Goodman Subdivision, 2nd – 4th filings. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 7\)](#)

8. **PUBLIC HEARING AND RESOLUTION** authorizing the trade of the Holfeld Subdivision Park Tract in return for Tract A-1-B of C/S 1833. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 8\)](#)

9. **PUBLIC HEARING AND SPECIAL REVIEW #782:** a special review to permit a temporary go-kart track on a property zoned R-9600 and located at 1235 West Wicks Lane. Harvest Church, owner; Glenn Fournier, agent. Zoning Commission recommends denial. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 9\)](#)

10. **PUBLIC HEARING AND SPECIAL REVIEW #783:** a special review to allow the operation of a powder coating business on a property zoned Controlled Industrial and located at 119 S. 25th Street. Montana Rescue Mission, owner; Jim Huertas and Mitch Lee of Coatings Inc., agents. Zoning Commission recommends

conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 10\)](#)

11. **PUBLIC HEARING AND RESOLUTION** vacating a portion of Madison Avenue right-of-way east of Orchard Lane, valued at \$2,222.00. JT Partnership, petitioner. Staff recommends approval of the vacation and Council to determine the cost. (Action: approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 11\)](#)

12. **PUBLIC HEARING AND RESOLUTION** vacating a portion of S. 26th Street between 1st and 2nd Avenues S., valued at \$50,000.00. Yellowstone Health Partnership/Yellowstone City-County Health Department, petitioners. Staff recommends approval of the vacation and Council to determine the cost. (Action: approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 12\)](#)

13. **PUBLIC HEARING AND ZONE CHANGE #757:** a zone change from R-7,000 to R-6,000 on property described as Lot 6, Block 1, Burnstead Sub., 2nd filing and located at 945 N. 19th St. Larry & Judith Hauk, owners. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12-criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 13\)](#)

14. **PUBLIC HEARING AND ZONE CHANGE #758:** a zone change from R-6,000 to R-Multi-Family Restricted on property described as Lot 1, Robinson Subdivision and located at 416 Orchard Lane. T.J. Van Winkle, owner; Eric Van Winkle, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12-criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 14\)](#)

15. **PUBLIC HEARING AND ZONE CHANGE #759:** providing that the BMCC be amended by revising Section 27-305 and 27-306; setting standards for all utility and pipeline transmission and distribution systems, adopting the revisions as an interim zoning regulation and setting a time period for the regulation to be effective. Zoning Commission recommends approval of the zone change and allowing the interim zoning regulation to be effective for a period not to exceed six (6) months. (Action: approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 15\)](#)

16. **REVIEW** of the City Administrator Contract. Staff makes no recommendation.

[\(Corresponding Staff Memo 16\)](#)

17. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(Restricted to ONLY items not on the printed agenda; comments limited to 3

minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

COUNCIL INITIATIVES

ADJOURN

A



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 13, 2005

SUBJECT: Boards & Commissions –Appointments

DEPARTMENT: City Administrator's Office

PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are vacant due to resignations. Term expiration dates on these vacancies vary and the positions must be filled.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tooley recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Zoning Commission	06/13/05	12/31/07
2.		Community Development	06/13/05	12/31/08
3.		Board of Adjustments	06/13/05	12/31/05
4.		Parks/Rec/Cemetery	06/13/05	12/31/08

1. Unexpired term of David Gelder
2. Unexpired term of Aldo Rowe
3. Unexpired term of Danny Graves
4. Unexpired term of Sandy Graves

Approved By: **City Administrator** **City Attorney**

Attachments

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Award of MET Transit Bus Powerplant Bid
DEPARTMENT: Aviation/Transit Department
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: As the MET Transit Bus fleet starts to age and the buses begin to accumulate higher mileage, MET will begin to incur powerplant (combined engine/transmission unit) failures from time to time causing the affected bus to be pulled from service for major repairs. Having a spare powerplant available on site allows the MET to quickly replace the powerplant in need of repair and return the bus to revenue service, subsequently avoiding a lengthy downtime. The powerplant can subsequently be repaired and placed back in inventory ready for the next powerplant failure. It has been standard practice for many years to keep a spare powerplant inventoried for these emergency repairs. While powerplant failures are rare when the fleet is fairly new, they do occasionally happen. Once the bus fleet gets closer to the end of its life cycle, MET can experience 3 to 4 failures per year.

MET Transit advertised on May 5 and May 12, 2005, for sealed bids to provide a Gillig Bus Powerplant (which consists of a Cummins ISM Engine with an Allison World Transmission and Components mounted on a Gillig bus dolly). Bids were opened on May 24, 2005, and Gillig Corporation was the only vendor to respond. While others could supply the powerplant components, it turns out that it would be very difficult for the other bidders to be cost competitive in assembling the components to meet the specifications required to be ready for installation into the Gillig bus. Staff has reviewed the bid and finds it acceptable.

<u>Vendor</u>	<u>Amount</u>
Gillig Corporation	\$59,425
ESTIMATE	\$60,000

FINANCIAL IMPACT: The bus powerplant is included in the approved FY 04/05 budget. It will be purchased using Federal Transit Administration (FTA) Discretionary Grant dollars at an 80% Federal Share of \$47,540 and a 20% Local Share of \$11,885 for a total of \$59,425.

RECOMMENDATION

Staff recommends that Council approve the bid of \$59,425 submitted by Gillig Corporation and authorize MET staff to proceed with the purchase.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

Attachment A – Agreement for Gillig Bus Powerplant

[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

TITLE: Award of MET Special Transit Paratransit Dispatch Software

DEPARTMENT: Aviation and Transit Department

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: MET Transit advertised to receive Request for Proposals (RFPs) for a Demand Response Software Package for the MET Special Transit/Paratransit Dispatch function. This software allows the MET Special Transit/Paratransit staff to schedule and track the 300 riders per day utilizing the paratransit service. The new software will also ensure that the City remains in compliance with the Americans with Disabilities Act (ADA) by ensuring the availability of the MET Special Transit services to those individuals eligible under the law.

To assist in developing the RFP and to analyze the proposed software packages, the City contracted with David Jackson, a consultant specializing in systems engineering for the transportation industry. Based on MET Transit's needs, the consultant recommended the Request for Proposals be scored based on 80% technical requirements and 20% cost. A committee made up of Aviation and Transit staff, IT staff, and the consultant, ranked the proposals based on the requirements identified in the RFP. One proposal was determined to be non-responsive. The remaining two proposals were scored very close with the Strategen proposal having the edge. However, after weighing in the pricing and responses received from querying other users of these software packages, staff recommends selecting the RouteMatch Paratransit Dispatch Software Package. The calculated proposal prices were as follows:

<u>Vendor</u>	<u>Price</u>
Strategen	\$149,985
RouteMatch	\$126,800
Trapeze	Non-responsive

ALTERNATIVES ANALYZED: The City Council has the following alternative choices:

- Reject all proposals and continue to operate with the current unreliable software program.
- Approve staff's recommendation for the RouteMatch Paratransit Dispatch Software.

FINANCIAL IMPACT: The total cost of this project will be \$126,800. The approved budget for this project is included in the MET Transit's Fiscal Year 2005 Capital Program.

RECOMMENDATION

Staff recommends that Council approve the proposal submitted by RouteMatch for their software in the amount of \$126,800 and authorize the MET Transit to proceed with the purchase.

Approved By: **City Administrator** **City Attorney**

INTRODUCTION

The MET Special Transit utilizes a dispatch system to schedule and track riders on their fleet of 15 paratransit vans. Without this software, efficient scheduling would be extremely difficult, if not impossible. The current dispatch software system is no longer supported as the vendor, Intelitran, is no longer in business. The dispatch system has not functioned properly for some time and its failure would be disastrous to the MET Special Transit operation.

BACKGROUND

In 1998, MET Transit advertised for bids for paratransit dispatch software, and the award of the bid to Intelitran was based solely on pricing. The software's automated scheduling function never performed adequately and the number of ride requests has increased to a point where the current software is no longer able to efficiently process the ride requests. The maintenance costs to support the Intelitran software continued to rise significantly each year. Three years ago Intelitran was sold to another company that will no longer provide software support for the Intelitran software, therefore the stability of MET's current software is in question, and it is doubtful if repairs could be made if the software fails. Approximately 300 rides are scheduled daily and a new Demand Response Software Package will enable MET Special Transit to schedule and dispatch its specialized transportation service with the highest efficiency possible. The RFP specifications for the Demand Response Software Package require the software to allow the MET to incorporate Automatic Vehicle Locator (AVL) equipment and Mobile Data Terminal (MDT) technology (for possible future use) which, when used, should further enhance future operating efficiencies. MET has advertised to receive RFPs for a Demand Response Software Package with AVL and the MDT option. Advertisements were posted on March 17 and 24, 2005. Eleven proposals were sent out and three proposals were received and opened April 26, 2005.

Per the RFP requirements, pricing was separated from the technical content of the proposals, and the proposals were judged upon the requirements set forth in the RFP. The scoring was based upon the RFP's technical requirements as well as 23 separate identified necessities such as software requirements, software functionality, implementation, experience and qualifications, etc., and the demonstration of adequate experience with similar software installations at agencies similar in size and complexity to MET Transit.

A committee was formed to review the proposals, which included Aviation and Transit staff, IT staff, and due to the complexity of the project, a technical consultant specializing in systems engineering for the transportation industry, Mr. David Jackson. Due to the complexity of the software proposals received and the difficulty in subsequently scoring the technical requirements, and the costs associated with each of the technical requirements, Mr. Jackson's

expertise proved very valuable. To meet MET's needs, the consultant also recommended that the RFP scoring of the proposals be based on 80% for technical content and 20% on costs.

Strategen provided the most technically complete proposal, however, additional customization of reports that may be required by MET Special Transit will probably result in additional costs. The calculated cost for the Strategen software was \$149,985. In talking to references, most liked the product, but all indicated that additional charges would result for any modification to the software to customize it to the individual needs of the user. It is estimated that this could add as much as an additional \$10,000 to \$25,000 to the total price, after the fact.

RouteMatch's technical score was slightly lower, based on the committee's scoring. However, their calculated price to meet the RFP's requirements was \$126,800. A subsequent reference check of current users found that all were very satisfied with the product. When queried about additional costs to customize or to generate specialized reports, it was reported that no additional costs had been charged to these users. In fact, the RouteMatch staff regularly provides instruction to the users so they can generate specialized reports on their own.

Although Trapeze submitted a proposal, their RFP was found to be non-responsive because they did not meet the specifications of the RFP, and the pricing did not include all required modules. In addition, their maintenance costs were higher than both of the other proposals. For the five-year period that maintenance pricing was required to be guaranteed, Trapeze pricing escalated 5% each year, where the other proposals provided a static annual cost in each of the five years.

ALTERNATIVES ANALYZED:

The City Council has the following alternative choices:

- Reject all proposals and continue to operate with the current unreliable software program. Due to the non-support of the current software and its inability to meet MET's current needs, a software replacement is recommended. To not replace the software could result in the inability to provide paratransit service in compliance with ADA regulations, which could possibly jeopardize some of MET's Federal or State funding.
- Approve staff's recommendation to purchase the RouteMatch Paratransit Dispatch Software Package, and improve the operating and dispatching efficiencies of the MET Special Transit.

RECOMMENDATION

Staff recommends that Council approve the proposal submitted by RouteMatch for their software in the amount of \$126,800 and authorize the MET Transit to proceed with the purchase.

[\(Back to Consent Agenda\)](#)

B3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

TITLE: Award of Airport Operations Center Fire Alarm Replacement

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The fire alarm system in the Airport Operations Center was installed in 1992. This system's main panel recently ceased to function and we have been unable to locate replacement components, as the manufacturer of this system is no longer in business. This project will replace the existing system with a new "state-of-the-art," fully programmable fire alarm system that is easily integrated with our existing heat and smoke sensing devices. This new system will provide better fire protection for the Airport Operations Center and additional safety for employees, especially during evening hours when this large building has only two employees working in it. This was an unexpected failure so this project was not specifically budgeted for; however, capital dollars are available to cover the cost due to savings experienced in other budget projects. We received the following bids on this project:

<u>COMPANY</u>	<u>BID</u>
Yellowstone Electric	\$28,105
I.D. Corporation	\$28,485
Action Electric	\$50,995
Engineers Estimate	\$40,028

FINANCIAL IMPACT: The total cost of this project is \$28,105. As previously mentioned, we have identified savings in other capital projects to accommodate this needed Fire Alarm System Replacement.

RECOMMENDATION

Staff recommends that City Council approve the award of the Airport Operations Center Fire Alarm Replacement to the low bidder Yellowstone Electric, in the amount of \$28,105.

Approved By: **City Administrator** _____ **City Attorney** _____
[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: W.O. 04-12 – Alkali Creek Road Reconstruction, Contract Award

DEPARTMENT: Public Works - Engineering

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project will reconstruct Alkali Creek Road from Senators Boulevard to the crossing of the BBWA inverted siphon. The work includes road reconstruction, new water main, sanitary sewer, storm sewer, and a multi-use trail. Bids were opened for the project on June 13, 2005, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Funding for the project is available from multiple sources as listed below.

Location of Work: Alkali Creek Road between Senators Blvd. and the BBWA crossing

Funding Sources: Gas Tax (\$307,369), Storm Drain (\$247,381), Assessments (\$30,000), CTEP (\$290,000), Arterial Street Fees (\$650,000), G.O. Bonds (\$750,000), Water (\$290,000), Sewer (\$410,000)

Approved Dollar Amount for Project: \$2,974,750

Spent (and obligated) to date: \$ 238,325

Funding available: \$2,736,425

Bids were opened on May 31, 2005 with the following results:

Firm	Bid Sch. 1-5 & 5A	Bid Sch. 1-5 & 5B
JTL Group, Inc. – Billings	\$1,995,051.70	\$1,876,403.70
Chief Construction Specialties, Inc.	\$2,470,236.43	\$2,415,456.43
Engineer's Estimate	\$2,384,766.73	\$2,388,242.73

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 04-12 – Alkali Creek Road Reconstruction-Billings (including STPE 1099(46)) for Schedules 1-5 and 5B to JTL Group, Inc. - Billings for \$1,876,403.70 and 190 calendar days, contingent on CTEP concurrence.

Approved By: City Administrator ____ City Attorney ____

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: W.O. 04-29 – Trans Tech Trail-Billings, Contract Award

DEPARTMENT: Public Works - Engineering

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project will construct a multi-use trail from the intersection of Gabel Road and Hesper Road to a point in the Trans Tech Center. Bids were opened for the project on June 13, 2005, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Funding for the project is available from a federal grant and donated match funds from the Bottrell Family Investments, LP (BFI).

Location of Work: Trans Tech Center (between Gabel Road and 29th St W.)

Funding Sources: CTEP Grant (\$161,833), local match (\$25,083) provided by BFI.

Approved Dollar Amount for Project: \$186,916

Spent (and obligated) to date: \$ 19,970

Funding available: \$166,946

Bids were opened on May 31, 2005 with the following results:

Firm	Bid Sch. 1	Bid Sch. 1, Sch. 1A, & Sch. 1B	
JTL Group, Inc. -Billings	\$148,904.00	\$154,642.00	\$169,802.00
CMG Construction	\$154,642.00	\$159,892.00	\$174,452.00
EHC-LLC	\$163,860.00	\$171,360.00	\$184,460.00
Engineer's Estimate	\$124,360.29	\$129,610.29	\$152,682.29

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 04-29, Trans Tech Trail-Billings (Federal aid no. STPE 1099(38)) for Schedules 1 and 1A to JTL Group, Inc. - Billings for \$154,364.00 and 45 calendar days, contingent on CTEP concurrence.

Approved By: City Administrator City Attorney

[\(Back to Consent Agenda\)](#)

B6

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Wastewater Treatment Plant Administration Building Electrical Improvements Bid Award

DEPARTMENT: Public Works

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: As part of the annual electrical maintenance program the Public Works Department makes improvements to the electrical systems in the water and wastewater systems. Many of these improvements involve replacing aging electrical equipment such as switchgear, motor control centers, transformers and power distribution cables. Many of these facilities have been in service for years and have reached the end of their useful life. The current project involves replacing the electrical switchgear equipment that controls power distribution in the administration building at the wastewater treatment plant.

FINANCIAL IMPACT: The proposed expenditure is budgeted for in the FY 06 wastewater plant capital fund. Bids were opened on June 7. In order to allow proper evaluation of the bids, it is recommended the award be delayed to the next council meeting.

RECOMMENDATION

Staff recommends that Council delay the bid award to the June 27 meeting.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

TITLE: Approval of Amendment #6 with Morrison-Maierle, Inc. for Engineering Services for Airport Miscellaneous Capital Projects

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of the engineering services required for airfield infrastructure design, including knowing the Federal Aviation Administration (FAA) design and grant funding requirements, the City of Billings Aviation and Transit Department has historically entered into five-year term contracts for engineering services at the Airport. The current five-year contract is with Morrison-Maierle, Inc. to provide engineering design, survey, and contract administration for Airport Capital Projects and other general Departmental engineering services as needed. The base agreement is amended each time a new project is undertaken. Amendment #6 includes the required engineering design, preliminary and construction surveys, bid document/specifications, and contract construction administration for asphalt paving in the Airport Business Park, Car Rental Return Lot, and Employee Parking Lots. The scope of work and fees associated with these projects were reviewed and negotiated by Airport staff. Including Amendment #6, the total engineering work under this agreement during the first four years has totaled \$1,845,487, which has produced over \$12,000,000 in construction projects and \$571,000 in equipment purchases.

FINANCIAL IMPACT: The total cost of the Engineering Contract Amendment #6 with Morrison-Maierle, Inc. is \$29,140. The paving work to be accomplished is approximately \$119,500. Budget authority and Capital funds are available in the Fiscal Year 2005 budget to complete the paving projects.

RECOMMENDATION

Staff recommends that the City Council approve Amendment #6 to the Morrison-Maierle, Inc. term contract in the amount of \$29,140 to cover the engineering services needed to complete the Airport's Miscellaneous Capital Paving Projects.

[\(Back to Consent Agenda\)](#)

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Professional Services Contract with HDR Engineering, Inc.—Amendment No. 3

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings has recommended an amendment to the Professional Services Contract with HDR Engineering, Inc. This contract, dated February 23, 2004, is for professional design services for the Water Treatment Plant Filter Building Expansion and Improvements project (W.O. 04-13). The changes to the original contract will encompass additional tasks for bidding and construction administration as shown in the attachment. The necessity for these additional tasks, and the corresponding Amendment, was discussed at the time of the original contract approval. Amendment No. 3 will also extend the Contract termination date to April 1, 2008.

FINANCIAL IMPACT: Amendment No. 3 represents an increase in the amount of the contract by \$933,419.00. This increase has been included in the FY 06 budget. Funds are available from the Utilities Water Construction Fund, account number 41674936039220.

Original Professional Service Contract	\$ 997,960	<u>% Of Contract</u>	<u>Cumulative % Of Contract</u>
Amendment No. 1	\$ 6,272	0.6%	0.6%
Amendment No. 2	N/C	--	0.6%
Amendment No. 3	\$ 933,419	93.5%	94.1%
Total to Date			\$1,937,651

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 3 to the Professional Services Contract with HDR Engineering, Inc., resulting in a net increase of \$933,419.

Approved By: City Administrator City Attorney

Attachments

4 Copies Each – Amendment No. 3

(3 Pages/Copy)

**AMENDMENT NUMBER THREE
TO THE
AGREEMENT FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING
SERVICES
BY AND BETWEEN
THE CITY OF BILLINGS, MONTANA
AND
HDR ENGINEERING, INC.
PROJECT FOR THE WATER TREATMENT PLANT FILTER BUILDING
EXPANSION AND IMPROVEMENTS**

THIS AMENDMENT NUMBER THREE, made and entered into this ____ day of _____, 2005, modifies the Agreement for Professional Services by and between the City of Billings, Montana, and HDR Engineering, Inc., dated February 23, 2004. The Agreement is modified as follows:

Item 1: Section 3.C. Change the Contract termination from "June 14, 2005" to "April 1, 2008" to encompass bidding and construction phases.

Item 2: Section 4.A. Increase the amount of compensation by \$933,419 to One Million Nine Hundred Thirty Seven Thousand Six Hundred Fifty-One and no/100 DOLLARS (\$1,937,651.00).

Item 3: Appendix A, Section 3. ADD the following to the Scope of Work, **DETAILED SCOPE OF SERVICES:**

"TASK SERIES 600 – FILTER BUILDING BID PHASE"

601 – Bidding Administrative Assistance

Prepare bid documents and distribute to prospective bidders. Answer bidder questions and prepare addendum as needed.

602 – Post-Bid Administrative Assistance

Receive, evaluate and tabulate bids. Assess completeness of bid. Make recommendations to the City on award of contract. Assist in preparation of contract documents.

TASK SERIES 700 – FILTER BUILDING CONSTRUCTION PHASE

Construction Phase scoping is based on 104 week construction period at which time

only minor punch list items would need to be completed.

701 – Construction Initiation Services

After award of the construction contract, the Consultant shall prepare a construction initiation memorandum, hold a preconstruction conference and prepare a memo summarizing the conference. The consultant will provide the contractor with a reasonable number of “for construction” plans and specifications.

702 – Office Assistance and Administration

During the construction phase of the project, the Consultant will provide office assistance to the City on the administration of the project. This effort will include review and preparation of change orders, shop drawing review, interpretation of drawings and specifications, monitoring of compliance with procedural requirements on the project, coordinating with the contractor, preparation of pay estimates, and conducting weekly construction meetings.

703 – Field Services

The Consultant will provide on-site construction observation services. A resident project representative will be provided at half-time for 20 weeks and full-time for 84 weeks. The resident project representative will monitor the project for compliance with project plans and specifications. Consultant will provide field staking of new structures and as-built surveying of uncovered utilities in locations not indicated on the drawings. Consultant will provide periodic trips to the site beyond construction meetings. Allowance is included for geotechnical consultation. No testing services are included as these will be provided by the contractor.

704 – Construction Wrap-Up and Acceptance

Upon completion of the construction of the improvements, the Consultant will schedule and hold a final project walk-through and assist the City in the final wrap-up of the project, including preparing record drawings, preparation of a punchlist, start-up of facilities, operations and maintenance information review, and recommending final acceptance.

705 – Post-Construction Warranty Services

Upon final acceptance, the Consultant will provide warranty item consultation, will assist in the eleven-month warranty inspection, and provide warranty follow-up.”

All provisions of the Agreement dated February 23, 2004, shall remain in full force and effect except as amended herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number Three (3) as of the day and year first above written.

CONSULTANT

HDR Engineering, Inc.

BY: _____
Adrian Huckabee, P.E.

TITLE: Vice President

DATE: _____

ATTEST:

CITY

City of Billings

BY: _____
Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
City Attorney

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

SUBJECT: Vehicle Lease Agreement with Underriner Motors for City County Special Investigations Unit (CCSIU)

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Deputy Chief of Police

PROBLEM/ISSUE STATEMENT: For many years the Billings Police Department has had officers operating in an undercover capacity. The work entails the use of unmarked cars that are unique from standard detective vehicles. Because undercover officers and their equipment are routinely exposed to the criminal element, it is necessary to rotate equipment. Rotating cars is an essential aspect of undercover operations. The reason for frequent rotation of cars is to ensure the safety of the undercover officer and to prevent the operation from being compromised.

Major car dealers in the City have been contacted for bids on these vehicles. Underriner Motors is the only dealer interested in leasing vehicles to the City for special operations purposes.

FINANCIAL IMPACT: The cost of leasing 6 vehicles will be \$25,200 (\$350 per vehicle per month) and the dollars have been budgeted in the drug forfeiture fund.

RECOMMENDATION

Staff recommends Council approval of the attached agreement between Underriner Motors and the City of Billings to lease six (6) vehicles for the City contingent of the City County Special Investigations Unit (CCSIU) from July 1, 2005 to June 30, 2006 in the amount of \$25,200.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A - Lease Agreement with Underriner Motors – 5 pages

AUTOMOBILE LEASE AGREEMENT

This AGREEMENT made _____, 2005 by and between
UNDERRINER MOTORS with its principal place of business at 523 North 29th Street,
Billings, Montana (the LESSOR), and **THE BILLINGS MONTANA POLICE
DEPARTMENT**, P. O. Box 1554, Billings, MT 59103 (the LESSEE), for the lease of six (6)
vehicles.

The terms of this agreement is for a period of 12 months from July 1, 2005 to June 30, 2006,
subject to the terms and conditions set forth below:

1) **RENTAL:** The LESSEE shall pay to the LESSOR a monthly rental of THREE
HUNDRED FIFTY DOLLARS (\$350.00) per vehicle (6 vehicles) for a total of TWENTY FIVE
THOUSAND TWO HUNDRED DOLLARS (\$25,200.00), paid on an annual basis.

2) **MAINTENANCE:** The LESSEE will bear all expense of maintaining the leased
vehicle in good operating condition. The LESSEE shall provide and pay for all gasoline, oil,
maintenance, washing, tire and battery replacements, and all necessary repairs other than those
covered by the standard manufacturer's limited warranty, where applicable. LESSEE also
agrees to pay the deductible in connection with any collision losses.

3) **LICENSING:** The LESSEE agrees to pay at its own cost and expense, State License
Fees imposed against said vehicle(s). Each lease vehicle shall bear a license plate, and title shall
be registered in the name of the LESSOR.

4) INSURANCE:

A) The LESSEE agrees to furnish and keep in force and effect an acceptable public
liability and property damage insurance policy covering all leased vehicles(s), naming therein or
by endorsement thereto, the LESSOR as an additional insured. The minimum limits of liability
coverage shall be in the amount of \$500,000 combined single limit for all person(s) killed or
injured in any one accident, for property damage or loss of use of property of third persons as a
result of any one accident. Prior to delivery of possession of said vehicle(s) hereunder, the
LESSEE agrees to furnish the LESSOR with a valid certificate of an acceptable insurance
company, licensed in Montana, certifying that such insurance is in force and agreeing that the
same shall not be cancelled except upon ten days' prior written notice to the LESSOR.

B) LESSEE agrees that it will, and will cause its agents and employees and their
families, to cooperate fully with LESSOR and all insurance carriers required by this lease in the
investigation, prosecution, and defense of all claims arising from all hazards insured hereunder.

5) **EXCESS MILEAGE:** LESSEE agrees to pay for excess mileage at the rate of \$.10
per mile in excess of 15,000 miles per year. The payment for excess mileage shall be due at the
end of the term of the lease.

6) **PERMISSION TO MOVE:** LESSEE agrees to notify and gain written permission from LESSOR should LESSEE decide to move the leased property as described above from the address stated above to another state on a permanent basis or for an extended period of time (longer than six (6) months).

7) **NOTICE:** LESSEE agrees to inform the LESSOR immediately regarding any accident, collision or other damage to the said vehicle(s). All other notices required to be given under the terms of this lease shall be in writing and shall be sent by United State Registered Mail or Certified Mail addressed to the party to be notified at its address as above stated.

8) **SECURITY AGREEMENT:** LESSOR shall have the right to finance any vehicle(s) now or hereafter covered by this lease by arranging for a Security Agreement thereon or by assigning LESSOR's interest under this lease or both, and LESSEE agrees that such Security Agreement placed by LESSOR shall be superior to this lease.

9) **REASONABLE CARE:** LESSEE agrees to use reasonable care in the operation of said vehicle(s) and, in good faith, to require reasonable care from users authorized by LESSEE hereunder, including the obligation to maintain the vehicle(s). In any event, LESSEE shall be held personally liable to LESSOR pursuant to the terms of this lease, regardless of permissive use by third parties.

10) **REPLACEMENT VEHICLES:** At any time during the initial or any renewal term of the within lease, the LESSOR may replace the above-described vehicle(s) with a vehicle of the same make and year, such replacement vehicle being in equal or better operating condition; in such event, all the terms and conditions of the within lease shall apply to any and all such replacement vehicle(s) for the term of this agreement or any renewal thereof.

11) **AGENTS:** LESSEE agrees to permit said vehicle(s) to be used only by LESSEE, (its) (his) agents or employees or the members of the immediate family thereof, and by no others. No operator or driver of said vehicle(s), including LESSEE shall have authority to act on behalf of the LESSOR under any circumstances.

12) **NON-LIABILITY:** LESSOR shall not be liable for any loss from the interruption of, or damage to the LESSEE'S business, and shall not be liable to any of the authorized uses hereunder, in connection with any operating failure of said vehicle(s) (or substitute vehicles provided to LESSEE during repair of the leased vehicle(s) or its replacement), or in connection with any delay in making repairs thereon or furnishing replacement(s) therefor.

13) **INDEMNITY:** LESSOR assumes no liability for any acts or omissions of the LESSEE or the LESSEE'S agents. The LESSEE hereby released and agrees to indemnify the LESSOR and hold the LESSOR harmless from any and all claims against the LESSOR of any kind or nature whatsoever, arising out of or resulting from the use and/or operation of the leased vehicles by the LESSEE, including any expenses and attorneys' fees which the LESSOR may incur in defending any such claims, except such claims or portions thereof as are covered by applicable insurance as otherwise herein provided.

14) **OWNERSHIP:** It is expressly understood and agreed that this Agreement is a contract for leasing only, and that the LESSEE acquires no ownership, title, or property right or interest in, of, or to the said motor vehicle(s) and equipment, but acquires only the right to use the vehicle(s) in accordance with the provision of this lease. Any accessories installed on said vehicle(s) by the LESSEE may be removed upon expiration of this lease. If such removal shall, in the opinion of the LESSOR, cause damage to said vehicle(s), the LESSEE agrees to pay the Lessor for such damage.

15) **RETURN:** Upon the termination of this lease, the leased vehicle(s), at the expense of the LESSEE, shall be returned to the place of business of the LESSOR in as good condition as when received, ordinary wear and tear excepted. This return provision shall apply to all substitute vehicles which may be the subject of this contract.

16) **EARLY TERMINATION:** Early termination of this Lease may result in an early termination charge to LESSEE.

17) **ASSIGNMENT, PLEDGE, LIENS, AND ENCUMBRANCES:** This lease may not be assigned, except by the LESSOR as provided herein. The LESSEE shall not have the right to pledge or otherwise encumber this lease or any interest therein nor shall the LESSEE have the right to encumber or otherwise suffer any lien to be placed against the leased vehicle(s), or abandon or conceal the leased vehicle(s). The LESSEE shall not sublet the leased vehicle(s) or any replacement vehicle(s) without the written consent of the LESSOR.

18) **WAIVER:** The failure of either party in any one or more instances to insist upon the performance of any of the terms, covenants or conditions of this lease, or to exercise any right or privilege in this lease conferred, or the waiver of any breach of any of the terms, covenants, or conditions of this lease, shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or privileges, but the same shall continue and remain in full force and effect, as if no such forbearance or waiver had occurred.

19) **DEFAULT:** If the LESSEE shall default in the payment in any of the installments of rent as herein provided, or breach any of the terms, conditions or provisions herein contained, or, during the term of this lease, shall file a voluntary petition in bankruptcy, shall make an assignment for the benefit of creditors or shall be adjudicated bankrupt; if a receiver shall be appointed for LESSEE'S business; or if LESSOR deems itself insecure, LESSOR may at its election terminate this Agreement without notice to LESSEE and shall thereupon be entitled to the immediate possession of any and all vehicles in LESSEE'S possession hereunder. In the event this Agreement shall be so terminated, LESSEE shall not be released from any liability to LESSOR for LESSEE'S failure to make any of the payments required by this Agreement or for LESSEE'S failure or inability to perform the conditions of this Agreement, and LESSEE hereby waives all claims for injury suffered through or loss caused by such repossession.

Upon default, the balance of the installments of rent, to the end of this lease or any existing extension of it, shall, without notice or demand by the LESSEE, at once become due and payable; and in addition thereto, the LESSEE hereby authorizes and empowers the LESSOR to

enter its premises or any other place where the leased vehicle(s) may be found, forcibly if necessary, to take possession and carry away and remove such vehicle(s), with or without legal process and thereby terminate the LESSEE'S right to retention and use of such vehicle(s). In the event any legal proceedings shall be instituted by LESSOR against LESSEE to recover any sums due or to become due hereunder and/or for the repossession of the vehicle(s) leased hereunder, LESSEE shall pay to LESSOR reasonable attorneys' fees and costs of repossession.

20) **BINDING EFFECT:** This lease shall be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and assigns.

21) **ENTIRE AGREEMENT:** This lease together with the Vehicle Lease Disclosure Statement represents the entire Agreement between the parties. All prior negotiations have been merged into this lease, and there are no understandings, representations, or agreements, oral nor written, express or implied, other than those set forth herein. This lease shall not be modified or amended except by an agreement in writing signed by the parties.

22) **CONSTRUCTION:** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed the day and year first above written.

LESSEE:

CITY OF BILLINGS

BY _____
CHARLES F. TOOLEY, MAYOR

LESSOR:

UNDERRINER MOTORS

BY _____
BILL UNDERRINER
ITS: OWNER

ATTEST BY:

MARITA HEROLD, CITY CLERK

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY

060.AUTOMOBILE LEASE AGREEMENT/UNDERRINER MOTORS

[\(Back to Consent Agenda\)](#)



F

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

SUBJECT: Library HVAC Maintenance Agreement

DEPARTMENT: Parmly Billings Library

PRESENTED BY: Bill Cochran, Library Director

Sandy Raymond, Senior Administrative Coordinator

PROBLEM/ISSUE STATEMENT: The Library's HVAC system includes three boilers, a cooling tower and numerous air conditioning units. Each of these units must be serviced regularly and repaired often. The present HVAC contract will expire June 30, 2005. The Library employs two Building Maintenance workers who each have a boiler operator's license but are not licensed or trained to repair or perform maintenance on the numerous HVAC units in the building. A maintenance agreement assures that there are qualified technicians providing regular maintenance to the equipment that are also available and on call when problems arise. This service also provides the Library with the assurance that the expense of HVAC repairs and parts will be covered by the contractor as part of the cost of the maintenance agreement.

ALTERNATIVES ANALYZED:

1. Authorize an HVAC maintenance contract with Conditioned Air Systems. (Recommended)
– Conditioned Air Systems was the only respondent to the City's request for bids.
2. Operate without a maintenance agreement.

FINANCIAL IMPACT: The total cost for the three-year agreement is \$71,300.00. Although the Library's proposed FY06 budget includes only \$17,250.00 for the first year of this service, the \$6,571.00 balance can be expended from the \$25,000.00 expenditure contingency. This will be from the Library reserves, which will remain above recommended levels. The contract can be cancelled with 90 days written notice.

RECOMMENDATION

Staff recommends that Council approve entering into a new three-year agreement with Conditioned Air Systems for the Library's HVAC system beginning July 1, 2005.

Approved By: **City Administrator** **City Attorney**
[\(Back to Consent Agenda\)](#)

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Interlocal Library Agreement

DEPARTMENT: Library

PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: In response to a request from the Library Board of Trustees, the City Council approved Resolution No. 04-18206 on October 25, 2004, creating an Ad Hoc Library Interlocal Agreement Committee to review the current interlocal agreement and recommend changes deemed desirable.

ALTERNATIVES ANALYZED: The Ad Hoc Library Interlocal Agreement Committee reviewed the current, original interlocal agreement of October 27, 1975, the amendment of September 26, 1977, and a list of recommended changes developed by the Library Board of Trustees at a January 28, 2005 meeting.

FINANCIAL IMPACT: The proposed draft interlocal agreement documents and maintains the current funding levels of 9.5 mills minimum by the City of Billings and 3 mills minimum by Yellowstone County.

RECOMMENDATION

Staff recommends that Council approve the draft interlocal agreement recommended by the Ad Hoc Library Interlocal Agreement Committee, including two minor revisions by the City Administrator to improve clarity, which were reviewed and accepted by Committee members, and submit the approved agreement to the Yellowstone Board of County Commissioners for review and action.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A. Draft Interlocal Agreement

INTERLOCAL AGREEMENT

BETWEEN YELLOWSTONE COUNTY AND THE CITY OF BILLINGS TO OPERATE
PARMLY BILLINGS LIBRARY

THIS AGREEMENT is made and entered into this ____ day of _____, 2005, by and between the respective governing bodies of the City of Billings, Montana and the County of Yellowstone, Montana, hereinafter referred to as "**BILLINGS**" and "**YELLOWSTONE**," respectively,

WITNESSETH:

WHEREAS, the purpose of this agreement is to provide a basis for cooperation between **YELLOWSTONE** and **BILLINGS** which will result in equitable library service to residents of Yellowstone County, Montana; and

WHEREAS, BILLINGS and **YELLOWSTONE** have agreed to continue the functions of a joint city-county library pursuant to **BILLINGS**'s self governing powers and the terms and conditions of this Interlocal Agreement; and

WHEREAS, BILLINGS and **YELLOWSTONE** wish to enter into an agreement pursuant to §§7-11-101 through 7-11-108, MCA, whereby library services are provided for residents of Yellowstone County from facilities operated by the joint efforts and authority of both parties; and

WHEREAS, BILLINGS and **YELLOWSTONE** have agreed to furnish certain funds and revenue to assist in the operation of the joint operation of the **PARMLY BILLINGS LIBRARY** pursuant to the laws of the State of Montana; and

WHEREAS, BILLINGS and **YELLOWSTONE** have previously entered into an interlocal agreement for these same purposes on October 27, 1975, which was amended by the mutual agreement of the parties on September 26, 1977, after **BILLINGS** adopted a charter form of government; and

WHEREAS, BILLINGS and **YELLOWSTONE** now wish to restate and revise their earlier mutual agreements as appropriate;

NOW, THEREFORE, in consideration of the execution of this agreement and the mutual covenants set forth herein, the parties renew and reconfirm their intention to continue and maintain the **PARMLY BILLINGS LIBRARY** under the terms, conditions and covenants herein contained, and it is hereby mutually agreed as follows:

1. **BILLINGS** and **YELLOWSTONE** agree to continue and perform the functions of a joint city-county library to residents of Yellowstone County, Montana, so as to extend the services to of the **PARMLY BILLINGS LIBRARY** to residents of the County of Yellowstone.

2. **BILLINGS** shall retain ownership of its building and will provide said building for the use of **PARMLY BILLINGS LIBRARY**.

Deleted: all parties

3. All books, periodicals, pamphlets, audio-visual materials and other library materials in the possession of **PARMLY BILLINGS LIBRARY** and all materials hereafter acquired shall be equally accessible to residents of the City of Billings and Yellowstone County, Montana under the rules and regulations of the **PARMLY BILLINGS LIBRARY** during the term of this agreement.

Deleted: **BILLINGS** shall maintain its respective building by paying all bonded indebtedness.

4. That in the event of the termination of this agreement by either **BILLINGS** or **YELLOWSTONE**, books and any cash reserves shall be distributed to **BILLINGS** and **YELLOWSTONE** in the same proportions as expenses were shared during the term hereof. Those books subject to distribution are only those books from the circulating collection.

5. In consideration of the promises, conditions, and obligations herein set forth, the parties do hereby agree to support and fund the annual library budget as finally determined, approved, and accepted by both parties in the following manner: **BILLINGS** agrees to support the budget in an amount no less than 9.5 mills, and **YELLOWSTONE** agrees to support the budget in an amount no less than 3.0 mills. When less than the mill levies of 9.5 mills for **BILLINGS** and 3.0 mills for **YELLOWSTONE** is required to fund the library budget, then the percent of the total budget for each entity shall remain the same percent as it would be if the 9.5 for **BILLINGS** and 3.0 mills for **YELLOWSTONE** were assessed.

6. Each party shall pay its respective share of the budget into a PARMLY BILLINGS LIBRARY fund managed by the City of Billings and shall not be used for any purpose except those as authorized by the City Council and the **PARMLY BILLINGS LIBRARY** Board of Trustees for library services as provided by the Laws of the State of Montana. Any money not spent in any fiscal year shall be credited to a Library Reserve Account to be spent in accordance with budgets subsequently adopted by **BILLINGS**.

Deleted: the Financial Services Manager of the City of Billings and the money therein placed in

7. The Library Board of Trustees shall be composed of seven (7) members, four (4) of whom shall be appointed by the Mayor, with confirmation by the Billings City Council, and three (3) of whom shall be appointed by the Board of County Commissioners of Yellowstone County, Montana. A Library Trustee may be removed only by vote of the appointing legislative body or the bylaws adopted by the PARMLY BILLINGS LIBRARY Board of Trustees. The terms of those Trustees appointed by **BILLINGS** will not exceed four (4) years. The terms of those Trustees appointed by **YELLOWSTONE** will not exceed five (5) years. No Trustee shall serve more than two (2) full terms in succession. A Trustee appointed to succeed any retiring Trustee shall be appointed before the first day of July of each year in the same manner as the persons for whom the successor is appointed. Vacancies in the Board of Trustees shall be filled for the unexpired term in the same manner as original appointments. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. A quorum of the Library Board of Trustees shall be three (3) members or more.

8. The primary role of the Board of Trustees is to advocate for the Library to the community, the Billings City Council, the Yellowstone Board of County Commissioners, the State of Montana, and the federal government, as appropriate, to ensure the best possible public library services for the residents of Billings and Yellowstone County. The Library Board of Trustees shall have the powers and duties set forth in this agreement. The Library Board of Trustees shall select one of its members as chairman, and such other officers as they deem necessary, for one (1) year terms. The Library Board of Trustees shall adopt rules for governance of its own affairs in accordance with this agreement.

9. The Library Board of Trustees shall prepare a three-year plan for Library services and programs by January 1 of each year, to serve as direction for Library staff for preparation of the Library budget for the following and future fiscal years. The Library Board of Trustees shall review and approve requests for grant applications and for funding by Library support groups to ensure consistency with the Library plan and service and program priorities. The Library Director shall submit to the Library Board of Trustees for review and action, any significant gifts to the Library, prior to receipt of the gift unless timely receipt as a condition of the gift precludes such notice, in which case the Library Director shall report on the gift to the Library Board of Trustees at the next meeting after its receipt. The Library Board of Trustees shall be responsible for annual review, revision and approval of all Library policies relating to public services, programs and use of Library, subject to submission no later than March 1 of each year to the City Attorney's office for legal review, for implementation by July 1, the beginning of each fiscal year.

10. The City Administrator shall consult with the Library Board of Trustees, and the Library Board of Trustees shall provide input, on all matters relating to the hiring and evaluation of the Library Director. The Library Board of Trustees shall provide a recommendation to the City Council on contracts affecting Library matters. The Library Board of Trustees shall report on Library matters to the Billings City Council and Yellowstone Board of County Commissioners at least annually.

11. This agreement may be terminated by either party upon giving to the other ninety (90) days notice, in writing, of their intention to do so.

12. This agreement is in force and effect from the date of its execution by the parties until the 30th day of June, 2005, after which it will be automatically renewed from year to year upon the same terms and conditions unless and until notice of termination is given by one party to the other as provided in Paragraph 12 above.

13. This agreement supersedes and takes the place of all previous agreements and contracts between the parties hereto with reference to library service, and it is the intention of the parties to terminate all former contracts without liability of any kind or character upon the parties hereto, or either of them.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

BILLINGS:

CITY OF BILLINGS, a Montana
Municipal Corporation

By: _____
CHARLES F. TOOLEY, Mayor

ATTEST:

By: _____
MARITA HEROLD, City Clerk

YELLOWSTONE:

COUNTY OF YELLOWSTONE

By: _____
JOHN OSTLUND, Chairman

ATTEST:

By: _____
TONY NAVÉ, Clerk and Recorder

[\(Back to Consent Agenda\)](#)

H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: 2005/2006 FISCAL YEAR LANDFILL USE AGREEMENTS

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year agreements with those entities. The current agreements expire June 30, 2005. The renewal of these agreements is recommended to continue the current practice.

ALTERNATIVES ANALYZED: None

FINANCIAL IMPACT: These agreements specify a rate of \$11.50 per ton of waste. We project these agreements will generate \$958,000 in revenue in fiscal year 2006.

RECOMMENDATION

Staff recommends that the City Council approve, and the Mayor sign, Amendment #2 to the agreement with Yellowstone County and new one-year Landfill Use Agreements with

Bighorn County	Town of Fromberg	Musselshell County
Town of Bridger	Town of Hysham	City of Red Lodge
Carbon County	Town of Joliet	Stillwater County
Town of Columbus	City of Laurel	Treasure County

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A – Example of "Standard" Landfill Use Agreement

B – Yellowstone County Amendment #2

INTRODUCTION

The Billings Regional Landfill currently accepts wastes from adjoining counties and the cities and towns within those counties. This is accomplished via 1-year agreements with those entities.

BACKGROUND

The City of Billings currently provides landfill services to each of the entities listed. The City provides this service based upon 1-year or 3-year agreements. These agreements allow us to accurately reflect the actual cost of providing service to each entity. The agreement with Yellowstone County for FY 2003/04 is for a three-year term allowing for establishment of the annual payment to the City by amendment. Amendment #2 establishes the annual payment for FY 2005/2006. All other agreements are for a one year period.

Since each of these other governmental agencies works on a July 1 fiscal year, as we do, staff tries to obtain approval of these agreements before the adoption of both the City of Billings' budget and their budgets. The current rate of \$11.50 per ton is maintained in these agreements.

Previous City Councils have felt that offering landfill services to other communities is worthwhile because the citizens of Billings benefit from spreading the fixed overhead cost of the landfill operation over a larger base. The Landfill Master Plan contemplates providing this service and still shows a landfill life to the year 2045. We provide this "good neighbor" service to surrounding communities and counties that border Yellowstone County but do not have their own landfills.

STAKEHOLDERS

We have held at least bi-annual ***Landfill User Summits*** since 1994. We extend invitations to representatives from each entity currently using the Billings Regional Landfill. The meetings are used to share statistical information, update participants on current programs and discuss future plans.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The Landfill Master Plan contemplates providing this service and shows landfill life to 2045.

RECOMMENDATION

Staff recommends that the City Council approve, and the Mayor sign, Amendment #2 to the agreement with Yellowstone County and new one-year Landfill Use Agreements with:

Bighorn County	Town of Fromberg	Musselshell County
Town of Bridger	Town of Hysham	City of Red Lodge
Carbon County	Town of Joliet	Stillwater County
Town of Columbus	City of Laurel	Treasure County

ATTACHMENTS

- A – Example of "Standard" Landfill Use Agreement
- B – Yellowstone County Agreement – Amendment #2

AMENDMENT NO.2

YELLOWSTONE COUNTY LANDFILL USE AGREEMENT

The Agreement dated June 23,2003 between THE CITY OF BILLINGS (City) and YELLOWSTONE COUNTY SOLID WASTE DISPOSAL DISTRICT (District) shall be amended as follows:

For July 1, 2005 to June 30, 2006 the total annual payment shall be

\$330,700.00.

Both parties hereby agree upon this Amendment. All other provisions of the original Agreement remain in full force and effect and shall be undisturbed by this Amendment.

DATED THIS _____ day of _____, 2005

YELLOWSTONE COUNTY
SOLID WASTE DISPOSAL DISTRICT

CITY OF BILLINGS

By: _____
Chairman

By: _____
Charles F. Tooley, Mayor

Attest: _____
Marita Herold, City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Renewal of Limited Commercial Building and Ground Lease with DHL Express, Inc.

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: DHL Express, Inc. recently merged/acquired Airborne Express to create a larger freight and cargo hauler/delivery company. DHL is in the process of evaluating its operations in Billings and have asked for a one (1) year term with a second year renewal option of the Limited Commercial Building and Ground Lease for the Airport facilities that they and/or Airborne have utilized for the past twelve (12) years. This facility and adjacent ground are used twice daily for DHL's freight and package sorting process. The facility and adjacent ground are also used for the storage of their aircraft loading equipment, and the tugs and carts used to move the freight between the facility and the aircraft.

This facility is adjacent to the car wash facility, located on the very east side of the Airport. The Lease is for 3,420 square feet of building space, which includes two small offices, with the remaining space being an open warehouse configuration. This Lease also incorporates 11,228 square feet of adjacent land used in the sorting operation. This is a good utilization of this facility.

FINANCIAL IMPACT: The first year of the new Lease will generate \$11,628 of revenue for the City's Airport. The Lease calls for adjusting the subsequent year, if renewed, by the Consumer Price Index to hedge against inflation. This Lease rate is calculated based on the square footage of the building being leased. The Lease rate is \$3.40 per square foot per annum, which is similar to the rate charged to other Airport tenants utilizing City owned building/hangar leases. When compared to other airports within the State of Montana and other similar sized regional airports, these rates tend to be at the high end of the scale. We have also compared the Airport's lease rates to the local commercial rates that one would pay for warehousing facilities and found that the Airport's lease rates are very comparable.

RECOMMENDATION

Staff recommends that Council approve a one (1) year Limited Commercial Building and Ground Lease with a one (1) year renewal option for the use of the City's facilities and adjacent ground with DHL Express, Inc.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Lease of City Hangar Property to Jack Bolme
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: On May 31, 2005, the City took over the ownership of an executive hangar, the result of a Reversion of Improvements clause that was used in the lease agreements twenty years ago. This is the third hangar that will become City property through this process. The original owner of the hangar, Jack Bolme, desires to continue to lease the hangar through the end of December. He is requesting a short time frame for the Lease, because he is currently subleasing the hangar to the U.S. Fish and Wildlife until December 31, 2005. It is currently unknown if the U.S. Fish and Wildlife will continue to lease this space beyond the end of the year. The building is a sixty (60) foot by sixty (60) foot aircraft hangar on the west end of the Airport, and includes approximately 720 square feet of finished office space.

FINANCIAL IMPACT: This Lease would generate revenues of \$1,320 per month for seven months for a total of \$9,240. This rate is calculated on the 3,600 square feet of hangar/office space using the rate of \$4.40 per square foot per annum, which is a very similar rate to what is being charged to other tenants utilizing City owned executive hangars.

RECOMMENDATION

Staff recommends that Council approve the Limited Commercial Aviation Building and Ground Lease with Jack Bolme.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

K



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 13, 2005

SUBJECT: Library Security Guard Service

DEPARTMENT: Parmly Billings Library

PRESENTED BY: Bill Cochran, Library Director

Sandy Raymond, Senior Administrative Coordinator

PROBLEM/ISSUE STATEMENT: The Library began contracting with a private guard service in 1999, to maintain safety for patrons, staff and facility and now seeks approval of a new agreement for Library guard service with Guardian Security beginning July 1, 2005 when the current agreement expires.

ALTERNATIVES ANALYZED:

1. Authorize the approval of the Guardian Security agreement, the firm chosen by the selection committee, for guard service for the Library. (Recommended)
2. Part-time guard service.
3. No guard service.

FINANCIAL IMPACT: The annual cost for the first year of the three-year agreement is \$64,654.20. The Library has sufficient funds in the proposed FY06 budget to pay for the services.

RECOMMENDATION

Staff recommends that Council approve the Library guard service agreement with Guardian Security for the first year of a three-year agreement.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Introduction, Procedural History, Alternatives Analyzed and Background – pages 2 and 3
- B. Library Journal article regarding Tacoma Library 2/25/02 - page 4
- C. Listing of reported incidents – pages 5 and 6

Attachment A**INTRODUCTION**

The current contract with Guardian Security expires June 30, 2005. Staff recommends the City Council approve a contract to retain guard service to maintain safety for patrons, staff and facility.

PROCEDURAL HISTORY

Members of the selection committee included Bill Lamdin, Library Board; Officer Mike Samson, Billings Police Department; Candi Beaudry, Planning Division Manager and 4th Floor Safety Committee representative; Elizabeth Fellerer, Library Circulation Staff and Sandy Raymond, Library Senior Administrative Coordinator.

The contract was advertised in The Billings Times on April 21 and April 25, 2005. In addition, RFP packets were mailed to the four local security firms listed in the current telephone directory. Two companies submitted proposals to provide the guard service and copies of the proposals were supplied to committee members a week prior to the interviews on May 19, 2005.

D-N-D	\$15.00/hour with additional charge for security checks of the building beyond 2 times per day
Guardian Security	\$15.35/hour with no charge for 3-4 daily security checks of the building and parking lot late evening and early morning

Guardian Security was chosen by the committee based on the criteria, which was 50% related experience and qualifications and 50% level of service and price.

BACKGROUND

Since the City Council approved the Library guard service contract in 1999, the guards have responded regularly to criminal activities including vandalism, theft, indecent exposure, consumption of alcohol and use of illegal substances in the building and on the Library grounds and viewing pornography in children's area and Teen Center. There have been a number of medical emergencies involving people coming into the Library who have been hurt and need assistance to patrons who have been transported to the hospital for medical attention. On a daily basis they deal with people who are panhandling on Library property and patrons whose conduct is not within the guidelines of the Library Policy.

The guard is in contact with all floors of the Library at all times via cell phone and is in radio contact with the Guardian Security office and the Library staff via radio. This allows them to respond to incidents in the facility in a short period of time. The agreement also calls for checking the building and parking lot 3 – 4 times during the late evening and early morning hours that at times have helped the Library avoid problems with vandalism and building maintenance emergency issues. During these checks the guard has discovered doors that have

been broken in an attempt to break in to the facility and doors that were inadvertently left unlocked.

Beginning June 1, 2005, the Library will initiate new policies that the Security Guard Service employees will enforce. The new policies will prohibit adults in Teen and Children's areas except with their own children or to retrieve materials; limit cell phone use to the lobby; prohibit adults from sleeping in the Library and will require patrons to meet minimal personal hygiene standards.

Since the service started, there have been many positive comments from the public and city staff who enjoy the change of atmosphere since the guard service has been employed.

ALTERNATIVES ANALYZED

No Guard Service

The presence of a uniformed security guard serves as a deterrent to violation of the Library's patron conduct policy and criminal activity. Many instances require the guard on duty to respond immediately, ranging from criminal activity to assisting 4th floor staff with irate customers or helping Library staff deal with patrons whose conduct violates Library policy. Private security guards limit the demands made by the Library on the time of sworn officers in the Billings Police Department to situations involving criminal acts. See attachment B for similar situation at another library.

Part-time Guard Service

Many of the same issues apply with part-time guard services that apply to having no guard service. It would not provide the level of protection needed to safeguard the patrons, staff and building and grounds adequately.

RECOMMENDATION

Staff recommends that Council approve the Library guard service agreement with Guardian Security for the first year of a three-year agreement.

Attachment B

Library Journal

Tacoma PL Director Says Library Beset by Drunks/Junkies

-- 2/25/2002

Facing budget cuts in 2001, the Tacoma Public Library, WA, was forced to either reduce hours or trim its security team. In the interest of public service, Director Susan Odencrantz cut security. Though there was little choice, she's paying for the decision now. Odencrantz reports that the library has become a haven for drunks and drug dealers. A large contributing factor was the 2001 closure of a nearby homeless shelter, which was razed to make space for a new convention center. With the shelter gone, the homeless now have relocated to the library, which has experienced a 22 percent rise in gate count while its circulation figures have decreased. As many as 100 homeless are passing the daylight hours at the library, but the number of other patrons is falling off.

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Attachment C

Library Security Guard
Listing of Reported Incidents

Daily Situations

- advise intoxicated persons that they are not allowed in the Library
- advise people that are panhandling in the Library, lobby and parking lot to move along
- stop people who have set off the Library's security system to see if they have any library items in their possession
- recover patron's personal property left on tables, desks and computer terminals (purses, library cards, billfolds, cell phones etc.)
- monitor activities of known registered sex offenders that come into the Library
- monitor people going in and out of the public bathrooms
- monitor children playing on circular staircase or elevators, and locate parents
- monitor people that are loitering on sidewalk around the Library
- help to clear the Library at closing time by asking patrons to shut down computers and checking to insure that all patrons are out of the building and all doors are locked
- check to see that the appropriate doors are locked during regular business hours
- escort staff to their vehicles when the Library closes at 9:00 p.m.

Recent Situations

- issue trespass warnings to patrons when necessary
- deal with patrons engaged in arguments in the Library
- prohibit men from entering the women's bathroom alone and/or in the company of an adult female
- intervene when people circumvent the internet filters to access pornography in the teen and children's area
- call Fire Department and standby until they can assist sick, injured or impaired patrons
- respond to front desk calls for assistance with irate and/or threatening patrons
- advise people outside of the building that they can't consume alcoholic beverages on Library property
- respond to vehicle accidents in the parking lot
- contact police when unlocked bicycle stolen from bike rack
- stop toddlers and small children who are about to wander outside and into the parking lot
- assist patrons who have locked keys in their car
- advise adult patrons that sleeping is not allowed
- upon request, escort patrons to their vehicles
- investigate inappropriate patron behavior in Teen area
- help parents locate children that have wandered away
- contact police when patrons have personal items stolen in Library
- contact police when patron reported that a person who they have a restraining order against was following them into the Library

- patrol areas where empty alcoholic beverage containers have been found inside the building
- stop people who are abusing the telephone privilege by exceeding the time limit or talking in a loud and or threatening manner on the telephone
- respond to staff calls because adult patron was loud and trying to sabotage one of the computers in the children's area
- investigate problem with patron who was angry and trying to damage security gates
- contact Police Department and Fire Department regarding a patron who was passed out in the bathroom and were unable to wake them
- stop patrons who are smoking in the Library
- advise maintenance when public bathrooms need attention because people have been sick and cleanup needs to occur

Other Special Situations

- stopped suspected thief, known to Police Department, who was casing cars in parking lot
- assisted with emergency response to suicide attempt in the women's restroom
- aided the Police Department in apprehending walk-away psychiatric patient
- stopped person/s urinating and/or defecating in doorways and/or parking lot and stairway
- removed persons sleeping in NW fire escape
- reported person in possession of a weapon
- stopped person who was committing incident exposure in Library

[\(Back to Consent Agenda\)](#)



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Downtown Billings Partnership (DBP) Recommendation to provide a Grant Award in excess of \$49,999 to MCS, LLC for its O'Donnell Building Project located at 2401 2nd Avenue North.

DEPARTMENT: Administration - Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The DBP seeks Council approval for a \$35,000 facade grant to MCS, LLC for its O'Donnell Building project. The DBP Housing committee earlier approved a \$39,000 housing grant to MCS, LLC for the same project. Because the combined grants exceed \$50,000, the façade grant must receive Council approval before funds may be allocated to the project.

FINANCIAL IMPACT: The Tax Increment Fund has a FY 2005 budget for this grant.

RECOMMENDATION

The Executive Committee of the DBP recommends that Council approve the grant award.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A – Downtown Billings Partnership Executive Agenda Item 3b – Board Agenda Item 3c

[\(Back to Consent Agenda\)](#)

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Quitclaim Deed from United Blood Services at 1444 Grand Avenue

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: United Blood Services at 1444 Grand Avenue is working on Certificate of Survey for its property. A portion of the public improvements on Grand Avenue are currently contained within United Blood Services property. United Blood Services has agreed to quitclaim this portion of its property to the City as shown on the attachment at no cost to the city.

ALTERNATIVES ANALYZED:

1. Accept the quitclaim deed from United Blood Services.
2. Do not accept the quitclaim deed from United Blood Services.

FINANCIAL IMPACT: United Blood Services has agreed to quitclaim the necessary street tract at no cost to the City.

RECOMMENDATION

Staff requests that Council accept the quitclaim deed from the United Blood Services.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

- A. Exhibit showing street tract to be quitclaimed
- B. Quitclaim Deed

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is acknowledged this _____ day of _____, 2005, the undersigned, **Blood Systems, Inc.**, Grantor, do hereby grant, convey, release and forever quitclaim its interest unto the CITY OF BILLINGS, MONTANA, P.O. Box 1178, Billings, Montana 59103-1178, as Grantee, in the following described real property situated in the City of Billings, Yellowstone County, Montana:

Tract 2, Certificate of Survey No. _____, recorded under Document No. _____, records of Yellowstone County, Montana.

TO HAVE AND TO HOLD unto the Grantee, and to its assigns and successors forever.

IN WITNESS WHEREOF, the Grantor has herein executed this instrument the day and year first above written.

Blood Systems, Inc.

BY: _____

ITS: _____

STATE OF _____)

: ss.

County of _____)

On this _____ day of _____, 2005 before me a Notary Public for the State of _____, personally appeared _____, and acknowledged to me that they executed the foregoing instrument of behalf of and as the act of Blood Systems, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

_____ (Signature)

(NOTARIAL SEAL)

_____ (Printed Name)

Notary Public for the State of _____

Residing in _____, _____

My Commission Expires: _____

[\(Back to Consent Agenda\)](#)

N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

TITLE: Recreational Trails Program Grant application for Gabel Road Connector

DEPARTMENT: Planning and Community Services Department, Ramona Mattix, AICP, Director

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking supplemental funding for a portion of the Gabel Road Connector Trail that will run from King Ave. to Shiloh (ZooMontana) with a side leg running east to connect to the Midland Subdivision Trail behind Big Bear and Best Buy that was already privately constructed. A portion of the project has already been approved for CTEP (Community Transportation Enhancement Program) funding of \$100,000, which would provide \$36,000 from the 2003 allocation and \$64,000 from the 2004 allocation. This funding will complete the TransTech section of the trail. The City Council approved the submittal of The Recreational Trails Program (RTP) grant on May 23, 2005, for \$70,000, but it was noticed that we could actually apply for up to \$75,000. The City Council is being asked for approval to apply for the additional \$5,000. The RTP grant provides reimbursement after monies have been expended for construction and requires a 20% match. The match for the additional \$5,000 would be \$1,250 and could be provided through the 1999 GO Bond.

FINANCIAL IMPACT: The Recreational Trails Program Grant is being written to provide supplemental funding for a portion of the Gabel Road Connector Trail. Council already approved the submittal of a \$70,000 grant request and this would increase the application to \$75,000 which is the maximum application amount. The RTP grant will be submitted for the portion of trail that runs from 29th St. east to connect to the piece built by the developers along Midland Subdivision. The City is currently acquiring the easement or right of way for this trail segment. This grant provides reimbursement after monies have been expended for the development and requires a 20% match. The match, with this additional \$5,000 for a total of \$75,000 grant would require \$18,750 total which would be a \$1,250 increase from the previously approved amount. This would be awarded from the 1999 GO Bond with the approval of the City Council. The 1999 GO Bond was identified for the development of the west end trail and was approved by the voters to be used for matching dollars for the trails. As of April 14, 2005, just under \$80,000 was available in the GO Bond account that has not been spent or has not been committed to trail related projects.

RECOMMENDATION

Staff recommends that Council approve the submittal of a Recreational Trails Program grant for a portion of the Gabel Road Connector Trail Project.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 13, 2005

SUBJECT: Cancellation of Checks and Warrants

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Finance has done a review of the outstanding warrants and checks. Under state law 7-6-4303, City Council has the authority to cancel municipal warrants and checks that have remained outstanding or unpaid for a period of one year or longer.

Also, a review of uncollectible accounts receivables for the Solid Waste division has been performed. It is city policy to turn delinquent accounts receivable over to a collection agency and write off the portion that is deemed to be uncollectible.

FINANCIAL IMPACT: The \$9,730.38 will be reverted back to affected funds. Employees were notified and given the opportunity pay the stop payment fee and have the check reissued. Employees are still responding so checks re-issued will not be cancelled.

The \$21,076.78 of bad debts will be eliminated.

RECOMMENDATION

Staff recommends that Council authorize the cancellation of said warrants and checks and receivable balances.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A- Outstanding Warrants to be Cancelled by City Council

B- Solid Waste Bad Debt Write Off

Attachment A

VOIDED CHECKS TO COUNCIL- JUNE 2005
FLEX Checks Outstanding through 4-30-04

Number	Date	Name	Amount
28508	5/14/2003	Bill Lindberg	\$ 17.34
31576	2/18/2004	Brad Smith	\$ 15.00
32547	4/7/2004	Brad Smith	\$ 71.40
29035	6/25/2003	Chad Hassler	\$ 0.55
31757	2/27/2004	Ernest Watters	\$ 13.78
30778	1/14/2004	Gail Rogeness	\$ 35.00
29480	8/1/2003	Joel Slade	\$ 112.50
32551	4/7/2004	Julie Rasmussen Green	\$ 239.76
30884	1/21/2004	Lyman Hawkins	\$ 63.95
31881	3/3/2004	Marguerite Gaghen	\$ 29.47
30115	10/15/2003	Mathew Chaney	\$ 4.23
30587	12/22/2003	Richard Millard	\$ 35.10
28412	5/7/2003	Ronald Martin	\$ 600.00
28870	6/11/2003	Ronald Martin	\$ 50.00
31384	2/11/2004	Scott Walker	\$ 253.78
28565	5/14/2003	Stephen Skomer	\$ 59.48
31910	3/10/2004	Terry Bechtold	\$ 162.93
29531	8/6/2003	Thomas Tully	\$ 8.82
30090	10/15/2003	Vernon Mashek	\$ 19.74
29311	7/16/2003	Virginia Burgess	\$ 29.14

			\$1,821.97

VOIDED CHECKS TO COUNCIL- JUNE 2005
HEALTH Checks Outstanding through 4-30-04

<u>Number</u>	<u>Date</u>	<u>Name</u>	<u>Amount</u>
139626	3/16/2004	Carl Zabrocki	\$ 24.95
140371	3/30/2004	Carl Zabrocki	\$ 29.03
129458	9/16/2003	Marcus Evenson	\$ 13.34
122286	5/6/2003	Terry Larson	\$ 4.62
126897	7/29/2003	Bruce Oberg	\$ 90.29
141056	4/13/2004	Bruce Oberg	\$ 128.66
125195	6/30/2003	Clyde Reid	\$ 5.96
129150	9/9/2003	Corine Owen	\$ 6.18
127915	8/19/2003	Jeff Chartier	\$ 5.78
129618	9/16/2003	Jerry Smidt	\$ 44.10
126436	7/22/2003	John Schweigert	\$ 4.46
133738	11/23/2003	John Schweigert	\$ 14.81
134899	12/16/2003	John Schweigert	\$ 22.42
137446	2/3/2004	Kerry Pribnow	\$ 1.03
123514	5/27/2003	Michael Samson	\$ 60.58
135668	12/29/2003	Robert D. Harper III	\$ 5.14
125974	7/15/2003	Acie Helmbrecht	\$ 69.72
137847	2/10/2004	Alan Wambach	\$ 52.39
138163	2/17/2004	Alan Wambach	\$ 96.66
138545	2/24/2004	Alan Wambach	\$ 37.71
134084	12/02/2003	Barbara J. Trenk	\$ 9.71
125199	6/30/2003	Eldon Rogers	\$ 28.96
125200	6/30/2003	Eldon Rogers	\$ 29.44
127797	8/12/2003	Eye Physicians & Surg	\$ 155.10
126303	7/22/2003	Harley Cline	\$ 341.94
133950	12/02/2003	Harley Cline	\$ 126.81
133197	11/18/2003	Harold V. Brown	\$ 39.86
133256	11/18/2003	Janet Henmen	\$ 43.12
126362	7/22/2003	Lonnie Larson	\$ 98.96
134016	12/02/2003	Lonnie Larson	\$ 2.88
135704	12/29/2003	Lonnie Larson	\$ 22.73
124476	6/17/2003	Lora Timmons	\$ 8.12
123475	5/27/2003	Markita Narwold	\$ 32.11
132908	11/11/2003	Phillip Ryder	\$ 4.64
136065	1/6/2004	Ronald Carstens	\$ 49.26
126339	7/22/2003	Ronald Holtan	\$ 15.73
122751	5/13/2003	Shirley Petersen	\$ 21.65
132895	11/11/2003	Shirley Petersen	\$ 3.20
138812	3/2/2004	Anne Kindness	\$ 9.10
130075	9/23/2003	Colleen Schell-Berg	\$ 10.32
131120	10/14/2003	Deanna Anthony	\$ 2.12
136481	1/13/2004	Donald K. Annin	\$ 10.67
138080	2/17/2004	Donald K. Annin	\$ 30.81
127361	8/5/2003	Eye Physicians & Surg	\$ 43.00
131128	10/14/2003	John Bedford	\$ 30.46

131129	10/14/2003	John Bedford	\$ 12.83
131624	10/21/2003	Marion Murphrey	\$ 20.81
137058	1/27/2004	Mark Gabel	\$ 6.61
139509	3/16/2004	Mark Gabel	\$ 4.95
136511	1/13/2004	Marvin Jochems	\$ 9.01
136512	1/13/2004	Marvin Jochems	\$ 134.14
139534	3/16/2004	Marvin Jochems	\$ 21.21
141884	4/27/2004	Nikki Schaubel	\$ 16.64
135808	12/29/2003	Pat Weber	\$ 15.95
129590	9/16/2003	Penelope Reed	\$ 6.35
129591	9/16/2003	Penelope Reed	\$ 27.64
123390	5/27/2003	Robert Butcher	\$ 59.06
128524	8/26/2003	Ronald Wegner	\$ 16.19
133407	11/18/2003	Ronald Wegner	\$ 16.19
128087	8/19/2003	Scott Walker	\$ 342.18
124717	6/24/2003	Simon Burst	\$ 8.31
122317	5/6/2003	Brad Ohs	\$ 7.19
124759	6/24/2003	Chad Hassler	\$ 4.95
124862	6/24/2003	David Sparks	\$ 3.30
136516	1/13/2004	Dennis Luoma	\$ 5.45
139554	3/16/2004	Dennis Luoma	\$ 5.94
130441	9/30/2003	Donald Ludwig	\$ 8.34
138791	3/2/2004	Donna Gardner	\$ 12.55
139168	3/9/2004	Donna Gardner	\$ 5.19
124374	6/17/2003	Eugene Hobby	\$ 41.30
124375	6/17/2003	Eugene Hobby	\$ 15.49
140636	4/6/2004	Eugene Hobby	\$ 99.83
126926	7/29/2003	Gene Robson	\$ 98.90
137456	2/3/2004	Gene Robson	\$ 0.29
131321	10/14/2003	Jefferey Wickham	\$ 40.76
141094	4/13/2004	Jeremy Smith	\$ 68.12
131193	10/14/2003	Jimmy Johnson	\$ 15.03
131194	10/14/2003	Jimmy Johnson	\$ 8.71
136211	1/6/2004	John W. Ramer	\$ 57.66
141928	4/27/2004	Kenneth A. Williams	\$ 115.33
138142	2/17/2004	Kim Palmieri	\$ 488.83
138129	2/17/2004	Linda Mehlhaff	\$ 43.97
138130	2/17/2004	Linda Mehlhaff	\$ 257.38
140264	3/30/2004	Linda Mehlhaff	\$ 4.63
125526	7/8/2003	Melody Jurkovich	\$ 23.12
136115	1/6/2004	Ralph Henderson	\$ 1.25
135276	12/22/2003	Rita Moore	\$ 16.60
131242	10/14/2003	Ruben T. Montez	\$ 24.30
123059	5/20/2003	Toni Gifford	\$ 0.01
135602	12/29/2003	Travis Arnold	\$ 23.46
140203	3/30/2004	William Gosnell	\$ 5.50
<hr/>			

\$4,109.98

VOIDED CHECKS TO COUNCIL- JUNE 2005
PAYROLL Checks Outstanding through 4-30-04

Number	Date		Amount
285023	7/11/2003	Lillian L. Bozonie	\$ 12.57
285559	7/25/2003	James R. Forseth	\$ 36.94
285940	8/8/2003	Mihail D. Kennedy	\$ 16.49
286335	8/22/2003	Bryony L. Peek	\$ 165.05
289179	1/9/2004	Marvin L. Jochems	\$ 300.00
289573	2/6/2004	Edwin L. Young	\$ 139.11

			\$ 670.16

VOIDED CHECKS TO COUNCIL- JUNE 2005
Accounts Payable Checks Outstanding through 4-30-04

Number	Date		Amount
642346	7/11/2003	Robyn Spang	\$ 5.00
642369	7/11/2003	Tina Icenoggle	84.00
642558	7/18/2003	Kentucky Fried Chicken	33.25
642725	7/25/2003	Als Bootery	115.00
644490	9/5/2003	Frank & Janice Forda	1.82
645456	9/26/2003	Stephen Jones	20.00
645610	10/3/2003	Jacob Giffin	43.50
645669	10/3/2003	MSU Billings	85.00
645916	10/10/2003	Karen Christianson	28.00
646070	10/10/2003	Yellowstone Roofing	2,575.00
646395	10/24/2003	Big Sky Cism	75.00
652197	1/2/2004	Sam Lind	4.21
653060	1/23/2004	Joel Slade	8.49
655410	3/26/2004	Child Safety Fair	\$ 50.00
			<u>\$3,128.27</u>

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Approval of Resolution Setting Mill Levy Rates

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This resolution establishes the city property tax mill levy rates for fiscal year 2006.

The mill levy rates for the new public safety fund levy and general obligation debt service funds for PRPL and streets will be established when the City has received the certified taxable valuation information from the Montana Department of Revenue.

RECOMMENDATION

Staff recommends that the City Council approve the resolution setting the mill levy rates for fiscal year 2006.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A - A Resolution Making the Annual All-Purpose Mill Levy and Mill Levies for Library Operating and Transit Operating for the Fiscal Year 2005-2006.

Attachment A

RESOLUTION 05-_____

**A RESOLUTION MAKING THE ANNUAL ALL-PURPOSE
MILL LEVY AND MILL LEVIES FOR LIBRARY
OPERATING, TRANSIT OPERATING, AND PUBLIC SAFETY
FUNDS FOR THE FISCAL YEAR 2005-2006.**

WHEREAS, pursuant to law, the City of Billings is required to make annual mill levies.

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

1. That an All-Purpose Annual Mill Levy in the amount of 69.50 Mills is hereby imposed on all taxable property within the City of Billings, Montana, for the Fiscal Year July 1, 2005 through June 30, 2006.

2. That additional Mill Levies in the amounts stated are hereby imposed on all taxable property within the City of Billings, Montana, to provide payment for the following:

- A. 10.00 Transit Operating Fund
- B. 9.50 Library Operating Fund
- C. 20.00 Public Safety Fund

3. That when said taxes are collected, the same shall be placed in respective funds for the City and expended pursuant to the annual budget.

4. The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Treasurer and a copy to the Yellowstone County Assessor.

5. This Resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **13th** day of **June, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Consent Agenda\)](#)

Q



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 13, 2005

SUBJECT: Resolution to Close Special Improvement/Sidewalk Bond Debt Funds to the SID Revolving Fund

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: State law requires closing these funds. Any excess/deficit balances upon completion of the Bond obligations are closed to the SID Revolving Fund.

FINANCIAL IMPACT: The revolving fund will receive cash of \$12,454.18 for some Special Improvement Districts in Funds 820 and 830. Cash was loaned to Special Improvement Districts in fund 820 to pay bond principal and interest. The loans in the amount of \$54,491.60, due to district delinquencies are uncollectible and will be written off in the SID revolving fund.

RECOMMENDATION

Staff Recommends Council Approve the Resolution closing Special Improvement/Sidewalk Bond Debt Funds to SID Revolving Fund.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A- Resolution to Close the Special Improvement District Debt Funds & Sidewalk Special Assessment Debt Funds to the Special Improvement District Revolving Fund

B- Fund 820 and 830

ATTACHMENT A

RESOLUTION _____

**A RESOLUTION TO CLOSE THE SPECIAL IMPROVEMENT DISTRICT DEBT FUNDS
AND SIDEWALK SPECIAL ASSESSMENT DEBT FUNDS TO THE SPECIAL
IMPROVEMENT DISTRICT REVOLVING FUND PURSUANT TO M.C.A. 7-12-4222.**

WHEREAS, the Special Improvement District Bond Debt Obligation and the Sidewalk Special Assessment Debt Obligation has been paid in full and excess/deficit balances remain, and

WHEREAS, state law requires that Special Improvement/Sidewalk Debt Funds be closed to the SID Revolving Fund and the City Council has the authority to close these funds after all debt has been satisfied.

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

That the Special Improvement/Sidewalk Funds be closed to the SID Revolving Fund per Attachment B effective June 13, 2005:

PASSED AND APPROVED by the City Council, this 13th day of June 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC CITY CLERK

[\(Back to Consent Agenda\)](#)

R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, June 13, 2005

TITLE: Resolution of intent to sell City property and setting a public hearing date
DEPARTMENT: Administration / Parking Division
PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council is asked to adopt a resolution of intent to sell City property and to set a public hearing date to consider the sale. The property is described as lots 5, 6, 8, 9 and 10, block 92, Billings Original Townsite and is located in the 100 block of N. 27th Street. The land is used for two (2) parking lots. The property is part of the proposed Sandstone redevelopment project.

ALTERNATIVES ANALYZED: Since the Council has directed staff to cooperate with the prospective developer and land aggregation is required for the project, there are no viable alternatives to considering the land sale.

FINANCIAL IMPACT: The property was recently valued at \$448,000. The property could be sold for cash, its value could be an offset to City costs in the proposed development or it could be donated in part or in whole to the project developer. The property was purchased in 1986 with tax increment funds. There are no specific rules on using land sale proceeds but past practice has been to return the money to the Fund that originally purchased the property.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to sell lots 5, 6, 8, 9 and 10, block 92 of Billings Original Townsite, authorize the staff to solicit bids and set a public hearing on July 11, 2005.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A: Resolution of Intent

INTRODUCTION

The City Council will consider a resolution of intent to dispose of property described as lots 5, 6, 8, 9 and 10, block 92 in the Billings Original Townsite. There are two parking lots on the property, divided by a lot with building that is owned by Harrison Fagg. The aggregated property is proposed to be used for the Sandstone redevelopment project.

PROCEDURAL HISTORY

- City Council heard staff presentation at work sessions on November 1 and December 6, 2004 and on May 2, 2005
- At the last work session, Council directed staff to develop the appropriate process and agreements with the developer so that it could consider participating in the proposed project
- Council will receive most of the agreements and take other steps in the project on June 27, 2005, and take final action on July 11, 2005

BACKGROUND

Since last fall, City staff has been working with the proposed developer of the Sandstone redevelopment project. The proposal initially included all property in the half block except the Grand Hotel. Gene Rockman, who owns the property at 2nd Ave. North and 27th St., later withdrew from the project. The proposed project now involves five (5) City owned lots and one lot owned by Harrison Fagg, the proposed developer. The project is a single building that will house a ground floor of retail space, 2-4 levels of parking, up to 40 housing units and possibly some office space. The project requires at least six lots and single party ownership is required for project management and to meet lender requirements.

State and City Codes require that City property be sold by soliciting bids and after conducting a public hearing. Property owners within 300 feet of the property will be notified by mail and notice will be published in the Billings Times. The bid solicitation will be structured to require the purchaser to control at least 6 vacant lots in order to make the project feasible. This process does not lend itself to the proposed project since the City has already identified the project and developer, but it must be followed if the City Council wants to participate in the project.

STAKEHOLDERS

Downtown property owners, merchants and professional staff have endorsed the project to this point. It is possible that some people may object to the land disposal because there is only one viable purchaser/developer. Some property owners may be concerned about the effects of a 10-15 story building with a parking garage in this location.

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to sell lots 5, 6, 8, 9 and 10, block 92 of Billings Original Townsite, authorize the staff to solicit bids and set a public hearing on July 11, 2005.

ATTACHMENTS

A: Resolution of Intent

RESOLUTION 05-

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY; DECLARING THE INTENT OF THE CITY TO DISPOSE OF CITY PROPERTY, AUTHORIZING CITY OFFICIALS TO SOLICIT BIDS FOR THE PROPERTY AND SETTING THE DATE FOR A PUBLIC HEARING.

WHEREAS, the City of Billings finds it desirable to dispose of property it currently owns, located in the 100 block of N. 27th Street and described as Lots 5, 6, 8, 9 and 10, Block 92 of the Billings Original Townsite, and,

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands and give the public the opportunity to be heard regarding such action, and

WHEREAS, Article 22-900 BMCC also requires that all property owners within three hundred (300) feet of the exterior boundaries of said property, be notified by mail, fifteen (15) days in advance of the time, date, place of public hearing and the existing and proposed use.

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

1. The City Council declares its intention to dispose of City property located in the 100 block of N. 27th Street and described as Lots 5, 6, 8, 9 and 10, Block 92 of the Billings Original Townsite.
2. City staff is authorized to solicit bids for the subject property, open the bids and present them to the City Council for its consideration.
3. A public hearing regarding the proposed property disposal will be conducted on July 11, 2005 at 6:30 o'clock p.m. in the Council Chambers, located on the Second Floor of the Police Facility, 220 North 27th Street, Billings, Montana. The City Clerk is hereby directed to publish notice of the public hearing in The Billings Times in its regular issues on June 23 and June 30, 2005 and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area at least fifteen days prior to the hearing. The notice shall include the time, date and the place for the hearing and a description of the existing and proposed land use.

APPROVED AND PASSED by the City Council of the City of Billings this 13th day of June, 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

(Back to Consent Agenda)

S



CITY COUNCIL
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Resolution of Blight for new 27th Street Tax Increment Finance District
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Ramona Mattix, Director

PROBLEM/ISSUE STATEMENT: The Downtown Billings Partnership has requested that the current downtown Tax Increment Finance District exclude a mid-block site on 27th Street to create a stand alone TIF for a long term project. This project which is a joint public/private partnership would create street level retail, mid level parking, and upper floor residential. The first step in the process is to designate the area blighted.

ALTERNATIVES ANALYZED: The City Council create a new district if it finds there are blight conditions to be ameliorated in the area. Council could decide not to create the district, which could jeopardize the proposed public/private project.

FINANCIAL IMPACT: The current district is projected to generate \$1 to \$1.5 million in tax increment revenue over a 20 year period.

RECOMMENDATION

Staff recommends that City Council begin the process of creating the new TIF district by adopting a resolution of findings of blight.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

A. Resolution of Findings of Blight

INTRODUCTION

A Downtown Tax Increment Finance District was first created in January of 1976 by a resolution which cited hazardous conditions existing in the District due to overhead utility wires, inefficient land use, problems of access and circulation, physical constraints to development, random location of mixed uses and deteriorated building conditions, and found that rehabilitation and redevelopment of the District would be in the public interest. That original District comprised about seventy blocks in the city center and the district expires Jan.1, 2008.

PROCEDURAL HISTORY

- 1979 bonds were issued to pay for the construction of a city parking garage in the downtown at a cost of \$3,990,000.
- Other downtown improvements that have occurred: The Depot renovation, downtown streetscape improvements, Old Chamber Building renovation and parking lot, Venture theatre, SoNoMa Lofts, renovation of the Securities building, Wells Fargo Bank Building, and numerous façade and awning projects
- Since the district was created there have been over \$75 million dollars of private investment and about \$25 million dollars of tax increment dollars spent in the downtown.
- The current TIF expires in 2008 making it impractical for that TIF to benefit from the tax increment that would be created by the proposed project.
- The City Council received the details of this project at its work session May 2, 2005.
- June 14, 2005 the Planning Board will review a proposed Urban Renewal Plan for recommendation to City Council.

Next steps to accomplish the expansion of the district required by statute are:

Resolution of Blight at City Council	June 13, 2005
Planning Board approval of Urban Renewal	June 14, 2005
Submission of Plan to City Council	June 16, 2005
Publication of notice of Public Hearing	June 16 & 23, 2005
Mailing notice of Public Hearing (not less than 10 days prior)	June 16, 2005
First Reading (14 days from plan submission)	June 27, 2005
Second Reading	July 11, 2005
Effective date (30 days from 2 nd reading)	Aug. 10, 2005

BACKGROUND

The Property being studied is a portion of a block bounded by North 27th Street and North 28th Street to the east and west, respectively, and 1st Avenue North and 2nd Avenue North on the north and south. Included in the Property would be a strip of North 27th Street approximately 40' wide and a strip of the alley on the west side of the Property approximately 10' wide. The street and alley extend the length of the Property. The exact site is shown on the attached Exhibit A. The District is being formed to encourage new private investment in a mixed-use housing, commercial and parking development. A new District will allow public financing over a 20-year period, which is a more realistic period for debt financing of capital assets than the remaining years of the present downtown tax increment district.

The District meets the statutory definition of blight. It is dominated by low intensity uses, including roughly 83% of the District that is being used as City-owned surface parking. The only

structure on the site is over 50 years old, dilapidated and in need of major repair. The City parking does not meet code, and the asphalt surface of the parking is dilapidated.

Potential future uses for the land include housing, parking and commercial uses such as offices and retail. Public improvements to help support private investment might include land acquisition, clearance, sale or lease, streetscaping, lighting, façade development, utilities and parking. Pedestrian amenities such as greenways, paths or transit corridors are also possibilities for the area. Urban Renewal Projects, including the proposed Multi-Use Facility Project, will enhance the CBD and greatly improve the Property.

ALTERNATIVE ANALYSIS

The alternatives available to Council would be to reject the creation of the Tax Increment Finance district and determine there is no instance of blight or to determine blight conditions need to be ameliorated. A summary of blight conditions and proposed improvements are provided below.

SUMMARY OF BLIGHT FINDINGS

There is one single story structure on the Property. It was constructed in 1935 and is about 3,500 square feet in size. The structure is functionally obsolete, and the electrical, heating, cooling and communications systems are inadequate by modern standards. The building is not sprinkled and it contains only single pane windows. There is a high likelihood that the structure contains at least some lead paint. The individual 25 foot wide lots that comprise the area are too small for modern commercial building designs. The parking lots are in poor repair and do not meet current codes. In general, the area of the District is totally under-utilized. It is located in a prime commercial area in what is considered the City Center of the CBD and a half-block from the Sheraton Hotel, a 23-story masonry structure.

The District has a combination of adequate and inadequate public facilities. Most of the underground and above ground utilities are adequate; however, overhead power lines diminish the visual appearance of the area. The street level appearance of public spaces within the District is generally poor. There is minimal landscaping; lighting is high intensity and vehicle oriented; and the parking lots are poorly screened and difficult to maintain. The sanitary sewer, water and storm water system on site are in average to poor condition. The appearance of the District contrasts dramatically with the North 27th Street and pedestrian improvements completed in 2001, and its poor condition is strikingly apparent. The deficiencies in the public and private property lead to a determination that the area is blighted, as defined by state statute found at 7-15-4202 MCA.

RECOMMENDATION

Staff recommends that City Council begin the process of creating the new TIF district by adopting a resolution of findings of blight.

RESOLUTION NO.

A RESOLUTION DESIGNATING BLIGHTED AREA WITHIN THE
CITY OF BILLINGS AND NECESSITY OF REHABILITATION AND
REDEVELOPMENT OF SAID AREA TO ESTABLISH A TAX
INCREMENT FINANCE DISTRICT WITHIN THE CITY OF BILLINGS,
COUNTY OF YELLOWSTONE, STATE OF MONTANA

WHEREAS, the State of Montana has provided for the redevelopment of those portions of its cities and towns which constitute a menace to public health and safety, constitute an economic and social liability and substantially impair the sound growth of a municipality; and

WHEREAS, sources of Federal funds to accomplish redevelopment objectives have been substantially reduced or eliminated; and

WHEREAS, the City has previously determined that conditions of blight and deterioration exist within and around the downtown core and the Extended Tax Increment Finance District from Montana Avenue north to 6th Avenue North and between 22nd Street North and 29th Street North and that approximately 50% of the structures within the area are physically deteriorated and functionally obsolete; and

WHEREAS, the City hereby also finds that the only structure within the new tax increment finance district that is the subject of this resolution ("Tax Increment Finance District") is substandard, physically deteriorated, and/or functionally and economically obsolete; and

WHEREAS, problems of inefficient land use, inadequate access and circulation, physical barriers, and random location of mixed inefficient uses exist within and around both the downtown core and the new Tax Increment Finance District; and

WHEREAS, the prevention and elimination of such blighted areas is a matter of City policy and concern in order that the City shall not be endangered by areas which are focal centers of physical deterioration and are conducive to fires, while contributing little to the tax income of the City; and

WHEREAS, problems of inefficient and underutilized land use exist within and around the boundaries of the new Tax Increment Finance District; and

WHEREAS, said areas need to be redeveloped and/or rehabilitated to remove the blight and correct the inefficient and underutilized land use; and

WHEREAS, the City desires to exercise all powers conferred by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, in addition to its other powers; and

WHEREAS, it may be necessary for the City to exercise its powers of eminent domain within said areas to condemn real property for purposes of blight elimination and/or redevelopment; and

WHEREAS, the original 27th Street Redevelopment Plan, having been duly adopted by the City of Billings and Yellowstone County, recommends extensive efforts to utilize "Tax Increment Financing" in implementing recommendations for downtown redevelopment; and the Tax Increment Finance Redevelopment Plan makes the same recommendations;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Billings, Montana:

1. BLIGHTED AREA. The City hereby declares that the area as shown on the map marked Exhibit "A" and more fully described under number 5 below is hereby declared a blighted area in accordance with MCA §§ 7-15-4206(2) and 7-15-4210 and the Montana Urban Renewal Law.

2. REHABILITATION AND REDEVELOPMENT. Rehabilitation and redevelopment, or a combination thereof, within that area is necessary and in the interest of public health, safety, morals, and welfare of the residents of the City.

3. URBAN RENEWAL LAW. This Resolution of necessity is hereby adopted as required by MCA 7-15-4210 to allow the City to utilize all powers conferred upon it by MCA, Title 7, Chapter 15, Parts 42 and 43, in addition to all other powers of the City of Billings.

4. EMINENT DOMAIN. The City may by purchase, through negotiations or condemnation, procure within said area the necessary property and land for redevelopment purposes and/or the elimination of blight and conditions detrimental to the public health, safety, morals, and welfare of the residents of the City of Billings.

5. BOUNDRARIES OF NEW TAX INCREMENT FINANCE DISTRICT.

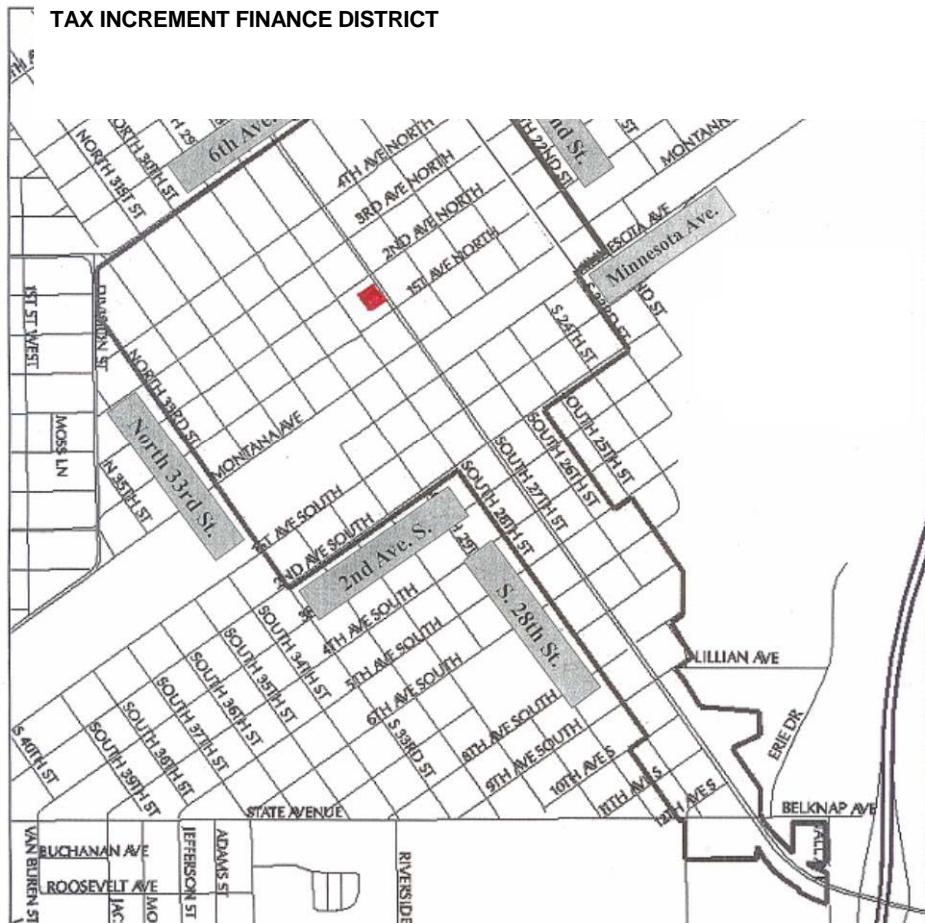
A tract of land situated within the City of Billings, County of Yellowstone, State of Montana within Block 92, consisting of Lots 5 through 10, according to the official plat on file in the Office of the Clerk and Recorder of said county under Document No. 16312, together with the western half of North 27th Street measured from the easterly border of Lots 5 through 10 to the center line of North 27th Street, together with the eastern half of the alley that divides Block 92

measured from the western border of Lots 5 through 10 to the center line of the alley.

EXHIBIT A

The new Tax Increment Finance District is shown in red.

Downtown Billings Tax Increment District



[\(Back to Consent Agenda\)](#)

T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Resolution Assessing Residential/Commercial Collection, Disposal, and Landfill Fees

DEPARTMENT: Public Works Department / Solid Waste Division

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Section 21-229 of the Billings Montana City Code requires that the City Council adopt the annual Solid Waste collection and disposal charges by resolution. The attached resolution will set the landfill fee and collection rates for FY06.

FINANCIAL IMPACT: The proposed rates remain the same as in FY05.

RECOMMENDATION

Staff recommends that the City Council approve the FY06 Resolution Levying and Assessing Residential/Commercial Collection, Disposal, and Landfill Fees.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

Attachment A – Proposed Resolution Levying and Assessing Residential/Commercial Collection, Disposal and Landfill Fees. (3 Pages)

Attachment B – Solid Waste Collection Rate Comparison. (1 Page)

INTRODUCTION

The Billings Montana City Code requires that the City Council adopt the annual Solid Waste collection and disposal charges by resolution.

BACKGROUND

These charges define a self-supporting residential and commercial level based upon the EMCON rate study of 1996. The City of Billings continues to represent a bargain across the state and region in terms of fees/rates as illustrated in the Rate Comparison chart attached.

Landfill use fees are set each year for services that are not covered by other agreements or assessments. These fees are charged to those landfill customers that reside outside of the City of Billings.

STAKEHOLDERS

The Billings Regional Landfill serves counties that border Yellowstone County that do not have their own landfill operations. Landfill fees are charged to the surrounding agencies that haul solid waste into the landfill through contract agreements. These landfill use agreements follow the charges adopted by this resolution.

We have held Landfill User Summits at least bi-annually since 1994. We extend invitations to representatives from each entity currently using the Billings Regional Landfill. The meetings are used to share statistical information, update participants on current programs, and discuss future plans.

RECOMMENDATION

Staff recommends that Council approve the FY05 Resolution Levying and Assessing Residential/Commercial Collection, Disposal, and Landfill Fees.

ATTACHMENTS

Attachment A – Proposed Resolution Levying and Assessing Residential/Commercial Collection, Disposal and Landfill Fees. (3 Pages)

Attachment B – Solid Waste Collection Rate Comparison. (1 Page)

RESOLUTION 05-_____

**A RESOLUTION LEVYING AND ASSESSING RESIDENTIAL AND
COMMERCIAL COLLECTION AND DISPOSAL FEES AND LANDFILL
USE FEES IN ACCORDANCE WITH RESOLUTION NO. 86-15491**

WHEREAS, it has become necessary in the operation of City services to assess the fees for collection and disposal of refuse, and

WHEREAS, said fees are established and should apply until changed by subsequent resolution.

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

1. **RESIDENTIAL AND MOBILE HOME COLLECTION AND DISPOSAL FEES.** Residential fees are hereby assessed at \$79.00 per annum for unit occupied by one family. Residential fees for a mobile home located in a mobile park are hereby assessed at \$73.00 per annum for unit occupied by one family. Residential carry out service, where available, will be assessed at \$158.00 per annum. Residential landfill fees for newly annexed property not yet receiving City collection service are hereby assessed at \$18.50 per annum for unit occupied by one family.

2. **LANDFILL FEES.** Landfill use fees that are not covered by other agreements or assessments are hereby assessed as follows. All fees will be based on net weight, unless the landfill scale is inoperable then volume fees will apply: A minimum charge of \$4.00 will apply to all transactions.

A. Pickup/Small Trailer

Pickups or equivalent sized trailers hauling any material except those with special fees shall be assessed minimum fees as follows:

Pickup truck/small trailer	\$4.00
----------------------------	--------

Vehicles with *side boards* over one (1) foot high or loaded with heavier materials will be charged at the per ton rate in Paragraph B unless the landfill scales are inoperable, then the vehicle will be charged by the cubic yard rated on the capacity of the vehicle.

B. Compatable Material

Compactible material such as demolition, wood, household debris, tree removal refuse, and all other refuse not covered by special fees or special use agreements shall be charged at the following rates:

rated capacity	Per Ton Charge	\$11.50
	Loose Garbage	\$1.45 per cubic yard of
	Compacted Garbage	\$3.75 per cubic yard of rated capacity

C. Non-Compactible Material

Asphalt, rocks, concrete, dirt, gravel, timbers, and other non-Compactible material will be charged at \$11.50 per ton or \$16.00 per cubic yard based on the rated capacity of the vehicle.

D. Special Waste

Special Waste such as contaminated soil, sludges, and treated timbers will be accepted on a case-by-case basis dependent upon testing and approval. If accepted, landfill fees will be \$23.00 per ton or \$32.00 per cubic yard based on the capacity of the vehicle.

E. Special Fees

1. Dead animals such as sheep, cows, and horses will be charged at the following rates:

Horse	\$75.00/each
Cow	\$50.00/each
Colt, Sheep, Pig, etc.	\$20.00/each
Large quantities	\$75.00/ton

2. Whole tires will be charged at the following rates:

Car or Light Truck (up to 17")	\$2.00/each
Large Truck (17" to 24")	\$5.00/each
Equipment Tire (grader size)	\$17.50/each

Large Amounts	\$75.00/ton or \$17.50 per cubic yard
Cut tires	\$11.50/ton or \$1.45/per cubic yard

3. Asbestos will be charged at \$60.00 per ton or \$30.00 per yard or \$7.50 per bag. The minimum charge shall be \$90.00.
4. Barrels with one end off will be charged at \$5.00. If both ends are cut off, they will be assessed per paragraph A or B above. All barrels that contained pesticides or herbicides must be triple rinsed.
5. Residential refrigeration units will be subject to a \$10.00 Freon recovery fee unless accompanied by written certification that the Freon has been recovered. Commercial units must have certification that the Freon has been removed.

F. City of Billings *residents hauling non-business waste* in a vehicle no larger than a 3/4 ton pickup truck, or equivalent sized trailer, will not be charged. All commercial waste not charged through other assessments will be charged per the above paragraphs.

3. **COMMERCIAL COLLECTION AND DISPOSAL FEES PER ANNUM.** Commercial collection service is available subject to Solid Waste Division approval of container type, size, placement, and serviceability. Commercial collection and disposal fees are hereby assessed as follows:

Container Size	City Owned Container PER WEEK FREQUENCY OF COLLECTION						Saturday *
	1	2	3	4	5	6	
2 Yards	\$509	\$838	\$1,167	\$1,496	\$1,825	\$2,220	\$658
3 Yards	\$555	\$930	\$1,305	\$1,680	\$2,055	\$2,505	\$750
4 Yards	\$602	\$1,024	\$1,446	\$1,868	\$2,290	\$2,796	\$844
6 Yards	\$753	\$1,266	\$1,779	\$2,292	\$2,805	\$3,421	\$1,026
8 Yards	\$845	\$1,450	\$2,055	\$2,660	\$3,265	\$3,991	\$1,210

Container Size	Customer Owned Container PER WEEK FREQUENCY OF COLLECTION						Saturday *
	1	2	3	4	5	6	

1 Yard	\$283	\$566	\$849	\$1,132	\$1,415	\$1,755	\$566
2 Yards	\$329	\$658	\$987	\$1,316	\$1,645	\$2,040	\$658
3 Yards	\$375	\$750	\$1,125	\$1,500	\$1,875	\$2,325	\$750
4 Yards	\$422	\$844	\$1,266	\$1,688	\$2,110	\$2,616	\$844
6 Yards	\$513	\$1,026	\$1,539	\$2,052	\$2,565	\$3,181	\$1,026
8 Yards	\$605	\$1,210	\$1,815	\$2,420	\$3,025	\$3,751	\$1,210
30 Gal Can Ea	\$61	\$122	\$183	\$244	\$305	\$378	\$122

90 Gallon Barrel \$156
300 Gallon Barrel \$346

* The above include use of the City of Billings' container with one pickup per week only. This service not available in all areas.

Hand Load/Loose - Special Service - In addition to can or container service. \$242.00 per annum for each minute of special service per pick-up.

Commercial customers will be provided 2 courtesy pickups over and above their current scheduled service each fiscal year. Any additional service will be billed at the actual hourly rates as follows (minimum 1 hour):

Compacter truck, 1 Man \$75.00 Compacter truck, 2 Men \$105.00.

Tax supported funds, which will include the General Fund, Public Safety, Library and Transit Funds, will not be charged for garbage.

Drop Box/Roll Off

Customer-owned Container \$93.00 per pull plus disposal:

Non-Compacted	\$11.50/ton or \$1.45 per cubic yard rated capacity
Compacted	\$11.50/ton or \$3.75 per cubic yard rated capacity

City-owned Container – \$93.00 per pull plus disposal plus lease fee if applicable.

30 cubic yards – cash only / one time \$165.00

Commercial landfill fees for newly annexed property not receiving City collection service will be assessed at the current disposal rate times the size and frequency of their service.

PASSED by the City Council and APPROVED this ____ day of _____ 2005.

CITY OF BILLINGS

By: _____

Charles F. Tooley, Mayor

ATTEST

City Clerk

[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

SUBJECT: Resolution Relating to Pooled Special Improvement District Refunding Bonds Series 2005; Determining the form and details and authorizing the execution and delivery.

DEPARTMENT: Administrative-Finance Division

PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On May 23, 2005, City Council approved a resolution authorizing the issuance and bond sale for refunding the following five Special Improvement Districts; 1327,1322,1334,1335 and 1340. D.A. Davidson & Company of Great Falls, MT will purchase the bonds at a negotiated sale. This resolution outlines the form and detail of the bonds.

An updated resolution will be submitted at the June 13th meeting which will have the detail of the sale.

FINANCIAL IMPACT: The reason for issuing the bonds is to achieve debt service savings for each of the districts. The savings will benefit each of the districts and the owners of property by reducing the total cost of the improvements financed and will benefit the City by reducing the liability of the revolving fund with respect to the outstanding bonds.

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Yellowstone County, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 05-_____, entitled: "RESOLUTION RELATING TO \$_____ POOLED SPECIAL IMPROVEMENT DISTRICT REFUNDING BONDS, SERIES 2005; PRESCRIBING THE FORM AND TERMS AND THE COVENANTS OF THE CITY FOR THE PAYMENT THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on June 13, 2005, 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 Council Members voted in favor thereof: _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____.

WITNESS my hand officially this ____ day of June, 2005.

City Clerk

RESOLUTION NO. 05-_____

RESOLUTION RELATING TO \$_____ POOLED SPECIAL
IMPROVEMENT DISTRICT REFUNDING BONDS, SERIES 2005;
PRESCRIBING THE FORM AND TERMS AND THE COVENANTS OF THE
CITY FOR THE PAYMENT THEREOF

BE IT RESOLVED by the City Council of the City of Billings, Yellowstone County, Montana (the "City"), as follows:

Recitals; Authorization; Sale The City, pursuant to Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), has issued its special improvement district bonds (the "Outstanding Bonds") drawn against the funds of, and to finance the costs of improvements in, the following special improvement districts of the City: Special Improvement District Nos. 1327, 1332, 1334, 1335 and 1340 (the "Districts"). All of the improvements financed from the proceeds of the Outstanding Bonds have been completed and all proceeds of the Outstanding Bonds and investment income thereon to be applied to costs of the improvements have been so applied or have been applied to the partial redemption of the Outstanding Bonds drawn on the respective Districts, except for certain proceeds of certain of the Outstanding Bonds on deposit in the Special Improvement District Revolving Fund of the City (the "Revolving Fund").

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Authorization. Montana Code Annotated, Section 7-12-4194 authorizes the issuance of special improvement district bonds under the Act to provide money needed to pay principal of and interest on outstanding bonds if the rate of interest on the refunding bonds is not less than one-half of one percent (0.50%) a year less than the rate of interest on the bonds to be refunded. Section 7-12-4193 authorizes the pooling of bonds of more than one special improvement district if the pooling is in the best interest of the city and the respective districts and will facilitate the sale of the bonds under more advantageous terms or with lower interest rates and if the pooled bonds are secured by the special improvement district revolving fund of the City.

Pooling and Issuance of Refunding Bonds. By Resolution No. 05-_____, adopted on May 23, 2005, this Council determined that it is in the best interests of the City and the owners of property in the Districts for the City to sell its pooled special improvement district refunding bonds, pursuant to Montana Code Annotated, Sections 7-12-4193 and 7-12-4194, in order to refund the Outstanding Bonds in advance of their stated maturities. Such bonds shall be denominated "Pooled Special Improvement District Refunding Bonds, Series 2005" (the "Bonds"), and shall be issued in the aggregate principal amount of \$_____. The Council also found that the pooling into a single refunding bond issue of the bond issues required to refund each issue of the Outstanding Bonds is in the best interest of the City and each of the Districts and will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus help to lower interest rates on the Bonds, and because a single refunding issue will reduce the costs and expenses of the refunding. Because the Bonds will be issued in a principal amount not greater than the outstanding principal amount of the Outstanding Bonds, no public hearing is required to establish the desirability of issuing the Bonds to refund the Outstanding Bonds.

Sale of Bonds. Pursuant to Montana Code Annotated, Sections 7-12-4194(3) and 7-12-4204(1), as amended, this Council authorized the sale of the Bonds at a private negotiated sale to

D.A. Davidson & Co., of Great Falls, Montana (the "Purchaser"), and as authorized by Resolution No. 05-_____, the City Administrator has executed and delivered a Bond Purchase Agreement, dated June __, 2005, with the Purchaser, providing for the issuance and sale of the Bonds upon the terms and further conditions contained in this resolution, at a purchase price equal to \$_____, plus interest accrued to the date of delivery of the Bonds. The execution and delivery of the Bond Purchase Agreement are hereby ratified and confirmed.

Interest and Debt Service Savings. It is hereby determined and declared that the average annual rate of interest on the Bonds as set forth in Section 2.01 is ____% which is at least one-half of one percent less than the average annual rate of interest on each issue of the Outstanding Bonds. Thus, the City has authority under the Act to issue the Bonds upon the terms and conditions set forth in this resolution.

The reason for issuing the Bonds is to achieve debt service savings for each of the Districts, computed on a net present value basis (using ____% as the discount rate) over the term of the Bonds at \$_____. The savings will benefit each of the Districts and the owners of property therein by reducing the total cost of the improvements financed therein and will benefit the City by reducing the liability of the Revolving Fund with respect to the Outstanding Bonds.

Official Statement. The Bonds will be offered for sale by the Purchaser by means of an Official Statement, a form of which has been presented to this Council, in the form of a Preliminary Official Statement, dated June __, 2005 (the "Official Statement"). This Council hereby approves the Official Statement and authorizes it to be executed on behalf of the City by the Financial Services Manager or, in his absence or disability, the acting Financial Services Manager in substantially the form presented to this Council, with such additions, deletions and modifications as the Financial Services Manager and the City Attorney may approve. Execution of the Official Statement by the appropriate officer of the City shall be conclusive as to the approval thereof by this Council. The City hereby authorizes the distribution of the Official Statement and ratifies the distribution of the Preliminary Official Statement by the Purchaser to prospective purchasers of the Bonds and this Council hereby authorizes and directs the Mayor and the Financial Services Manager to execute such certificates relating to the accuracy and completeness of the Official Statement as may be appropriate.

Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana and the home rule charter of the City, including the Act, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Terms of the Bonds

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Principal Amounts, Maturities, Denominations and Interest Rates. For the purpose of providing funds sufficient, with other moneys of the City legally available therefor, to refund in advance of their stated maturities the Outstanding Bonds, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the award of sale in

Section 1.05, the City shall forthwith issue and deliver to the Purchaser the Bonds, payable solely from the 2005 Refunding Pooled Special Improvement District Sinking Fund (the "Sinking Fund") created in Section 4.01. The Bonds shall be dated, as originally issued, as of June 30, 2005, and shall be issued in the form of fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

The Bonds shall mature on July 1 in the years and amounts set forth below, subject to prior redemption, and shall bear interest from the date of original registration (June 30, 2005) to their respective maturities or prior dates upon which they have been duly called for redemption at the rates per annum set forth opposite such years and amounts, respectively:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2007	\$	%	2012	\$	%
2008			2013		
2009			2014		
2010			2015		
2011					

Interest shall be calculated on the basis of a 360 day year composed of twelve 30-day months.

Payment. The Bonds shall be issuable only in fully registered form, and the ownership of the Bonds shall be transferred only on the books of the City at the operations center of the Registrar, as provided in Section 2.06. Interest on the Bonds shall be payable on January 1 and July 1 in each year, commencing January 1, 2006, to the owners of record of the Bonds as such appear on the Bond Register as of the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. The interest on, and, upon presentation and surrender thereof, the principal of, each Bond, the amount payable with respect thereto, shall be payable in lawful money of the United States of America by check or draft issued by the Registrar.

Dating of Bonds. Each Bond shall be dated, as originally issued, as of June 30, 2005. Upon the original delivery of the Bonds pursuant to Section 2.08 or upon the delivery of a Bond upon an exchange or transfer pursuant to Section 2.05, the Registrar shall date each Bond so delivered as of the date of its authentication.

Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the Sinking Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Districts, the Financial Services Manager shall call for redemption on the interest payment date outstanding Bonds or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal, to the extent practicable, the amount of such funds on deposit in the Sinking Fund on that date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption, without premium.

(b) Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described in Subsection (a) of this Section 2.04 on any interest payment date; provided, however, the Bonds shall not be called for redemption before July 1, 2010, from the proceeds of refunding special improvement district bonds or warrants. The redemption price shall equal the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption, without premium.

(c) Selection of Bonds for Redemption; Partial Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of their stated maturities . If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in \$5,000 principal amounts selected by the Registrar by lot or other manner it deems fair. Upon partial redemption of a Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount thereof outstanding.

(d) Notice and Effect of Redemption. The date of redemption shall be fixed by the Financial Services Manager, who shall give notice to the Registrar no less than thirty-five (35) days prior to the date of redemption. The Registrar shall give notice by first class mail, postage prepaid to the owner or owners of such Bonds at their addresses appearing in the bond register, of the numbers of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall be not less than thirty (30) days after the date of mailing notice. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease to accrue.

System of Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent for the Bonds (the "Registrar"). This Section 2.06 shall establish a system of registration for the Bonds as defined in the Model Public Obligations Registration Act of Montana. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

Bond Register. The Registrar shall keep at its operations center or such other office designated in writing to the City a Bond Register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of the transfer of a Bond or portion thereof selected for redemption.

Exchange of Bonds. Whenever any Bonds are surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the City.

Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the Bond Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, premium, if any, and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the sum or sums to paid.

Taxes, Fees and Charges. For every transfer or exchange of a Bond (except for an exchange upon a partial redemption of any Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond lost, stolen or destroyed, upon receipt by the Registrar of evidence satisfactory to it that such Bond was lost, stolen or destroyed, and of the ownership thereof, and upon receipt by the Registrar of an appropriate bond of indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond before payment.

Initial Registrar. The City hereby appoints U.S. Bank National Association, of Seattle, Washington, to act as registrar, transfer agent and paying agent for the Bonds (the "Registrar"). The City reserves the right to appoint a bank, trust company or fiscal company or an officer of the City as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana, but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. In the event of such an appointment, upon merger or consolidation of the Registrar with another corporation, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City reserves the right to remove any Registrar upon 30 days' notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the Bond Register to the successor Registrar. On or before each principal or interest due date, without further order of this Council, the Financial Services Manager shall transmit to the Registrar, if other than the Financial Services Manager, solely from moneys in the Sinking Fund available therefor, moneys sufficient for the payment of all principal, premium, if any, and interest then due on the Bonds.

Form of Bonds. The Bonds shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act and this resolution.

Execution, Registration and Delivery of Bonds. The Bonds shall be prepared under the direction of the Financial Services Manager and shall be executed on behalf of the City by the signatures of the Mayor, the Financial Services Manager and the City Clerk; provided that all signatures may be printed, engraved or lithographed facsimiles of the originals. The seal of the City need not be affixed to or imprinted on any Bond. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication and registration on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication and registration on different Bonds shall not be signed by the same representative. The executed certificate of authentication and registration on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. The Bonds shall be registered in order of their serial numbers by the Registrar, as attested by the Certificate of Authentication and Registration, as of June 30, 2005, and the Bonds shall be delivered by the Registrar to the Purchaser upon payment of \$_____ plus accrued interest, if any, from the registration date to the date of such delivery and payment, and the Purchaser shall not be obligated to see to the application of the purchase price.

Securities Depository for the Bonds.

For purposes of this Section 2.09, the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds the Bonds as securities depository.

“Representation Letter” shall mean the Blanket Issuer Letter of Representations from the City to DTC.

The Bonds shall be initially issued as separately authenticated fully registered Bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the Bond Register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the

purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any Person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other Person which is not shown on the Bond Register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No Person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with Subsection (d) hereof.

In the event the City determines to discontinue the book-entry-only registration system, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with Subsection (d) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with Subsection (d) hereof.

In the event that any transfer or exchange of Bonds is permitted under Subsection (b) or (c) of this Section 2.05, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the preparation of such Bonds in the form of Bond certificates and the method of payment of principal of and interest on such Bonds in the form of Bond certificates.

K. Application of Proceeds; Redemption of Outstanding Bonds

Comment [3]: Please do not type any text in this area.

Application of Proceeds. On the date of issuance of the Bonds, the Financial Services Manager shall credit the proceeds of the Bonds, in the amounts necessary, with other available funds therein, to the funds of the Districts to pay interest on all Outstanding Bonds on July 1, 2005, and to redeem all other Outstanding Bonds on July 1, 2005, at a price equal to the principal amount thereof plus interest accrued to the date of redemption. The balance of the proceeds of the Bonds and available funds of the City to the extent necessary shall be used to pay costs of issuance of the Bonds and of the refunding.

Redemption of Outstanding Bonds. As authorized by Montana Code Annotated, Section 7-12-4194(6)(b) and the resolutions authorizing issuance of the Outstanding Bonds, the City has called for redemption on July 1, 2005, all Outstanding Bonds, and all such actions of officers of the City to effect such redemption are hereby ratified and confirmed.

L. Sinking Fund; Revolving FundSinking Fund. There is hereby created and established the Sinking Fund designated as the 2005 Refunding Pooled Special Improvement District Sinking Fund, which shall be maintained by the Financial Services Manager on the books and records of the City separate and apart from all other funds of the City. Within the Sinking Fund there shall be maintained separate accounts, designated as the “Special Improvement District No. ___ Account,” for each of the Districts (the “District Accounts”). Within each District Account there shall be maintained separate subaccounts, designated as the “Principal Subaccount” and “Interest Subaccount,” respectively.

Comment [4]: Please do not type any text in this area.

Principal Subaccounts and Interest Subaccounts. Money in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Bonds as such payments become due or to redeem Bonds. From the proceeds of the Bonds, there shall be deposited ratably in the Interest Subaccounts any accrued interest on the Bonds to the date of their delivery, in proportion to the principal amount of the Bonds allocable to each of the Districts.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each fiscal year on the special assessments levied in each of the Districts, the Financial Services Manager shall credit to the Interest Subaccount in the District Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Subaccount of said District Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Account. All money in the Interest Subaccount and the Principal Subaccount shall be used first to pay interest due, and any remaining money shall be used to pay Bonds then due and, if moneys are available, to redeem Bonds or principal installments thereof in accordance with Section 2.05. Redemption of Bonds shall be as provided in Section 2.04, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Sections 7-12-4203 and 7-12-4206.

Loans from Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Special Improvement District Revolving Fund to the District Accounts in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in the District Account, and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Account in an amount sufficient to make good any deficiency then existing in the Principal Subaccount of the District Account, to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in a Principal Subaccount or an Interest Subaccount in a District Account if the money on deposit therein on any June 15 or December 15 (excluding amounts in the Principal Subaccount representing prepaid special assessments) is less than the amount necessary to pay Bonds due (other than upon redemption), and interest on all Bonds payable, on the next succeeding interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds or warrants of the City is not sufficient to make good all deficiencies then existing in the special improvement district funds for which the City has covenanted to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds of the special improvement districts in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds of the City has been paid. On any date when all accrued interest on special improvement district bonds or warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the special improvement district funds for payment and redemption of bonds to the extent the special improvement district funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, in an amount proportionate for each such district to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

Covenants. The City covenants and agrees with the owners from time to time of the Bonds that until all the Bonds and interest thereon are fully paid:

Comment [5]: Please do not type any text in this area.

Compliance with Resolution. The City will hold the Sinking Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The provisions hereinabove made with respect to the Sinking Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering and the sale of the Bonds.

Assessments. The City covenants that it has done all acts and things necessary for the final and valid levy of special assessments, on the basis prescribed in the resolutions of intention for each of the Districts, upon all assessable property within the boundaries of each of the Districts in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an original amount for each of the Districts equal to the original principal amount of the Outstanding Bonds drawn upon the district fund of said District. Such special assessments for each of the Districts have been levied and are estimated to be outstanding (including installments that are delinquent) as of July 1, 2005 in the amounts set forth in Exhibit B hereto (which is hereby incorporated herein by reference), and such installments not yet delinquent are payable in equal semiannual installments commencing November 30, 2005 and on each November 30 and May 31 thereafter as noted on Exhibit B. Pursuant to Montana Code Annotated, Section 7-12-4189, interest on the whole amount of the

special assessments remaining unpaid shall accrue at the average annual interest rate borne by the Bonds plus one-half of one percent per annum. Each partial payment shall include interest for six months on that payment and the then remaining balance of the special assessment. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

Reassessment. If at any time and for whatever reason any special assessment or tax levied against assessable property in any of the Districts is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-4186. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened, questioning the validity or regularity of the creation of the Districts, the validity of the special assessments levied therein, the validity of the Outstanding Bonds or the issuance or validity of the Bonds or the undertaking and agreement of the City to make good any deficiency in the collection of special assessments through the levy of taxes for, and the making of advances from the General Fund to, the Revolving Fund, or the right and power of the City to issue the Bonds or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the Districts for costs of the Improvements, unless the City determines, by resolution of this Council, that such waiver is in the best interest of the holders of the outstanding Bonds.

Tax Matters**Use of Improvements.** The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

Comment [6]: Please do not type any text in this area.

General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action that would cause the interest on the Bonds to become includable in gross income for

purposes of federal income taxation under the provisions of the Code and applicable Treasury Regulations thereunder in effect at the time of such action, and covenants and agrees that it will take or cause its officers, employees or agents to take any action within its or their powers to prevent the interest on the Bonds from becoming, includable in gross income for purposes of federal income taxation under the Code and applicable Treasury Regulations.

Certification. The Mayor, the City Clerk and the Financial Services Manager, being the officers of the City charged with the responsibility for issuing the Bonds are authorized and directed to execute and deliver to the Purchaser a certification in accordance with the provisions of Section 148 of the Code and Treasury Regulations, Section 1.148-2(b), stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be arbitrage bonds within the meaning of Section 148 of the Code and applicable Treasury Regulations. The certification shall further state that to the best of the knowledge and belief of the certifying officers no other facts, estimates or circumstances exist which would materially change this expectation.

Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes. In furtherance of the foregoing, the Financial Services Manager is hereby authorized and directed to execute a Rebate Certificate, in a form to be prepared by bond counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Information Reporting. The City shall file with the Secretary of the Treasury, not later than August 15, 2005, a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

“Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2005 other than the Bonds under Section 265(b)(3) except _____. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the City in 2005 in an amount greater than \$10,000,000.

Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Bonds, and all statements contained in and

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shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements of fact purported to be shown thereby.

Discharge~~General~~. When the liability of the City on all Bonds issued under and secured by this resolution has been discharged as provided in this Section 8, all pledges, covenants and other rights granted by this resolution to the owners of such obligations shall cease.

Comment [8]: Please do not type any text in this area.

Payment. The City may discharge its liability with reference to any Bond or installment of interest thereon which is due on any date by mailing to the registered owner of such Bond on or before that date a check or draft in a sum sufficient and providing proceeds available for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available for the payment thereof in full with interest accrued to the date of such mailing.

Prepayment. The City may also discharge its obligations with respect to any Bonds called for redemption on any date when they are prepayable according to their terms, by on or before that date depositing with the Registrar funds sufficient for the payment of the principal, interest and redemption premium, if any, which are then due; provided that notice of such redemption has been duly given as provided herein or irrevocably provided for.

Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 8 with the Registrar shall be irrevocable and held for the benefit of the owners of Bonds in respect of which such deposits have been made.

Continuing Disclosure.

(a) **Purpose and Beneficiaries.** To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit the original Purchaser and other participating underwriters in the primary offering of the Bonds to comply with amendments to Rule 15c2-12 promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12), relating to continuing disclosure (as in effect and interpreted from time to time, the "Rule"), which will enhance the marketability of the Bonds, the City hereby makes the following covenants and agreements for the benefit of the Owners (as hereinafter defined) from time to time of the Outstanding Bonds. The Sinking Fund and the Revolving Fund of the City are the only "obligated persons" in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made. The City has

complied in all material respects with any undertaking previously entered into by it under the Rule.

If the City fails to comply with any provisions of this Section 9, any person aggrieved thereby, including the Owners of any Outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 9, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder to the extent permitted by law. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 9 constitute a default under the Bonds or under any other provision of this resolution.

As used in this Section 9, "Owner" or "Bondowner" means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any "Beneficial Owner" (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used herein, "Beneficial Owner" means, in respect of a Bond, any person or entity which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 270 days after the end of each fiscal year of the City, commencing with the fiscal year ending June 30, 2005 the following financial information and operating data in respect of the City (the "Disclosure Information"):

(A) An extract from the financial statements of the City for such fiscal year, including the complete audit report and opinion of an independent certified public accountant or state legislative auditor thereon, containing the financial statements of the Sinking Fund and the Revolving Fund of the City including balance sheets as of the end of such fiscal year and a statement of operations and changes in fund balances for the fiscal year then ended, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time, or, if and to the extent such financial statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City, to the best of his or her knowledge;

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information for such fiscal year or the period most recently available of the type identified below, which information may be unaudited, but shall be certified as to accuracy and completeness in all material respects by the Financial Services Manager of the City to the best of his or her knowledge, which certification may be based on the reliability of information obtained from governmental or other third-party sources:

1. Information, for such fiscal year, relating to special assessments, collections, investment earnings and debt service payments, amounts on hand in the Revolving Fund and transfers in and out contained in the table under the captions "The Districts," "The Revolving Fund," "Other Outstanding Special Improvement District Bonds and the Revolving Fund," "Statement of Changes in Fund Balance of the Revolving Fund," "Special Assessment Collections" and "Future Financings" in the Official Statement.
2. Information, as of January 1 for the current tax year, relating to the appraised value and taxable value of taxable property in the Districts.
3. Identification of the ten property owners in the Districts with the largest assessments by name, type of property and taxable value.
4. Information, as of the most recent date available, regarding employment in the Billings MSA, the State of Montana and the United States of the type contained in the table under the caption "The City—Employment" in the Official Statement.
5. Information, as of the most recent date available, regarding the larger employers in the Billings MSA, identifying the employer and estimated number of employees of the type contained in the table under the caption "The City—Employment—Major Employees" in the Official Statement.
6. Information, as of the end of the most recent fiscal year, regarding the direct debt of the City, including debt evidenced by special improvement district bonds, overlapping general obligation debt and debt ratios of the type contained under the captions "The City—Direct Debt of the City," "—Overlapping General Obligation Debt," "—Debt Ratios for General Obligation Debt" and "—Additional Debt" in the Official Statement.

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date unaudited financial

statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated by reference, if it is updated as required hereby, from other documents, including official statements, which have been submitted to each of the repositories hereinafter referred to under subsection (c) or the SEC. If the document incorporated by reference is a final official statement, it must also be available from the Municipal Securities Rulemaking Board. The City shall clearly identify in the Disclosure Information each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be a Material Fact (as defined in paragraph (3) hereof), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 9 is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner, notice of the occurrence of any of the following events which is a Material Fact (as hereinafter defined):

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers, or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities; and
- (K) Rating changes.

As used herein, a “Material Fact” is a fact as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, a “Material Fact” is also an

event that would be deemed “material” for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

- (A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;
- (B) the amendment or supplementing of this Section 9 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);
- (C) the termination of the obligations of the City under this Section 9 pursuant to subsection (d); and
- (D) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) to the following entities by telecopy, overnight delivery, mail or other means, as appropriate:

(1) the information described in paragraph (1) of subsection (b), to each then nationally recognized municipal securities information repository under the Rule and to any state information depository then designated or operated by the State of Montana as contemplated by the Rule (the “State Depository”), if any; and

(2) the information described in paragraphs (2) and (3) of subsection (b), to the Municipal Securities Rulemaking Board and to the State Depository, if any.

Any filing under this Section 9 may be made solely by transmitting such filing to the Texas Municipal Advisory Council (“MAC”) as provided at <http://www.disclosureusa.org> unless the United States Securities and Exchange Commission has withdrawn the interpretative advice in its letter to MAC dated September 7, 2004.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 9 shall remain in effect so long as any Bonds are outstanding and not discharged under Section 8. Notwithstanding the preceding sentence, however, the obligations of the City under this Section 9 shall terminate and be without further effect as of any date on which the City delivers to the Registrar an opinion of Bond Counsel to the effect that, because of legislative action or final judicial or administrative actions or proceedings, the failure of the City to comply with the requirements of this Section 9 will not cause participating underwriters in the primary offering of the Bonds to be in violation of the Rule or other applicable requirements of the Securities Exchange Act of 1934, as amended, or any statutes or laws successor to thereto or amendatory thereof.

(2) This Section 9 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the recording officer of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that: (i) such amendment or supplement (a) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City or the type of operations conducted by the City, or (b) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule; (ii) this Section 9 as so amended or supplemented would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering of the Bonds, giving effect to any change in circumstances applicable under clause (i)(a) and assuming that the Rule as in effect and interpreted at the time of the amendment or supplement was in effect at the time of the primary offering; and (iii) such amendment or supplement does not materially impair the interests of the Bondholders under the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 9 is entered into to comply with the continuing disclosure provisions of the Rule and should be construed so as to satisfy the requirements of paragraph (b)(5) of the Rule.

(e) Further Limitation of Liability of City. In and to the extent the limitations of liability contained in subsection (a) are not effective, anything contained in this Section 9 to the contrary notwithstanding, in making the agreements, provisions and covenants set forth in this Section 9, the City has not obligated itself except with respect to the special assessments pledged to pay the Bonds and the covenant to utilize the Revolving Fund as permitted by law and described herein. None of the agreements or obligations of the City contained herein shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions whatsoever or constitute a pledge of the general credit or taxing powers of the City.

Effective Date: This resolution shall be in full force and effect from and after its passage.

Comment [9]: Please do not type any text in this area.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 13th day of June, 2005.

Mayor

Attest: _____
City

Clerk

(SEAL)

EXHIBIT A

[Form of Bonds]

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF YELLOWSTONE

CITY OF BILLINGS

POOLED SPECIAL IMPROVEMENT DISTRICT
REFUNDING BOND, SERIES 2005

(Special Improvement District Nos. 1327, 1332, 1334, 1335 and 1340)

Interest at the rate per annum specified below

payable on the

1st day of January and the 1st day of July
in each year, commencing January 1, 2006.

No.			\$
Interest Rate	Maturity	Date of Original Issue	CUSIP
		June 30, 2005	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

DOLLARS

FOR VALUE RECEIVED, THE CITY OF BILLINGS, Montana (the "City"), will pay, solely from the 2005 Refunding Pooled Special Improvement District Sinking Fund herein described, to the registered owner identified above, or registered assigns, the principal amount specified above on the maturity date specified above, as authorized by a resolution adopted by the City Council of the City on June 13, 2005 (the "Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from the most recent date to which interest has been paid or duly provided for until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Manager of the City. Principal of this Bond is payable upon presentation and surrender hereof to U.S. Bank National Association, Seattle, Washington, at its operations center in St. Paul, Minnesota, as Bond Registrar, Transfer Agent and Paying Agent, or its successor designated under the provisions of the Resolution described herein (the "Registrar"). Interest is payable by check or draft drawn on the Registrar on January 1 and July 1 of each year, commencing January 1, 2006, to the owner of this Bond as such appears of record in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month.. The principal of and interest on this Bond are payable in lawful money of the United States of America.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

This Bond is one of an issue in the aggregate principal amount of \$_____ (the `Bonds'), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate and maturity date. The Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of providing funds to refund in advance of their maturities certain valid outstanding special improvement district bonds of the City. The Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or assessment levied upon all property within the boundaries of each of the following special improvement districts of the City the bonds of which are refunded hereby: Special Improvement District Nos. 1327, 1332, 1334, 1335 and 1340 (the "Districts"). Such assessments constitute a lien against real estate within said respective Districts, and the Bonds are not general obligations of the City.

The Bonds are subject to mandatory redemption in order of stated maturities and within a stated maturity in \$5,000 principal amounts selected by lot or other manner deemed fair by the Registrar, on any interest payment date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the Sinking Fund, from the prepayment of assessments levied in the Districts for the redemption thereof, and in the manner provided for the redemption of the same. The Bonds are subject to redemption at the option of the City from other sources of funds available therefor on any interest payment date; provided, however, that the City hereby agrees that the Bonds are not to be called for redemption before July 1, 2010, from the proceeds of refunding special improvement district bonds or warrants. The redemption price is equal to the principal amount of the Bonds or portions thereof to be redeemed plus interest accrued thereon to the date of redemption, without premium. The date of redemption shall be fixed by the Financial Services Manager, who shall give notice by first class mail, postage prepaid, to the owner or owners of such Bonds at their addresses shown on the bond register, of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall not be less than thirty (30) days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease to accrue. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

The Bonds have been designated by the City as "qualified tax-exempt obligations" pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

As provided in the Resolution, and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender

hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance thereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication and Registration hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor and the City Clerk.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)
Mayor

Date:

(Facsimile Signature)
City Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Bonds delivered pursuant to the Resolution mentioned herein and this Bond has been registered as required by law on the books of the City as of the 30th day of June, 2005.

U.S. BANK, NATIONAL ASSOCIATION,
as Registrar

By _____
Authorized Representative

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --as tenants in common	UTMA _____ (Cust)	Custodian _____ (Minor)
TEN ENT --as tenants by the entireties	under Uniform Transfers to Minors	
JT TEN --as joint tenants with right of survivorship and not as tenants in common	Act _____	(State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder,

and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY OR
OTHER IDENTIFYING NUMBER OF
ASSIGNEE:

NOTICE: The signature to this assignment
must correspond with the name as it appears
upon the face of the within Bond in every
particular, without alteration, enlargement or
any change whatsoever.

/_____/

SIGNATURE**GUARANTEED**

Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Bond Registrar, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Bond Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT B

The special assessments for each of the Districts have been levied and are estimated to be outstanding (including installments that are delinquent) as of July 1, 2005 in the amounts set forth below, and such installments not yet delinquent are payable in equal semiannual installments commencing November 30, 2005 and on each November 30 and May 31 thereafter until the final payment date noted below (if such date is November 30, the installment payable on that date is in a principal amount equal to twice that of the previous installments):++++

Special Improvement District No.	Amount of Outstanding Assessments	Final Payment Date
1327	\$204,479.03	May 31, 2011
1332	232,232.60	May 31, 2012
1334	274,615.48	May 31, 2012
1335	110,083.53	May 31, 2014
1340	463,864.95	May 31, 2015

[\(Back to Consent Agenda\)](#)



V

CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

SUBJECT: Resolution Relating to \$2,520,000 Pooled Special Improvements Districts Bonds, Authorizing the Issuance and Calling for the Public Sale Thereof

DEPARTMENT: Administrative Services

PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved Special Improvement District (SID) projects and has awarded construction contracts for SID 1358, 1365, 1366 and 1371. The following resolution authorizes the sale of \$2,520,000 in bonds for financing of the above stated project.

FINANCIAL IMPACT:

SID 1358-Lake Hills Subdivision Improvements	\$ 1,737,000
SID 1365-Lake Hills Drive Improvements	\$ 46,000
SID 1366-Rimrock West Park & Storm Drain	\$ 668,000
SID 1371-Shiloh Road Improvements	\$ 69,000

RECOMMENDATION

It is recommended that the City Council approve the attached resolution.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A - Resolution prepared by Dorsey & Whitney

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 a Resolution entitled: "RESOLUTION RELATING TO \$2,520,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2005 (SPECIAL IMPROVEMENT DISTRICT NOS. 1358, 1365, 1366, AND 1371); AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on June 13, 2005, 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 Council Members voted in favor thereof: _____

or were absent: _____.

WITNESS my hand and seal officially this ____ day of June, 2005.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$2,520,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2005 (SPECIAL IMPROVEMENT DISTRICT NOS. 1358, 1365, 1366, AND 1371); AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), special improvement districts, designated as Special Improvement District Nos. 1358 ("District No. 1358"), 1365 ("District No. 1365") 1366 ("District No. 1366"), and 1371 ("District No. 1371") (collectively, the "Districts"), for the purpose of financing costs of certain public improvements of special benefit to the properties within the Districts (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds of the City drawn on the Districts (the "Bonds"), the creation and administration of the Districts, and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Districts is \$2,520,000. The costs of the Improvements are to be paid from the proceeds of the Bonds, which are to be payable primarily from special assessments to be levied against property in the Districts, which property will be specially benefited by the Improvements in an amount not less than \$2,520,000.

(b) It is necessary that Bonds be issued and sold in an aggregate principal amount of \$2,520,000 to finance the costs of the Improvements within each of the Districts, including incidental costs, described in Subsection (a). The costs of the Improvements are currently estimated and financed as follows:

District No. 1358

Construction	\$1,509,399.28
Administration	288,795.91
City Finance Fee	43,425.00
Engineering Fee	60,795.00
Revolving Fund Deposit	86,850.00
Bond Discount	34,740.00
<u>Costs of Issuance</u>	<u>29,529.00</u>
Subtotal	\$2,053,534.19
<u>Less Contributions</u>	<u>- 316,534.19</u>
Total	\$1,737,000.00

District No. 1365

Construction	\$174,423.49
Administration	31,130.24
City Finance Fee	1,150.00
Engineering Fee	1,610.00
Revolving Fund Deposit	2,300.00
Bond Discount	1,610.00
<u>Costs of Issuance</u>	<u>782.00</u>
Subtotal	\$213,005.73
<u>Less Contribution from Property Owners</u>	<u>- 167,005.73</u>
Total	46,000.00

District No. 1366

Construction	\$449,204.00
Engineering Fee	120,000.00
Advance Costs	600.00
PRPL Fees	23,380.00
City Finance Fee	16,700.00
Revolving Fund Deposit	33,400.00
Bond Discount	13,360.00
<u>Costs of Issuance</u>	<u>11,356.00</u>
Total	\$668,000.00

District No. 1371

Construction	\$2,305,781.09
City Administration/Finance Fees	1,725.00
Engineering	2,415.00
Revolving Fund Deposit	3,450.00
Bond Discount	2,415.00
<u>Costs of Issuance</u>	<u>1,173.00</u>
Subtotal	\$2,316,959.29
<u>Less Contributions</u>	<u>- 2,247,959.09</u>
Total	69,000.00

(c) The City is authorized pursuant to Montana Code Annotated, Section 7-12-4193, to issue and sell special improvement district bonds of more than one district in a single offering on a pooled basis upon a determination that such pooling is in the best interests of the Districts and the City.

(d) The City is further authorized by Montana Code Annotated, Section 7-12-4204(1) to sell the Bonds at a price less than the principal amount thereof, but including interest thereon to the date of delivery, if this Council determines that such sale is in the best interests of the Districts and the City.

Section 2. Determinations of Public Interest in Allowing Bond Discount and Permitting Pooling of Bonds. Pursuant to the authority described in Section 1, this Council hereby determines that the issuance and sale of the Bonds in a pooled single offering for the following Special Improvement Districts in the respective principal amounts set forth below:

<u>District No.</u>	<u>Principal Amount</u>
1358	\$1,737,000
1365	46,000
1366	668,000
<u>1371</u>	<u>69,000</u>
Total:	\$2,520,000

is in the best interest of each of the Districts and the City and will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus help to lower interest rates on the Bonds and because a single issue will reduce the costs of issuance. This Council further determines to fix the minimum price for the Bonds at \$2,477,160.00 (98.3% of par), plus interest accrued thereon to the date of delivery. Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of each of the Districts and the City.

Section 3. Findings and Determination To Pledge the Revolving Fund. In the Resolutions of Intention To Create Special Improvement District Nos. 1358, 1365, 1366, and 1371, adopted on March 22, 2004, March 22, 2004, July 25, 2004, and June 14, 2004, respectively, this Council found it to be in the public interest, and in the best interest of the City and the Districts, to secure payment of principal of and interest on the Bonds by the Revolving Fund and authorized the City to enter into the undertakings and agreements authorized in the Act in respect of the Bonds, based on the factors required to be considered under Section 7-12-4225(4) of the Act. Those findings and determinations were ratified and confirmed in the resolutions creating Special Improvement District Nos. 1358, 1365, 1366, and 1371, adopted by this Council on April 12, 2004, April 12, 2004, August 23, 2004, and July 12, 2004, respectively, and are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of Pooled Special Improvement District Bonds, Series 2005 (Special Improvement District Nos. 1358, 1365, 1366, and 1371) of the City in the aggregate principal amount of \$2,520,000 (the "Bonds") for the purpose of financing the Improvements. The Bonds shall be dated, as originally issued, as of August 1, 2005, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2006, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2006	\$180,000	2012	\$210,000
2007	175,000	2013	220,000
2008	180,000	2014	230,000
2009	185,000	2015	235,000
2010	195,000	2016	250,000
2011	200,000	2017	260,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine at the time of the sale, and the principal of and interest on the Bonds shall be payable annually in equal payments on each July 1, commencing January 1, 2006, and concluding July 1, 2017, unless the Bonds are earlier redeemed. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

Bidders will have the option of combining the Bonds maturing on and after 2006 through and including 2011 and on and after 2012 through and including 2017 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

The Bonds shall be issuable only as fully registered bonds and shall be executed by the manual or facsimile signatures of the Mayor, Deputy City Administrator and the City Clerk. The Bonds shall be secured by the Revolving Fund.

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale until 12:00 noon, M.T., on July 11, 2005, in accordance with the Notice of Sale hereinafter prescribed. At a regular meeting of this Council on July 11, 2005, at 6:30 P.M., M.T, the City will award the sale of the Bonds. The City Clerk is authorized and directed to cause notice of the sale to be published, as required by Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106, in *The Billings Times* once each week for two successive weeks preceding the week which contains the date of sale. The notice of sale shall be published and mailed in substantially the form set forth as Exhibit A to this resolution and this Council hereby adopts the terms and conditions set forth in such notice of sale as the terms and conditions of the sale of the Bonds.

Section 6. Continuing Disclosure. In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds, to provide annual reports of specified information and notice of the occurrence of certain events, if material. The Sinking Fund and Revolving Fund of the City are the only “obligated persons” in respect of the Bonds within the meaning of the Rule for the purposes of disclosing information on an ongoing basis. A description of the undertaking is set forth in the Official Statement. Failure of the City to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds.

Section 7. Official Statement. The Financial Services Manager and other officers of the City are hereby authorized and directed to prepare on behalf of the City an official statement to be distributed to potential purchasers of the Bonds. Such official statement shall contain the terms and conditions of sale set forth in the notice of sale referred to in Section 5 and such other information as shall be advisable and necessary to describe accurately the City and the security for, and terms and conditions of, the Bonds. The Financial Services Manager is authorized on behalf of the City to deem the official statement near "final" as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934.

Passed by the City Council of the City of Billings, Montana, this 13nd day of June, 2005.

Mayor

Attest: _____ **City** **Clerk**

EXHIBIT A

NOTICE OF BOND SALE

\$2,520,000 Pooled Special Improvement District Bonds,
Series 2005
(Special Improvement District Nos. 1358, 1365, 1366, and 1371)

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City of Billings, Montana (the "City"), will sell to the highest and best bidder for cash, as evidenced by sealed bids, the above-described Bonds drawn against the funds of the following special improvement districts in the respective principal amounts set forth below:

<u>District No.</u>	<u>Principal Amount</u>
1358	\$1,737,000
1365	46,000
1366	668,000
<u>1371</u>	<u>69,000</u>
Total:	\$2,520,000

Sealed bids for the purchase of the Bonds will be received in the City Clerk's office, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by the City by electronic transmission through Parity™, in either case until 12:00 noon, M.T., on Monday, July 11, 2005, at which time the bids will be opened and tabulated. The City Council of the City will meet at their regular meeting at 6:30 P.M., M.T., on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids and to award the sale of the Bonds.

Bids may be submitted by facsimile to the City Clerk at (406) 657-8390 or to Springsted Incorporated at (651) 223-3046 until 12:00 noon, M.T., on Monday, July 11, 2005.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of Special Improvement District Nos. 1358, 1365, 1366, and 1371 (collectively, the "Districts"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended. The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the respective Districts benefited by the Improvements to be undertaken therein or therefor. The special assessments are payable in equal, semiannual installments over a 12-year term, with unpaid installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The Bonds are further secured by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"). The City will agree to make a loan from the Revolving Fund to the Sinking Fund established for the Districts to make good any deficiency then existing in the principal and interest subaccounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City's general fund to the extent authorized by law.

Date and Type

The Bonds will be dated, as originally issued, as of August 1, 2005, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Redemption

If issued as serial bonds, the Bonds shall mature, subject to redemption, on July 1 in the following years and amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2006	\$180,000	2012	\$210,000
2007	175,000	2013	220,000
2008	180,000	2014	230,000
2009	185,000	2015	235,000
2010	195,000	2016	250,000
2011	200,000	2017	260,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine, and the principal of the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2006, and continuing through July 1, 2017, subject to prior redemption. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

Bidders will have the option of combining the Bonds maturing on and after 2006 through and including 2011 and on and after 2012 through and including 2017 into one or more

term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

The Bonds shall be issuable only as fully registered bonds and shall be executed by the manual or facsimile signatures of the Mayor, Financial Services Manager and the City Clerk. The Bonds shall be secured by the Revolving Fund.

Book Entry

The Bonds will be issued by means of a book entry system with no physical distribution of Bonds made to the public. The Bonds will be issued in fully registered form and one Bond, representing the aggregate principal amount of the Bonds maturing in each year, will be registered in the name of Cede & Co. as nominee of The Depository Trust Company (“DTC”), New York, New York, which will act as securities depository of the Bonds. Individual purchases of the Bonds may be made in the principal amount of \$5,000 or any multiple thereof of a single maturity, through book entries made on the books and records of DTC and its participants. Principal and interest are payable by the registrar to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to participants of DTC will be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants will be the responsibility of such participants and other nominees of beneficial owners. The purchaser, as a condition of delivery of the Bonds, will be required to deposit the Bonds with DTC.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the Sinking Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Districts or from the transfer of surplus money from the Construction Subaccount to the Principal Subaccount, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the Sinking Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under “Mandatory Redemption” on any interest payment date; provided, however, the Bonds shall not be called for redemption before July 1, 2011, from the proceeds of refunding special improvement district bonds or warrants. The redemption price shall equal the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Selection of Bonds for Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of the stated maturities thereof. If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in \$5,000 principal amounts selected by the Registrar by lot or other manner it deems fair.

Interest Payment Dates, Rates

Interest will be payable each January 1 and July 1, commencing January 1, 2006, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 5/100 of 1%. No supplemental or "B" coupons or additional interest certificates are permitted. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent and Paying Agent

The City will designate and contract with a suitable bank or trust company to act as bond registrar, transfer agent and paying agent (the "Registrar"). The bond register will be kept, transfers of ownership will be effected and principal of and interest on the Bonds will be paid by the Registrar. The City will pay the charges of the Registrar for such services. The City reserves the right to remove the Registrar and to appoint a successor.

Delivery

Within 45 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the authorized denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of bond counsel hereinafter described, an arbitration certification and a certificate verifying that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing. As a condition of delivery, the purchaser must certify to the City in writing the initial reoffering prices of the Bonds.

Qualified Tax-Exempt Obligations

The Bonds will be designated by the City as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the Code), and financial institutions described in Section 265(b)(5) of the Code may treat the Bonds for purposes of Sections 265(b)(2) and 291(e)(1)(B) of the Code as if they were acquired on August 7, 1986.

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion from gross income for federal income tax purposes and Montana individual income tax purposes of the interest thereon will be furnished by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as Bond Counsel. The legal opinion will be provided at closing. The legal opinion will state that the Bonds are valid and binding special obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy,

reorganization, moratorium or creditors' rights; however, Dorsey & Whitney LLP will not express an opinion as to the enforceability of the agreement of the City to make loans or advances from the Revolving Fund to the Sinking Fund as may be required to pay principal and interest on the Bonds.

Type of Bid and Good Faith Deposit

Sealed or electronic bids for not less than \$2,477,160.00 (98.3% of par) and accrued interest on the principal sum of \$2,520,000 must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional. Bids may be transmitted electronically through Parity™ in accordance with these terms and conditions.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the "Deposit") in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$25,200 payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the City Clerk. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the Financial Services Manager prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City) not later than 1:00 P.M., M.T., on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Award

The bid authorizing the lowest net interest cost (total interest on all Bonds from August 1, 2005, to their maturities, less any premium or plus any discount) will be deemed the most favorable. In the event that two or more bids state the lowest net interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The Council will consider sealed bids or bids transmitted electronically through the Parity™ system. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

Electronic Transmission

To the extent any instructions or directions set forth in Parity™ conflict with this Notice of Sale, the terms of this Notice of Sale shall control. For further information about Parity™, potential bidders may contact the Financial Advisor, Springsted Incorporated at (651) 223-3000 (Bond Services), or Parity™ at (212) 404-8102 (Client Services). In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the City Clerk, Marita Herold, at facsimile number (406) 657-8390 (phone (406) 657-8210).

Official Statement

The City will prepare an Official Statement relating to the Bonds which the City will deem, for purposes of SEC Rule 15c2-12, to be final as of its date. The City will deliver, at closing, a certificate executed by the Mayor, Financial Services Manager and the City Clerk to the effect that, to the best of their knowledge, as of the date of closing, the information contained in the Official Statement, including any supplement thereto, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading; provided that no comment will be made with respect to any information provided by the successful bidder for inclusion in any supplement to the Official Statement.

By submitting a bid for the Bonds, the successful bidder agrees: (1) to disseminate to all members of the underwriting syndicate copies of the Official Statement, including any supplements prepared by the City, (2) to file promptly a copy of the Official Statement, including any supplement prepared by the City, with a nationally recognized municipal securities repository, and (3) to take any and all other actions necessary to comply with applicable rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board governing the offering, sale and delivery of the Bonds to ultimate purchasers.

Within seven business days after the sale the City will furnish to the successful bidder without charge up to 75 copies of the final Official Statement relating to the Bonds. The successful bidder must notify the Financial Services Manager in writing within five business days after the award of sale of the Bonds if it requires additional copies of the Official Statement. The cost of additional copies shall be paid by the successful bidder.

Continuing Disclosure

In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds, to provide annual reports of specified information and notice of the occurrence of certain events, if material. The Sinking Fund and Revolving Fund of the City are the only "obligated persons" in respect of the Bonds within the meaning of the Rule for the purposes of disclosing information on an ongoing basis. A description of the undertaking is set forth in the Official Statement. Failure of the City to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds.

CUSIP Numbers

The City will assume no fee or obligation for the assignment or printing of CUSIP numbers on the Bonds or for the correctness of any numbers printed thereon, but will permit such numbers to be assigned and printed at the expense of the purchaser, if the original purchaser waives any delay in delivery occasioned thereby.

Information for bidders and bidding forms may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Dated: June 13, 2005.

BY ORDER OF THE CITY COUNCIL

City Clerk
City of Billings, Montana

Publish: June 30, 2005
July 7, 2005

[\(Back to Consent Agenda\)](#)



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13th, 2005

TITLE: Resolution Of Intent To Expand Park Maintenance District No. 4012

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: The existing Park Maintenance District No. 4012 contains 183,823 square feet (4.22 acres) of dedicated parkland. The expansion of Park Maintenance District No. 4012 to include Village West Subdivision, 1st and 2nd Filings will not add park or public area to the district. Therefore, there will be no additional development or improvement of park area. As a condition of the Village West Subdivision, 2nd Filing final plat approval, the lots must be included in the park maintenance district. The Resolution of Intent to Expand the District is the first step in the process to include all lots of Village West Subdivision, 1st and 2nd Filings in Park Maintenance District No. 4012. It provides for notification of the property owners of the Intent, schedules a public hearing and City Council consideration of the Resolution to Create the Expanded PMD No. 4012.

ALTERNATIVES ANALYZED:

- Do not expand Park Maintenance District No. 4012
- Expand the Park Maintenance District to include all lots of Village West Subdivision, 1st and 2nd Filings, which will be assessed for a portion of the cost of maintaining the existing park areas of the district. (Recommended)

FINANCIAL IMPACT: There is no additional cost associated with maintenance in the expansion area. The expansion area's portion of the maintenance cost for the existing parkland is estimated to be \$5,589.42 for the FY 2006, to be assessed in November of 2005. The assessment rate for this amount is \$0.0057 per square foot of property in District 4012. The assessment for the added lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4012 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the July 11th, 2005, City Council meeting.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS:

- A. Resolution of Intent to Create Park Maintenance District No. 4012 (Including Exhibits "A" through "D").

INTRODUCTION

Approval of the Resolution of Intent to Expand Park Maintenance District No. 4012 is the first step in the process to include all lots of Village West Subdivision, 1st and 2nd Filings, in Park Maintenance District No. 4012.

PROCEDURAL HISTORY

- The original Circle 50 Subdivision Maintenance District 4012 was created through Resolution to Create District Number 99-17481 approved at the July 12th, 1999, City Council meeting to provide for the maintenance of approximately 4.22 acres of park and public area in Circle 50 Subdivision, installed in accordance with the Subdivision Improvement Agreement for the subdivision.
- The Subdivision Improvements Agreement approved for the annexation and development of Village West Subdivision requires that the subdivision become a part of Park Maintenance District 4012 along with the Circle 50 Subdivision to provide maintenance for Country Manor Park and the Village West street landscaping along 38th Street West.
- The Resolution of Intent To Expand PMD 4012 provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and provides for a protest period from June 17th through July 1st, 2005, and sets a date for a Public Hearing and Council consideration of the Resolution to Expand the district at the July 11th, 2005, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. This assures that the parks are well maintained without increasing the demand on the expenditures of the city general fund and relieves the pressure on existing developed parks. Village West Subdivision, 1st and 2nd Filings, provided cash-in-lieu to fulfill the required parkland dedication. The Village West Subdivision, 1st and 2nd Filings, Subdivision Improvements Agreements required the lots to be added to the existing Park Maintenance District 4012. The proposed expanded maintenance district includes 91 additional lots. There are Waivers of Protest on file for the formation of the park maintenance district for all lots within the Village West Subdivision, 1st and 2nd Filings.

Approval of the Resolution of Intent to Create Expanded Park Maintenance District No. 4012 for Village West Subdivision, 1st and 2nd Filings is the first step in the creation process.

ALTERNATIVES ANALYSIS

- Do not expand the maintenance district at this time and maintain the park improvements as they are currently.

- Expand the Park Maintenance District now to assure assessments can be collected from the expanded lots in November 2005. The Village West Subdivision, 1st and 2nd Filings assessments for park maintenance are discussed herein. Staff recommends this alternative.

STAKEHOLDERS

- The developer has agreed to expand the existing Park Maintenance District to include all lots of Village West Subdivision, 1st and 2nd Filings.
- The residents in the subdivision will be made aware of the assessment for park maintenance when they purchase a lot or home, and/or a public notice will be advertised and mailed to all property owners within the expansion area informing them of the Intention to Expand Park Maintenance District No. 4012 and of the protest process and Public Hearing scheduled for the July 11th, 2005, City Council meeting.
- Few protests are received annually for the Park Maintenance District assessments that are levied throughout the city.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city General Fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2006 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division O & M budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4012 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the July 11th, 2005, City Council meeting.

ATTACHMENTS:

- A. Resolution of Intent to Create Park Maintenance District No. 4012 (Including Exhibits "A" through "D").

RESOLUTION NUMBER 05-
A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY
COUNCIL TO EXPAND THE BOUNDARIES OF THE EXISTING SPECIAL
IMPROVEMENT MAINTENANCE DISTRICT NO. 4012 FOR THE PURPOSE
OF MAINTAINING THE EXISTING AND FUTURE PARK
IMPROVEMENTS IN CIRCLE 50 SUBDIVISION TO INCLUDE VILLAGE
WEST SUBDIVISION.

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana as follows:

Section 1. Proposed Expansion Of Extended Special Improvement Maintenance District No. 4012: Intention to Expand the Boundaries of Existing Special Improvement Maintenance District. The City proposes to maintain certain improvements to benefit certain property located in the City of Billings, Montana. The improvements consist of **the existing and future park improvements located in Circle 50 Subdivision plus the future park and boulevard improvements located in the proposed Village West Subdivision installed by the developer and as part of a future construction phase of the subdivision**, as more particularly described in Section 5. It is the intention of the Billings City Council to expand the boundaries of the Extended Special Improvement Maintenance District No. 4012, created and established in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the maintenance costs for the landscaping and other improvements. The estimated annual costs for the maintenance of the improvements to be set by the Resolution of the Council each year.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Extended Special Improvement Maintenance District No. 4012 of the City of Billings, Montana.

Section 3. Boundaries of District. The boundaries of the District are to be extended to include the property depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof). The boundary of the extended District is more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundary is designated and confirmed as the boundary of the District. A listing of each property to be added to the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A", "B" and "C" are hereby declared to be the Extended Special Improvement Maintenance District and the territory which will benefit and be benefited by the maintenance of the existing and future park improvements in Circle 50 Subdivision to include the Village West Subdivision, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: landscaping, trees, irrigation systems, irrigation system water services, and other park equipment and improvements installed by the developer, Parks Department, and/or as part of a future Special Improvement District.

Section 6. Assessment Methods: Property To Be Assessed. All properties within the District are to be assessed for a portion of the costs of maintaining the existing and future park improvements in Circle 50 Subdivision to include the Village West Subdivision, as specified herein. The costs of maintaining the Improvements shall be assessed against the benefiting property, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.

Section 7. Assessable Area. All properties in the District will be assessed for their proportionate share of the costs of maintaining the existing and future park improvements in Circle 50 Subdivision to include the Village West Subdivision. The total assessable area to be added to the District is **978,777** square feet bringing the total assessment area within the District to **4,018,829** square feet. The costs of maintaining the Improvements per square foot of assessable area for the current year shall be **\$0.0057** per square foot as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

Section 8. Payment of Assessments. The assessments for the costs of maintaining the existing and future park improvements in Circle 50 Subdivision to include the Village West Subdivision shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing: Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property being added to Extended Special Improvement Maintenance District No. 4013 subject to assessment and taxation for the cost and expense of maintaining the existing and future park improvements in Circle 50 Subdivision to include the Village West Subdivision may make and file with the City Clerk until **5:00 p.m. mdt**, on the expiration date of said 15-day period, **July 1, 2005**, written protest against being included in Extended Special Improvement Maintenance District No. 4012, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on **Monday, July 11, 2005, at 6:30 p.m., mdt**, in the Council Chambers, located on the Second Floor of the Police Facility at 220 North 27th Street, in Billings, Montana.

Section 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 the Resolution in the Billings Times, a newspaper of general circulation in the county on **June 16, and June 23, 2005**, 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 that is being added to Extended Special Improvement Maintenance District No. 4012 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 first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this **13th day of June, 2005.**

THE CITY OF BILLINGS

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk

[\(Back to Consent Agenda\)](#)



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Resolution of Intent to Create - Park Maint. District No. 4027, Ironwood Estates Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: Ironwood Estates Subdivision contains approximately 47.84 acres of dedicated park and public open space. It includes 20-foot wide trailway strips throughout the subdivision, which provide connectivity between the many large public park areas. The development and improvement of the park will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements. As a condition of the Ironwood Estates Subdivision, 3rd Filing final plat approval, the lots must establish a park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Ironwood Estates Subdivision in Park Maintenance District No. 4027.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District now to assure assessments can be collected in November 2005, to pay costs of maintenance as the park is developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create the Park Maintenance District at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$22,830.00 for the first year. The assessment rate for this amount is \$0.00421 per square foot of property in District 4027. The assessment for the lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4027 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the July 11th, 2005, City Council meeting.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

- A. Resolution of Intent to Create Park Maintenance District No. 4027 (Including Exhibits "A" through "D").

INTRODUCTION

Approval of the Resolution of Intent to Create Park Maintenance District No. 4027 for the maintenance of Ironwood Estates Subdivision public areas is the first step in creating the Park Maintenance District by setting a date for the Public Hearing and consideration of the Resolution to Create the district, and by notifying the property owners included within the district of the intended action.

PROCEDURAL HISTORY

- The Ironwood Estates Subdivision, 1st through 3rd Filings have been approved and filed. The final 4th Filing of Ironwood Estates Subdivision is being submitted to the Planning Department June 1st, 2005.
- The Master Plan for the construction of the public area improvements was developed with the PRPL Department and adopted by the City Council as Resolution 04-18118 on April 26th, 2002.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the July 11th, 2005, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Ironwood Estates Subdivision, Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots included in Blocks 1 through 12 of Ironwood Estates Subdivision. Said lots shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Ironwood Estates Subdivision.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4026 for Ironwood Estates Subdivision is the first step in the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the July 11th, 2005, City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2005, to pay costs of maintenance for the spring and summer of 2006 as the park development commences. The approved Subdivision Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Ironwood Estates Subdivision.
- The 223 lots initially included in the PMD in Ironwood Estates Subdivision consist of single-family residences. The residents and property owners have agreed to the development. Many are strongly supportive of the parks and funding its ongoing maintenance. The rapid build out that is taking place is attributed to the fact that the open space and park amenities will be quickly developed.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2006 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4027 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the July 11th, 2005, City Council meeting.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS:

A. Resolution of Intent to Create Park Maintenance District No. 4027 (Including Exhibits "A" through "D").

RESOLUTION NO. 05-

A RESOLUTION DECLARING IT TO BE THE INTENTION

OF THE CITY COUNCIL TO CREATE A PARK MAINTENANCE DISTRICT FOR THE PURPOSE OF MAINTAINING THE PUBLIC AREAS AND ASSOCIATED TRAIL SYSTEM AS IDENTIFIED AND CONSTRUCTED IN

IRONWOOD ESTATES SUBDIVISION

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

Section 1. Proposed Park Maintenance District; Intention To Create Park Maintenance District.

The City proposes to maintain certain special improvements to benefit certain property located in the City of Billings, Montana. The Improvements consist of native grasses, trees, shrub, trails, drainageways, irrigation system, and other public area improvements that may be identified in the future, as more particularly described in Section 5. It is the intention of the Billings City Council to create and establish in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a special improvement maintenance district (the "Special Improvement Maintenance District") for the purpose of financing the maintenance costs for the hardscaping, landscaping, drainageways, weed control, and other portions of the improvements made with the development of Ironwood Estates Subdivision. The estimated annual costs for the maintenance of the special improvements to be set by Resolution of the Council each year.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Park Maintenance District No.4027 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A" and "C" are hereby declared to be the Park Maintenance District and the territory which will benefit and be benefited by the maintenance of the Ironwood Estates Subdivision public area improvements, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: native grasses, trees, shrubs, trails, irrigation system, drainage ways, storm detention facilities, street lighting and signage, weed control, pest control, and other park equipment and improvements installed by the developer and

the Parks Department located in the public area of Ironwood Estates Subdivision, as shown on Exhibit "A" attached hereto.

Section 6. Assessment Methods; Property To Be Assessed. All eligible properties within the District are to be assessed for a portion of the costs of maintaining the Ironwood Estates Subdivision public area improvements, as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the Ironwood Estates Subdivision, Public Area Improvements.

Section 7. Assessable Area. All eligible properties in the District will be assessed for their proportionate share of the costs of maintaining the Ironwood Estates Subdivision public area improvements. The total square footage in the District to be assessed is **5,419,282** square feet. The costs of maintaining the Improvements for the first year shall be \$0.00421 per square foot as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

Section 8. Payment of Assessments. The assessments for the costs of maintaining the Ironwood Estates Subdivision, Public Area Improvements shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed District subject to assessment and taxation for the cost and expense of maintaining the Ironwood Estates Subdivision public area improvements may make and file with the City Clerk until **5:00 p.m. M.D.T., July 1, 2005** on the expiration date of said 15-day period, written protest against the proposed Special Improvement Maintenance District No. 4027, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on **Monday, July 11, 2005, at 6:30 p.m. M.D.T.** in the Council Chambers, located on the Second Floor of the City Hall at 220 North 27th Street, in Billings, Montana.

Section 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 **June 16, and June 23, 2005**, 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 Extended 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 first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____ day of _____, 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Harold, CMC, CITY CLERK

[\(Back to Consent Agenda\)](#)



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Second Reading of an Ordinance expanding Ward IV
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Nicole M. Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: On May 9, 2005, the City Council adopted Resolution No. 05-18262 annexing a portion of the W1/2,W1/2,SW1/4 Section 32, T. 1N, R. 25 E., containing approximately 40.5 acres located on the east side of 54th Street West, north of Grand Avenue (Annexation #05-02). The property must be added to one of the City's election wards. This ordinance will add the property to Ward IV. On May 23, 2005, the City Council passed the ordinance on first reading.

ALTERNATIVES ANALYZED: City Code requires the Council to approve an ordinance to amend Ward boundaries in the event of annexations that change the configuration of City limits (Sec. 11-102(c), BMCC). Council may approve or defer the approval of the Ward boundary change.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council hold approve the second reading of this ordinance that adds property to City Ward IV.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward IV the following described real property:

A tract of Unplatted land that is the W1/2 W1/2 SW1/4 of Section 32 T.1N., R.25E., P.M.M., Yellowstone County, Montana; Being bounded on the south side by Certificate of Survey No 1877, on the west side by Amended Plat of Lot 65A of the Amended Lots 65-68, 93-100 and 125-128 of Sunny Cove Fruit Farms, and on the north by Certificate of Survey No 1952.

Containing 40.568 gross and net acres, more or less.

(Annexation #05-02) See Exhibit "A" Attached

2. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 23rd day of May, 2005.

PASSED by the City Council on the second reading this 13th day of June, 2005.

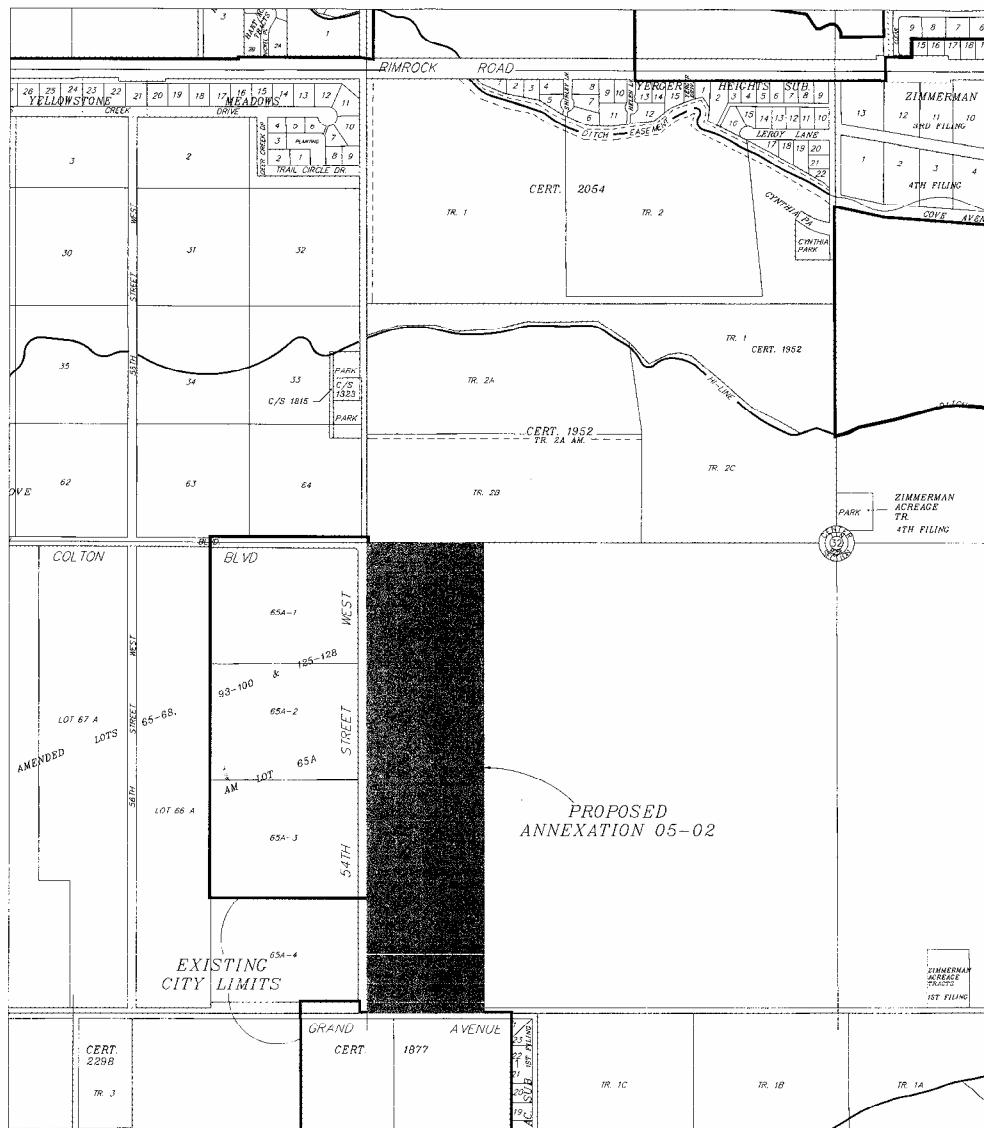
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



[\(Back to Consent Agenda\)](#)

Z

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Second Reading of an Ordinance expanding Ward V

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On May 9, 2005, the City Council adopted Resolution No. 05-18263 annexing approximately 25 acres located south the intersection of 52nd Street West and Grand Avenue (Annexation #05-03). The property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V was held on May 23, 2005. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds property to City Ward V.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD V PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

3. **AMENDMENT.** Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

A tract of land situated in the E1/2 NW1/4 of Section 4, T.1S., R.25E., P.M.M.,

Yellowstone County, Montana, more particularly described as:

Certificate of Survey 1877, Tract 3, Recorded April 20, 1979, Under Document

No. 1125965, Records of Yellowstone County, Montana; including all adjacent

right-of-way of 52 Street West and Broadwater Avenue, containing 24.828 gross

acres and 22.763 net acres, more or less. See Exhibit "A" Attached.

(Annexation (# 05-03)

4. **CERTIFICATION.** Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. **REPEALER.** All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 23rd day of May, 2005.

PASSED by the City Council on the second reading this 13th day of June, 2005.

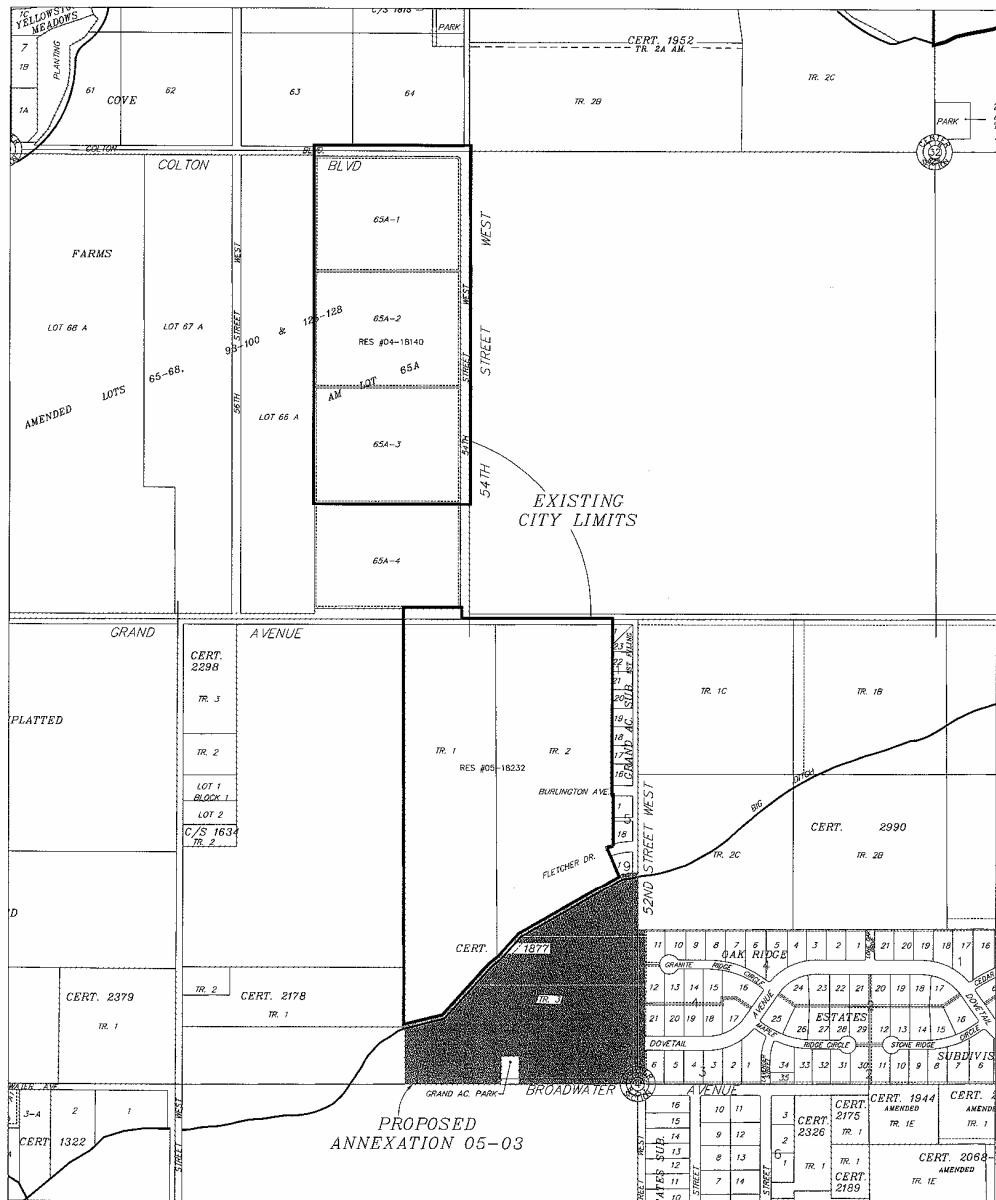
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT "A"



(Back to Consent Agenda)

AA

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: McKay Acres Subdivision Amended, Amended Lot 18B Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On May 2, 2005, the owner of this property, Larry Larsen, applied for preliminary plat approval for the McKay Acres Amended, Amended Lot 18B. This minor subdivision would create 3 residential lots to be known as Lots 18B-1, 18B-2, and 18B-3. The City Council must act on the preliminary minor plat within 35 working days of its submittal.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using criteria that are set out in those laws. Those review criteria are found in Attachment D of this report. The City may not unreasonably restrict an owner's ability to develop his land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to approve, conditionally approve or deny the preliminary plat.

FINANCIAL IMPACT: There should be no direct financial impact on the City if the preliminary plat is approved.

RECOMMENDATION

Planning staff recommends that Council conditionally approve the preliminary plat of McKay Acres Subdivision Amended, Amended Lot 18B and adopt the findings of fact as stated in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A: Plat
- B: Site photos
- C: Mayor's approval letter
- D: Findings of Fact

INTRODUCTION

McKay Acres Subdivision Amended, Amended Lot 18B is a preliminary minor plat that would create three lots for residential use. The subject property is zoned Residential-9600 and Lot 18B-1 has an existing house on it. The subject property is located on the north side of Pryor Lane where it is intersected by Orchard Drive.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on May 2, 2005.
- The City Council will consider the application at its meeting on June 13, 2005
- The City Council's decision can be appealed to the District Court

BACKGROUND

General location:	2029 Pryor Lane
Legal Description:	Lot 18B, McKay Acres Subdivision, Amended
Subdivider/Owner	Larry Larsen
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-9600
Surrounding zoning:	R-9600
Existing land use:	Residential
Proposed land use:	Residential
Gross area:	54,640 square feet.
Lots:	3
Max.	34,520 square feet
Min.	9,600 square feet
Dedications:	None – previously met

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects from a subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments, utilities and other agencies have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as Attachment D, discuss the potential negative effects that were identified by reviewers and the following conditions are recommended as measures that will mitigate them.

RECOMMENDED CONDITIONS

1. To mitigate impacts on local services, the following amendments shall be made to the Subdivision Improvements Agreement prior to final plat approval:
 - SIA Section V.—first paragraph shall be deleted.
 - SIA Section V.—add the following statements: “Separate water and sanitary sewer services are required for each lot out to the water main and sanitary sewer fronting the property in Pryor Lane. The location of the water and sanitary sewer services for the existing residence shall be determined and an easement for them shall be placed on the final plat to avoid having a new house built on top of them.”
2. To mitigate impacts on local services, lot address assignments shall be made by City Fire prior to final plat approval and shall appear on the final plat.
3. To ensure that the final plat will comply with local subdivision regulations and state law:
 - Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Department to clarify the documents and bring them into standard acceptable formats.
 - The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting for minor plats but nearby property owners may attend the Council meeting. The Department received no public comments or questions about the subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy and the 2000 Transportation Plan. Specific conformance is discussed in the Findings of Fact.

RECOMMENDATION

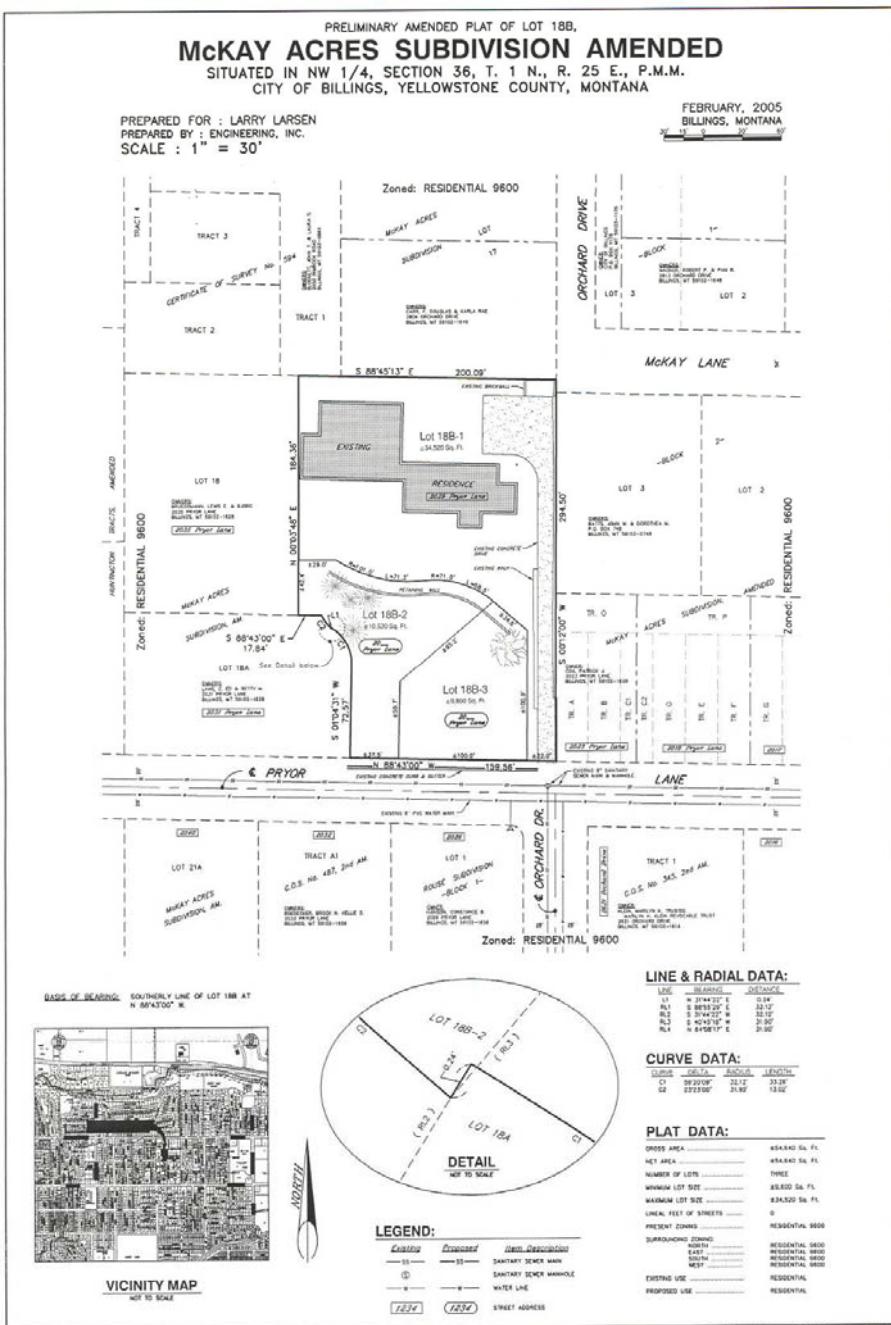
Planning staff recommends that Council conditionally approve the preliminary plat of McKay Acres Subdivision Amended, Amended Lot 18B and adopt the findings of fact as stated in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Site photos
- C: Mayor's approval letter
- D: Findings of Fact

ATTACHMENT A

Preliminary plat of McKay Acres Subdivision, Amended, Amended Lot 18B



ATTACHMENT B
Site Photos



Figure 1: From Pryor Lane looking down common lot line for Lots 18B 2 & 18B3, toward existing home on Lot 18B-1.



Figure 2: Pryor Lane looking down existing driveway for Lot 18B-1.

ATTACHMENT C
Mayor's approval letter

June 14, 2005

Larry Larsen
1645 Parkhill Dr., No. 3
Billings, MT 59102

Dear Sir:

On June 13, 2005 the Billings City Council conditionally approved the preliminary plat of the McKay Acres Subdivision Amended, Amended Lot 18B. The conditions of approval are as follows:

1. To mitigate impacts on local services, the following amendments shall be made to the Subdivision Improvements Agreement prior to final plat approval:
 - SIA Section V.—first paragraph shall be deleted.
 - SIA Section V.—add the following statements: “Separate water and sanitary sewer services are required for each lot out to the water main and sanitary sewer fronting the property in Pryor Lane. The location of the water and sanitary sewer services for the existing residence shall be determined and an easement for them shall be placed on the final plat to avoid having a new house built on top of them.”
2. To mitigate impacts on local services, lot address assignments shall be made by City Fire prior to final plat approval and shall appear on the final plat.
3. To ensure that the final plat will comply with local subdivision regulations and state law:
 - Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Department to clarify the documents and bring them into standard acceptable formats.
 - The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

If you have questions about the conditions of approval, please contact Juliet Spalding in Planning and Community Services at 247-8684 or by email at spaldingj@ci.billings.mt.us.

The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Charles F. Tooley, Mayor
cc: Engineering, Inc.

ATTACHMENT D
Findings of Fact
McKay Acres Subdivision, Amended, Amended Lot 18B
June 13, 2005

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMCC 23-304(c)(1) and MCA 76-3-608(3)(a)]

1. Effect on agriculture and agricultural water users' facilities

This subdivision should have no effect on agriculture or agricultural water users' facilities. The property is in the middle of a developed residential subdivision.

2. Effect on local services

- a. Utilities – Water and sewer lines are in place in Pryor Lane. Those utilities have sufficient capacity to serve the property. There is not a storm drain line adjacent to this property, however, a waiver of right to protest SID's will be filed with this plat to ensure participation in any future SID's including one to install storm water drainage facilities. Private utilities will provide service to the new lots under their operating procedures. Recommended conditions of approval include that each lot shall be served by a separate water and sewer connection, and that an easement be shown on the final plat the existing water and sewer connections for Lot 18B-1. (Condition #1)
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - All three proposed lots would gain access off of Pryor Lane. No street dedication or construction is proposed at this time but a waiver of right to protest future SID's for such improvements will be filed with the final plat.
- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3 at the corner of 17th St. West and Parkhill Drive. The Fire Department has reviewed the proposed subdivision and has requested that final address assignments for all three lots be made by them prior to final plat approval. (Condition #2) Police response will depend upon officer availability and location when a call for service is placed. The Police department has no concerns with the proposed subdivision. AMR provides medical care and transport.
- e. Schools – The subdivision is in the School District #2. No comments have been received from School District #2.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat. There should be little impact on parks and recreation.
- g. MET Transit – Poly Drive, just to the north of this subdivision is one of MET's routes. This subdivision should not significantly impact MET service.

3. Effect on the natural environment

This subdivision should have only minor effects on the natural environment. There will be some short term air and noise pollution during construction activities. However, the property is within an urbanized part of the city and these effects should be small.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. The property is within the urbanized area of the city, has one house on it and has no unusual or attractive habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. This property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304(c)(1)]

An Environmental Assessment is not required because this is a minor plat.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMCC 23-304(c)(3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- Predictable land use decisions that are consistent with neighborhood character and land use patterns.
- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- Contiguous development focused in and around existing population centers separated by open space.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Pryor Lane is a local residential street. No additional improvements are anticipated for this subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3)(b) and BMCC 23-304(c)(4)]

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]

The property is served by municipal water, sewer and solid waste services and these services will be extended to the new lot. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304(c)(6)]

The property is in the Residential-9600 zoning district and the subdivision conforms to the zoning.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3)(c) and BMCC 23-304 (c)(7)]

All of the proposed lots have access to existing utilities within Pryor Lane. NWE and MDU reviewed the preliminary plat and neither has requested additional easements. It is recommended as a condition of approval that an easement be shown on the final plat for the existing water and sewer lines serving Lot 18B-1.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608(3)(d) and BMCC 23-304(c)(8)]

Pryor Lane provides physical and legal access to all three proposed lots.

CONCLUSIONS OF FINDING OF FACT

- The proposed McKay Acres Subdivision, Amended, Amended Lot 18B does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on local services because this is an infill proposal and services are already provided to the property and surrounding properties.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and does not conflict with the Transportation Plan.
- The proposed subdivision complies with State and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

Approved by the Billings City Council on June 13, 2005

Charles F. Tooley, Mayor

[\(Back to Consent Agenda\)](#)

BB

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Final Plat of Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing

DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing is being presented to Council for approval. On February 14, 2005, the City Council conditionally approved the five (5) lot preliminary minor plat, which is proposed for residential uses. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: Should the City Council approve the final plat, the subject property may further develop, resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lot 1, Block 17 of Daniel's Subdivision, Second Filing.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A: Plat

ATTACHMENT A

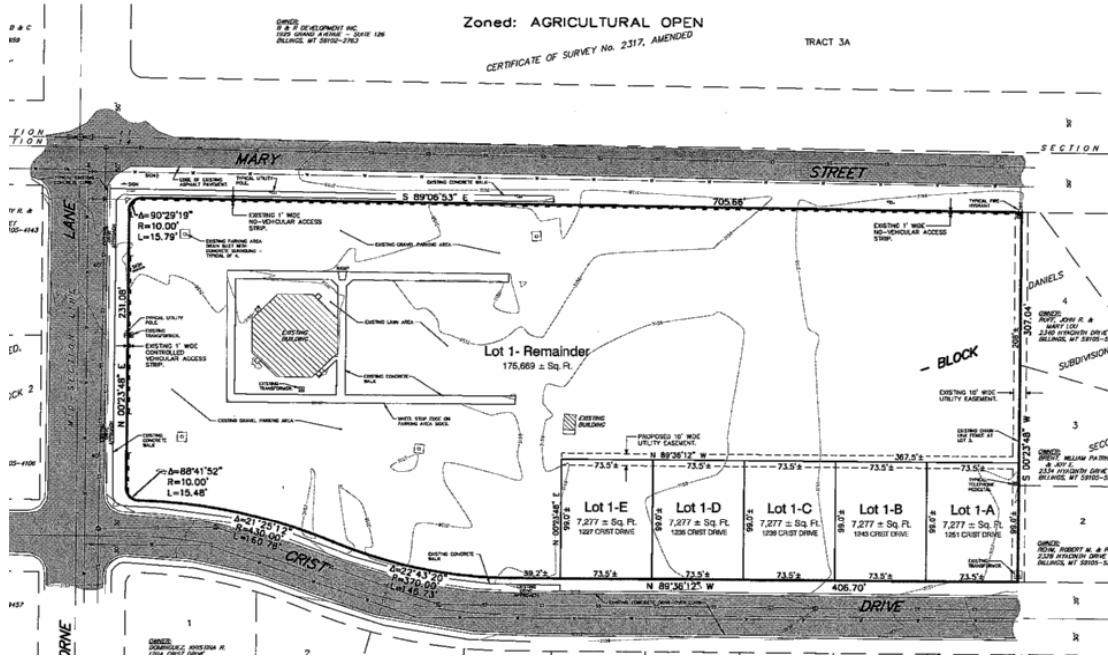
Final Plat

PRELIMINARY AMENDED PLAT OF LOT 1, BLOCK 17,
DANIELS SUBDIVISION SECOND FILING
SITUATED IN NE 1/4, SECTION 14, T. 1 N., R. 26 E., P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : HEIGHTS ASSEMBLY OF GOD
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 40'

JANUARY, 2005
BILLINGS, MONTANA

20220220



[\(Back to Consent Agenda\)](#)

CC

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: King Place Subdivision --Final Plat

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was approved by the Council on December 13, 2004. The subject property is zoned Neighborhood Commercial and Residential Multi-family-Restricted and is located on the southeast corner of Wick Lane and Bench Boulevard. The subdivision will create 2 lots for commercial use as limited by the zone change agreement (Lots 1 & 2) and 2 lots for multi-family residential use (Lots 3 & 4). All of the conditions for final plat approval have been met by the subdivider.

The City Attorney reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing.

FINANCIAL IMPACT: The creation of 2 commercial lots and 2 multi-family residential lots will increase the City's tax revenue on this parcel.

RECOMMENDATION

Staff recommends that the City Council the final plat of King Place Subdivision.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A: Final Plat

ATTACHMENT A

DD1



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, June 13, 2005

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Nikki R. Schaubel, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$57,868.71 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 1, 2005 to May 15, 2005 is on file in the Municipal Court.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims

Approved By: City Administrator City Attorney

ATTACHMENTS

A – Check register 4/1/05 to 05/15/05

[\(Back to Consent Agenda\)](#)

DD2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$760,151.17 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 13, 2005 is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)

DD3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$714,808.18 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 20, 2005 is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

[\(Back to Consent Agenda\)](#)



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, JUNE 13, 2005**

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting the Budget Amendments for the Fourth Quarter of Fiscal Year 2004/2005

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Budget adjustments are requested for the Fourth Quarter of Fiscal Year 2004/2005. Where there is no revenue sources, reserves will be the revenue sources.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2004/2005 per attached.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

A-Resolution to Make Fiscal Year 2004/2005 Adjustment Appropriations (with Exhibit A)

Attachment A

RESOLUTION 05-

A RESOLUTION TO MAKE **FISCAL YEAR 05**
ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-
6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND
REVISIONS WITHIN THE GENERAL CLASS OF SALARIES
AND WAGES, MAINTENANCE AND SUPPORT AND
CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly Budget Review (FY 2004/2005)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 13th day of June, 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMCCITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Public Hearing & 1st Reading Ordinance Adopting NFPA1/UFC as the Billings Fire Code

DEPARTMENT: Fire Department

PRESENTED BY: Marvin L. Jochems, Fire Chief; Frank Odermann, Fire Marshal

PROBLEM/ISSUE STATEMENT:

The Uniform Fire Code, which is currently adopted by the City, is no longer in publication. In order to provide for changes in technology and code developments, a new Fire Code needs to be adopted for the City's jurisdiction.

ALTERNATIVES ANALYZED:

There are two model fire codes in the United States from which to choose; the National Fire Protection Association/Uniform Fire Code (NFPA1/UFC) and the International Fire Code (IFC). Pros and cons to the adoption of either code have been analyzed and are presented under the 'Alternatives Analysis' heading of this document. A complete copy of NFPA1/UFC is on file in the City Clerk's Office.

FINANCIAL IMPACT

NFPA1/UFC is already in effect in BUFSAs, which is in the Billings Fire Department's jurisdiction. There would be no additional costs associated with adoption of the NFPA1/UFC in the City, as the necessary replacement of inspection forms and code books are covered in budget line items.

There are potential additional costs associated if the City were to adopt the IFC, as the City would be required to perform code enforcement under two fire codes; IFC within the City and NFPA1/UFC within the Billings Urban Fire Service Area (BUFSAs). This would require a different separate set of all inspection forms and data entry for code enforcement. This would also place an immense burden on manpower with the Fire Prevention Bureau.

RECOMMENDATION

Staff recommends that, in order to maintain code conformity across jurisdictional boundaries within the State, as well as to provide the City of Billings with a reasonable level of regulation to safeguard life and property from fire and other life-threatening conditions, the Billings City Council adopts the NFPA1/UFC, 2003 Edition.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

Attachment A: Proposed Ordinance for adoption of NFPA1/UFC, 2003 Edition

Attachment B: Letter from Billings Architects Association

INTRODUCTION

The Uniform Fire Code, which is currently adopted by the City, is no longer in publication. In order to provide for changes in technology and code developments, a new Fire Code needs to be adopted for City's jurisdiction.

There are two model fire codes in the United States from which to choose; the NFPA1/UFC and the International Fire Code (IFC). Staff recommends that Council adopt the NFPA1/UFC.

The State has adopted the NFPA1/UFC, 2003 edition. In order to be consistent with State Fire Code, a new Fire Code needs to be adopted locally. Because the State has adopted the NFPA1/UFC, local adoption of the IFC would promote inconsistency across jurisdictional boundary lines. For example, with adoption of the IFC, the City could be charged with enforcing the IFC within City limits, and an entirely different code, NFPA1/UFC, in the Fire Service Area located outside of City limits.

With local adoption of NFPA1/UFC, consistency within Fire Code enforcement would be maintained across jurisdictional lines.

BACKGROUND

- The City of Billings is currently working under adoption of the 1997 Uniform Fire Code. Since the Uniform Fire Codes are no longer being published, a new fire code needs to be selected in order to provide for a reasonable degree of public safety due to changes in technology.
- The State of Montana has adopted the NFPA1/UFC, 2003 Edition. Every jurisdiction within the State, with the exception of Kalispell, has adopted or is in the process of adopting the NFPA1/UFC.
- State statute provides that a municipality may elect to adopt and enforce a different fire code than is adopted by the State. However, as the state adopted version of the NFPA1/UFC is the minimum standard which may be adopted, the City of Billings may not be less restrictive in any provision of the locally adopted fire code. Local and state adoption of the same fire code provides for conformity between the codes and would keep the City of Billings in compliance with this state statute.
- Adoption of the NFPA1/UFC, would ensure that this community is afforded the latest technological and philosophical advancements in fire and life safety protection
- The Fire Department made two presentations to members of the public. Present at one or both of these meetings were citizens, Councilwoman McDermott, representatives of the Downtown Business Partnership, and members of the building and architecture communities. As a result of our discussion, Eric Simonson, President of the Billings Architects Association, stated he would write a letter to Council, on behalf of the Association, recommending adoption of the NFPA1/UFC.

ALTERNATIVES ANALYSIS

There are two model fire codes in the United States from which to choose; the NFPA1/UFC and the International Fire Code (IFC). Pros and cons to the adoption of either code have been analyzed and are discussed here under sub-headings 'Alternative 1' and 'Alternative 2'.

Alternative 1, Adoption of NFPA1/UFC

Pros:

- Adoption of NFPA1/UFC will maintain uniformity with State Fire Marshals jurisdiction and every rural and municipal jurisdiction in the State, with the sole exception of Kalispell, which has adopted the IFC.
- Adoption of NFPA1/UFC will provide fire service resources across the State with whom to consult on Code related issues.
- Adoption of NFPA1/UFC will provide consistency between Billings' Fire Prevention Bureau and the Administrative Rules adopted by the State Fire Prevention Bureau.
- Adoption of NFPA1/UFC will create uniformity across jurisdictional lines from City limits to BUFSA.
- Adoption of NFPA1/UFC will allow architects, engineers and developers to use the same fire code anywhere in the State.

Cons:

- NFPA1/UFC is not a 'companion code' to the International Building Code (IBC) which is currently adopted statewide. However, NFPA1/UFC has created a document which cross references provisions with the International Fire Code (IFC) to similar provisions within the NFPA1/UFC.

Alternative 2, Adoption of IFC

Pros:

- IFC is a 'companion code' to the currently adopted building code (IBC) and, therefore, is designed to correlate directly to provision of the building code.

Cons:

- Adoption of IFC will create non-conformity between Billings and the entire state, which the exception of Kalispell.
- Adoption of IFC in Billings will require the City to enforce one fire code within the city limits and a different fire code outside city limits in the BUFSA. This is problematic in many ways. The Billings Fire Prevention Bureau does not have adequate manpower resources to enforce different codes within our jurisdiction. This scenario would create additional costs to the City, as it would require multiple different sets of inspection forms for businesses, daycares and group homes. It would also require a second data set for IFC code provisions to be entered into our computer inspection tracking system. Costs for maintenance of only one fire code are presently included in the Department's line items. Additionally, the Fire Department would have to train all department personnel in two different codes.
- State statute requires that if there is any conflict between any paragraph, section, sentence, or word of the Fire Code as adopted and amended by the city, and any paragraph, section, sentence, or word of the Fire Code as adopted and amended by the

state, the more stringent paragraph, section, sentence, or word of either code controls. Therefore, enforcement of the code will be more complex if Billings adopts a different code than the state.

Key elements of proposed ordinance:

- Although the IBC is not the companion code to the NFPA1/UFC, the State adoption of NFPA1/UFC was amended to be compatible with the IBC via State Administrative Rules. The proposed resolution to adopt NFPA1/UFC includes the adoption, by reference, of the State Administrative Rules.
- The following are some of the provisions included in the proposed ordinance which provide remedies to issues which may arise.
 - Building codes adopted by the City of Billings control design and construction. If there are any conflicts between the construction standards in the Fire Code and construction standards set forth in the City's building code, the provisions of the building code control. The Fire Code construction standards only apply if there are no comparable building code construction standards.
 - Although the IBC is not a companion code to the NFPA1/UFC, The State adoption of NFPA1/UFC is amended by State Administrative Rules to be fully compatible with the IBC. These State Administrative Rules are adopted by reference in this ordinance. As any unforeseen circumstances arise which may create a need to amend the State Administrative Rules in order to ensure continued compatibility, the amendments would be immediately effective statewide and locally.

STAKEHOLDERS

The Fire Department made two presentations to members of the public. Present at one or both of these meetings were citizens, Councilwoman McDermott, representatives of the Downtown Business Partnership, and members of the building and architecture communities. As a result of our discussion, Eric Simonson, President of the Billings Architects Association, has provided letter to Council, on behalf of the Association, recommending adoption of the NFPA1/UFC. A copy of this letter is attached.

RECOMMENDATION

Staff recommends that, in order to maintain code conformity across jurisdictional boundaries within the State, as well as to provide the City of Billings with a reasonable level of regulation to safeguard life and property from fire and other life-threatening conditions, the Billings City Council adopts the NFPA1/UFC, 2003 Edition.

ATTACHMENTS

Attachment A: Proposed Ordinance for adoption of 2003 NFPA1/UFC
Attachment B: Letter from Billings Architects Association

ORDINANCE NO. 05-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 14-301, 14-302, 14-303, 14-304, 14-305, 14-306, 14-307, 14-310 AND 14-311, PROVIDING FOR THE ADOPTION OF THE 2003 EDITION OF THE NFPA1/UNIFORM FIRE CODE AND UPDATING REFERENCES TO THE FIRE CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Section 14-301 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-301. Adoption by reference of the NFPA1/Uniform Fire Code and Administrative Rules.

~~There is adopted by the city, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the Uniform Fire Code, 1997 Edition, with Appendixes I-A through VI-I excepting Appendix II-D, as well as the Uniform Fire Code Appendix Standard A-HI-C I and all tables therein, recommended by the Western Fire Chiefs Association and the International Conference of Building Officials, being particularly the 1997 Edition thereof, except portions as are hereinafter modified or amended by this article,~~

A. The NFPA1 / Uniform Fire Code (NFPA1/UFC), 2003 edition, together with any supplements, adopted by the Fire Prevention and Investigation Bureau of the Montana Department of Justice (or its successor), as set out in the Administrative Rules of Montana, and as amended from time to time by the Bureau, are adopted by reference and incorporated in this chapter as if set forth in full, with the additions, amendments, and deletions enumerated within the Administrative Rules, except as may be noted in this chapter, by future Administrative Order, or by any regulations not applicable to local government jurisdictions. The following annexes are adopted as part of this code:

- (1) Annex A Explanatory Material;
- (2) Annex D Hazardous Materials Management Plans and Hazardous Materials Inventory Statements;
- (3) Annex G Ozone Gas-Generating Equipment;
- (4) Annex H Fire Flow Requirements for Buildings; and
- (5) Annex I Fire Hydrant Locations and Distribution.

~~of which code~~ ~~One (1) copy of the NFPA1/UFC, 2003 edition, shall be~~ ~~is now~~ filed in the office of the city clerk, and the same is adopted and incorporated as fully as if set out at length in this

article, and from the date on which the ordinance codified in this article shall take effect, the provisions thereof shall be controlling within the limits of the city.

B. The following Fire Code sections are adopted:

(1) NFPA1/UFC Section 2.1 General is adopted.

(2) NFPA1/UFC Section 2.2 Publications is adopted with the following exceptions:

a. NFPA 101, Life Safety Code, 2003 Edition is not adopted

b. NFPA 5000, Building Construction and Safety Code, 2003 Edition is not adopted.

(3) NFPA1/UFC Section 1.12 Permits and Approvals is adopted.

(4) NFPA1/UFC Section 1.12.19 is modified as follows:

1.12.19 Permits shall be required in accordance with Table 1.12.19(a) for only the following Operations and Materials:

a. Display Fireworks (1.3G)

b. Flame Effects

c. Open Burning

d. Open Fires

e. Pyrotechnic Articles

f. Pyrotechnics Before a Proximate Audience

All Operations and Materials not listed herein are NOT adopted.

(5) NFPA1/UFC Section 10.7.3 False Alarms is adopted

(6) NFPA1/UFC Section 13.7.1.4.11.1 is modified as follows:

13.7.1.4.11.1 Where required by another section of this Code, or by the Authority Having Jurisdiction (AHJ), emergency forces notification shall be provided to alert the municipal fire department and fire brigade (if provided) of fire or other emergency.

(7) NFPA1/UFC Section 13.7.1.4.11.2 is modified as follows:

13.7.1.4.11.2 Where fire departments notification is required by another section of this Code, or by the AHJ, the fire alarm system shall be arranged to transmit the alarm automatically via any of the following means acceptable to the AHJ and shall be in accordance with NFPA 72, National Fire Alarm Code.

C. The following sections are added to NFPA1/UFC and adopted:

- (1) NFPA1/UFC Section 18.1.1 Plans
- (2) NFPA1/UFC Section 18.1.1.1 Fire Apparatus access. Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.
- (3) NFPA1/UFC Section 18.1.1.2 Fire hydrant systems. Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.
- (4) NFPA1/UFC Section 18.1.2 Timing of Installation. When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction.

EXCEPTION: When alternate methods of protection, as approved, are provided, the requirements of Section 18.1.2 may be modified or waived.

- (5) NFPA1/UFC Table 1.12.19(a) A permit shall be obtained from the Fire Department having Jurisdiction for the use of explosives within the City limits.

- D. If there is any conflict between any paragraph, section, sentence, or word of the Fire Code as adopted and amended by the city, and any paragraph, section, sentence, or word of the Fire Code as adopted and amended by the state, the more stringent paragraph, section, sentence, or word of either code controls.
- E. Building codes adopted by the City of Billings control design and construction. If there are any conflicts between the construction standards in the Fire Code and construction standards set forth in the City's building code, the provisions of the building code control. The Fire Code construction standards only apply if there are no comparable building code construction standards.

Section 2. That Section 14-302 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-302. Bureau of fire prevention.

There is hereby established in the city a fire prevention bureau which shall be an integral part of the city fire service, and which shall be operated under the direction and supervision of the city administrator as follows:

- (1) The Uniform adopted Fire Code shall be enforced by the bureau of fire prevention.
- (2) The officer in charge of the bureau of fire prevention shall be appointed by the city administrator.
- (3) As directed by the city administrator the chief of the fire service may detail such employees of the fire service as inspectors as shall from time to time be necessary. The chief of the fire service shall recommend to the city administrator the employment of technical inspectors who, when such authorization is made, shall be selected through an examination.

(4) Each person designated or appointed to enforce the adopted Uniform Fire Code and all provisions of this chapter are hereby granted full power and authority to issue citations and take all measures necessary to fully enforce these laws.

Section 3. That Section 14-303 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-303. Definitions.

- (a) Wherever the term "corporation counsel" is used in the Uniform adopted Fire Code, it means the city attorney.
- (b) Wherever the word "jurisdiction" is used in the Uniform adopted Fire Code, it means the city.

Section 4. That Section 14-304 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-304. Flammable or combustible liquids and bulk plants; district limits established. The limits referred to in the adopted Fire Code section 79.501(85) of the Uniform Fire Code, in which storage of flammable or combustible liquids in outside aboveground tanks is prohibited, are established as follows: All areas other than those zoned highway commercial, controlled industrial and heavy industrial.

Section 5. That Section 14-305 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-305. Liquefied petroleum gas ~~bulk~~ storage; district limits established.

The limits referred to in section 82.105(85) of the Uniform adopted Fire Code, in which ~~bulk~~ storage of liquefied petroleum gas is restricted, are established as follows: All areas other than those zoned highway commercial, control industrial and heavy industrial.

Section 6. That Section 14-306 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-306. Explosives and blasting agents; prohibited.

The limits referred to in the section 77.106(85) of the Uniform adopted Fire Code, in which storage of explosives and blasting agents is prohibited, shall be the entire city.

Section 7. That Section 14-307 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-307. New materials, processes or occupancies.

The building official and the fire official shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies which shall require permits, in addition to those now enumerated in the Uniform adopted Fire Code. The fire official shall post such list in a conspicuous place in his or her office, and distribute copies thereto to interested persons.

Section 8. That Section 14-310 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-310. Appeals.

Whenever the fire official shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the ~~Uniform~~ adopted Fire Code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire official to the Fire Marshal, to the Fire Chief and to the City Administrator within thirty (30) days from the date of the decision appealed.

Section 9. That Section 14-311 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 14-311. Violations.

(a) Any person who violates any of the provisions of the ~~Uniform~~ Fire Code adopted in section 14-301, or fails to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance respectively be guilty of a misdemeanor, punishable as provided in section 1-110. The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

Section 10. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 11. REPEALER. All resolutions, ordinances, and sections of City code conflicting or inconsistent with the provisions of this chapter or the NFPA1/UFC fire code as adopted and amended herein are hereby repealed.

Section 12. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of
_____, 2005.

PASSED, ADOPTED and APPROVED on second reading this

____ day of _____, 2005.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

[\(Back to Regular Agenda\)](#)



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, JUNE 13, 2005**

SUBJECT: Public Hearing and Approval of the Resolution Approving and Adopting the Budget for FY 2006

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: This resolution provides for the formal adoption of the budget. The proposed budget has been available for review since May 12, 2005. Four (4) public presentations have been made regarding the proposed budget. Section 2 of this resolution allows the City Administrator to amend this budget for Debt Service Funds, Federal and State Grants accepted and approved by the City Council, Special Assessment and donations. These items are all, with the possible exception of donations, approved by the City Council which means that also needing to approve budget amendments to allow the expenditures is redundant. The delegation of authority is allowed by State Statutes.

RECOMMENDATION

Staff recommends that City Council conduct a public hearing and approve the resolution approving and adopting the Budget for the City of Billings for fiscal year 2005-2006.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

A-Resolution Approving & Adopting the Budget for the City of Billings, MT for FY 2005-2006
Includes Exhibit A-City of Billings Expenditure Budget for Fiscal Year 2005-2006

Attachment A

RESOLUTION NO. _____

**A RESOLUTION APPROVING AND ADOPTING THE BUDGET FOR
THE CITY OF BILLINGS, MONTANA FOR FISCAL YEAR 2005-2006**

WHEREAS, the City Administrator of the City of Billings has regularly and lawfully submitted to the City Council of the City of Billings, Montana, the budget for Fiscal Year 2005-2006; and

WHEREAS, the proper notice was published stating that said City Council has completed the PRELIMINARY MUNICIPAL BUDGET for said Fiscal Year, and that said budget has been placed on file and is open to inspection in the office of the City Clerk; and that said City Council would meet for the purpose of annually determining, approving and adopting the budget, and any taxpayer might appear and be heard.

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

Section 1: That the Revenue Budget for Fiscal year 2005-2006, as detailed in the Budget Report, and as amended by the City Council, and the Expenditure Budget for Fiscal year 2005-2006 as detailed in the budget report and as amended by the City Council and further detailed on EXHIBIT "A", be, and the same is hereby finally determined, approved, and adopted.

Section 2: That the City Administrator is authorized to amend this budget for the expenditure of additional funds from the following: Debt Service Funds, Federal and State Grants accepted and approved by the City Council, special assessments and donations.

PASSED AND APPROVED by the City Council this 13th day of June, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

[\(Back to Regular Agenda\)](#)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 13, 2005

SUBJECT: Public Hearing and Resolutions setting Annual Assessments for Fiscal Year 2006

DEPARTMENT: Public Works Department

PRESENTED BY: David M Mumford, P.E., Public Works Director
Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolutions have been completed by the Finance Division and the assessments are ready to spread on the tax files.

Arterial Construction Fee
Storm Sewer Maintenance

Arterial construction and the storm sewer maintenance rates remain the same as fiscal year 2005. Light maintenance districts' rates are calculated by estimating the expenses for maintenance and recovering actual expenditures. Due to increases in maintenance and the cost of energy many of the light maintenance districts' rates have increased for fiscal year 2006.

RECOMMENDATION

Staff recommends that a public hearing be held and that the City Council approve the resolution on June 13, 2005.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A- Arterial Construction Fee Annual Assessment Resolution and Exhibit A
- B- Light Maintenance District Annual Assessment Resolution and Exhibit B
- C- Storm Sewer Maintenance Annual Assessment Resolution and Exhibit C

RESOLUTION 05-_____

A RESOLUTION LEVYING AND ASSESSING ARTERIAL CONSTRUCTION FEES FOR PROPERTIES WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION

WHEREAS, the Billings, Montana City Code did establish the rate table for Arterial Construction Fee assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL ARTERIAL CONSTRUCTION FEE FOR FISCAL YEAR 2006. That for the purpose of paying the cost of construction and/or reconstruction of arterial roadways and depreciation and replacement of arterial roadways to provide safe facilities on which citizens and visitors may travel, including the principal and interest on all revenue bonds to be issued for that purpose, as authorized by MCA Title 7 Chapter 7 Part 44 or Title 7 Chapter 13 Part 43, as amended, an annual arterial construction fee is imposed for the fiscal year 2006, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Arterial Construction Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from taxes shall be paid into the municipal arterial construction system fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, **June 13, 2005**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on June 2 and June 9, 2005, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **13th day of June, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

Exhibit A

Arterial Construction Fee

ZONE	RATE
VACANT	988.00 Cap
AT RATE	0.00125
P	0.00212
R-96	0.00371
R-80	0.00404
R-70	0.00425
RMH	0.00477
R-50	0.00512
PD	0.00585
R-60	0.00638
RP	0.00692
RMF-R	0.00721
RMF	0.00748
NCL	0.00769
NC	0.00824
ELC	0.00824
MCPZD	0.00850
CC	0.00879
ELG	0.00902
PZD	0.00892
HC	0.00902
CI	0.00960
HI	0.01068
CBD	0.01279
ELI	0.00902

Attachment B

RESOLUTION 05-_____

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY IN CERTAIN
LIGHTING MAINTENANCE DISTRICTS WITHIN THE CITY OF BILLINGS,
PROVIDING FOR NOTICE, HEARING AND ADOPTION.

WHEREAS, certain lighting maintenance districts have been created within the City of Billings, and

WHEREAS, State Law provides for assessment for maintenance costs annually, and

WHEREAS, M.C.A. 7-12-4332 provides that the City shall pass a resolution levying and assessing maintenance costs.

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

1. DISTRICTS AND ASSESSMENTS. The lighting maintenance districts and assessments to defray one hundred percent (100%) of all the costs of maintenance and lighting are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. PERIOD OF ASSESSMENT. That said assessment is to defray costs for the fiscal year 2006.

3. DISPOSITION OF COLLECTIONS. That the assessments as collected shall be placed in the respective lighting maintenance funds and shall be used to defray the costs of maintenance and lighting as provided by law.

4. NOTICE OF HEARING. On Monday, **June 13, 2005**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on June 2 and June 9, 2005, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **13th** day of **June 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

Exhibit B

District Number	FY 06 Assessment	FY06 Assess. per Sq. Ft.
8	6,200	0.001784
9	3,000	0.000428
10	18,500	0.000874
13	170,000	0.010848
14	75,000	0.008254
17	13,400	0.012606
18	1,250	0.005642
95	3,150	0.006013
97	140,000	0.077234
99	19,000	0.026860
100	30,000	0.033324
107	20,000	0.016582
109	50,000	0.014766
113	2,750	0.007745
114	11,000	0.014815
115	2,500	0.013214
116	7,000	0.014238
117	35,000	0.017350
118	2,600	0.008184
119	1,700	0.003498
121	28,500	0.012961
122	2,200	0.013095
123	3,900	0.015369
124	11,000	0.012742
125	4,500	0.013221
126	2,300	0.013343
127	7,700	0.010669
128	5,500	0.010330
129	3,800	0.011289
130	1,700	0.011507
131	9,500	0.012163
133	2,700	0.009144
134	6,500	0.010782
135	6,000	0.011752
136	5,500	0.012743
137	4,500	0.004223
138	8,300	0.012737
139	2,800	0.012258
143	6,500	0.013829
144	270	0.006919
145	5,400	0.010719
146	4,200	0.012343
147	5,000	0.034955
149	18,500	0.007378
150	8,600	0.013188
151	7,400	0.012706
152	49,000	0.012789

153	6,200	0.009987
154	14,500	0.012892
155	5,600	0.013340
157	10,200	0.011761
158	9,000	0.012336
159	12,000	0.019371
160	8,500	0.011924
161	12,200	0.011846
162	700	0.001478
163	7,500	0.009723
164	4,200	0.011144
165	10,000	0.013169
167	2,800	0.010370
171	6,500	0.010964
172	6,500	0.006447
173	14,000	0.010423
174	11,300	0.010899
175	3,900	0.011800
176	530	0.009192
178	3,000	0.011022
179	5,700	0.008531
180	3,800	0.011249
181	19,000	0.013221
182	7,000	0.012105
183	13,500	0.011828
184	4,500	0.010987
185	1,600	0.008829
186	4,125	0.003278
187	2,700	0.008344
188	3,200	0.011030
189	2,700	0.012273
190	14,500	0.010799
191	5,000	0.012195
192	3,500	0.013672
193	9,000	0.013043
194	2,250	0.002871
195	2,250	0.005389
196	1,500	0.500000
197	1,000	0.318471
198	1,400	0.008284
200	1,000	0.276243
201	5,600	0.012727
202	10,000	0.022211
203	200	0.001778
204	3,600	0.006990
205	375	0.003491
206	3,650	0.008626
207	4,100	0.008888
208	8,000	0.104849
209	6,000	0.011382
210	1,200	0.003030
211	450	0.003000
212	450	0.002810
213	340	0.001850

214	4,900	0.012589
216	1,700	0.012267
217	4,500	0.549652
220	3,375	0.599574
221	100	0.001650
222	1,200	0.005782
223	2,000	0.004203
224	19,500	0.013567
225	4,500	0.017199
226	2,125	0.005644
227	4,500	0.008324
228	9,000	0.010313
229	5,000	0.012383
230	10,500	0.015847
231	7,000	0.011038
232	29,000	0.010896
233	18,000	0.004203
234	6,000	0.012109
235	4,500	0.009675
236	3,000	0.006770
237	4,900	0.014081
238	180	0.002929
239	1,100	0.031517
240	6,000	0.016861
241	7,000	0.049645
242	930	0.006325
244	1,300	0.008871
245	950	0.026389
246	3,700	0.014367
247	13,000	0.027604
248	26,000	0.051128
249	31,000	0.012054
250	3,000	0.018973
251	45,000	0.010427
252	6,500	0.019288
253	22,000	0.012883
254	3,375	0.006028
255	2,250	0.003875
257	13,000	0.001811
258	30,000	0.011255
259	25,000	0.012982
261	5,500	0.017255
262	29,000	0.009929
263	15,000	0.004585
264	3,500	0.005241
265	3,500	0.013033
266	700	0.001008
269	800	0.003681
270	10,200	0.007021
271	9,500	0.005425
272	25,000	0.013309
273	2,000	0.006652
274	1,200	0.001218
276	6,000	1.264223

277	8,300	0.013064
278	4,700	2.031115
279	750	0.004731
280	16,000	0.005242
281	8,000	2.072496
283	13,000	1.825745
285	3,500	0.007689
286	2,700	0.010978
287	3,000	1.246013
288	18,000	0.013118
289	8,000	0.006290
320	1,250	0.002734

RESOLUTION 05-_____

A RESOLUTION LEVYING AND ASSESSING STORM SEWER FEES FOR PROPERTIES WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE, HEARING AND FINAL ADOPTION

WHEREAS, the Billings, Montana City Code did establish the rate table for Storm Sewer assessments; and

WHEREAS, extension of these charges have been made on individual properties to be assessed annually.

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

1. ANNUAL STORM SEWER FEE FOR FISCAL YEAR 2006. That for the purpose of defraying the cost of upgrading, repairing and maintaining the City Storm Sewer System an annual storm sewer fee is imposed for the fiscal year 2006, upon all lots or portions of lots as identified in the city's property tax record files. Rates are hereby levied and assessed as listed and described on EXHIBIT "A" attached hereto and by this reference said exhibit is made a part hereof.

2. EXEMPTION. Storm Sewer Fee assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund, or MET Transit Fund.

3. DISPOSITIONS OF COLLECTIONS. Monies collected from taxes shall be paid into the Storm Sewer Fund, of Billings, Montana.

4. NOTICE OF HEARING. On Monday, **June 13, 2005**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on June 2 and June 9, 2005, in the Billings Times.

5. CERTIFICATION. The City Clerk is hereby directed upon final passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

6. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **13th day of June, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

Exhibit C

Storm Sewer Fee

ZONE	RATE
VACANT	913.00 Cap
AT RATE	0.00116
P	0.00196
R-96	0.00343
R-80	0.00373
R-70	0.00393
RMH	0.00441
R-50	0.00473
PD	0.00540
R-60	0.00590
RP	0.00639
RMF-R	0.00667
RMF	0.00691
NCL	0.00711
NC	0.00761
ELC	0.00761
MCPZD	0.00785
CC	0.00812
ELG	0.00834
PZD	0.00824
HC	0.00834
CI	0.00887
HI	0.00987
CBD	0.01181
ELI	0.00834

[\(Back to
Regular
Agenda\)](#)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 13, 2005

SUBJECT: Annual Park Maintenance Districts' Assessments for Fiscal Year 2006

DEPARTMENT: Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, PRPL Director

Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolution has been completed by the Finance Division and the assessments are ready to spread on the tax files. Park maintenance district rates are calculated by estimating the expenses for maintenance and recovering actual expenditures. By state law, park maintenance districts are their own entity and are required to be self-sufficient. The following park maintenance districts' assessments have been increased to eliminate negative cash balances: Gregory Hills (4004), Aspen Grove (4009), Montana Avenue (4011), Rush Acres (4014), Francis Park (4018), Rolling Hills (4019), Lutheran Park (4022), Walden Grove (4024), and Rehberg Ranch (4025). The rest of the districts' assessments remain at the fiscal year 2005 level.

RECOMMENDATION

Staff recommends that a public hearing be held and that the City Council approve the resolution on June 13, 2005.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A-Park Maintenance Districts Annual Assessment Resolution

RESOLUTION 05-_____

A RESOLUTION LEVYING AND ASSESSING ALL PROPERTY
WITHIN PARK MAINTENANCE DISTRICTS AN AMOUNT
EQUAL TO THE COST OF MAINTAINING THE
IMPROVEMENTS IN SAID PARK MAINTENANCE DISTRICTS
WITHIN THE CITY OF BILLINGS, PROVIDING FOR NOTICE,
HEARING AND FINAL ADOPTION.

WHEREAS, certain Park Maintenance Districts within the City have been created and constructed, and

WHEREAS, certain improvements within those Park Maintenance Districts require maintenance, and

WHEREAS, M.C.A. Section 7-12-4162 provides that the City may levy and assess the costs of maintenance against said districts.

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

1. MAINTENANCE OF IMPROVEMENTS. Certain improvements including trees, shrubs, grass and care thereof require maintenance with certain Park Maintenance Districts.

2. MAINTENANCE DISTRICT BOUNDARIES. The boundaries of the park maintenance districts are established by resolution and are on file in the City Clerk's office.

3. ASSESSMENT METHOD. The entire maintenance costs shall be assessed against the entire district, each lot or parcel of land within said district to be assessed for that part of the whole costs which its area bears to the area of the entire district exclusive of streets, avenues, alleys and public places all as provided in M.C.A. Section 7-12-4162.

4. COST OF MAINTENANCE. The City Council estimates that the cost of maintenance for the fiscal year 2006 for the following Park Maintenance Districts is:

PARK MAINT. DISTRICT	NUMBER	PER SQ FT	PROPERTY
HARVEST PARK	PMD 4001	.021137	4,305,296
OLYMPIC PARK	PMD 4002	.018914	4,493,983
PARKLAND WEST	PMD 4003	.011849	2,109,937
GREGORY HILLS	PMD 4004	.019317	685,912

HIGH SIERRA	PMD 4005	.005498	5,838,242
FOREST PARK	PMD 4006	.002677	631,333
WOODLAND COMMERCE	PMD 4007	.004709	849,406
TERRA WEST SUB'D	PMD 4008	.010344	821,711
ASPEN GROVE SUB.	PMD 4009	.016925	384,051
LAKEVIEW SUBD	PMD 4010	.002505	239,498
MT AVE PMD	PMD 4011	.093524	515,696
CIRCLE 50 PMD	PMD 4012	.005610	3,030,116
N BROADWAY	PMD 4013	.091115	285,355
RUSH SUB	PMD 4014	.004945	2,643,056
HOWARD HEIGHTS	PMD 4015	.002556	1,134,783
MISSIONS UNITED	PMD 4016	.001341	820,568
SOUTHGATE	PMD 4017	.004251	2,234,690
FRANCES' PARK	PMD 4018	107.45 PER UNIT	179 LOTS
ROLLINGS HILLS	PMD 4019	363.70 PER LOT	33 LOTS
DOKKEN PARK	PMD 4020	300.00 PER LOT	21 LOTS
LUTHERAN PARK	PMD 4022	172.01 PER LOT	72 LOTS
RIMROCK WEST PARK	PMD 4023	103.88 PER LOT	227 LOTS
WALDEN GROVE PARK	PMD 4024	.011008	817,616
REHBERG ESTATE SUB	PMD 4025	.010309	2,400,136
UINTA PARK SUB	PMD 4026	68.15 PER LOT	169 LOTS

5. **DISPOSITION OF COLLECTIONS.** The monies collected from the tax shall be paid into the respective Park Maintenance Funds.

6. **NOTICE OF HEARING.** On Monday, June 13, 2005 at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution. The City Clerk published notice hereof twice, on June 2 and June 9, 2005, in the Billings Times.

7. **CERTIFICATION.** The City Clerk is hereby directed upon final passage and approval of this Resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Treasurer and a copy to the Yellowstone County Assessor.

8. EFFECTIVE DATE. This Resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **13th day of June, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, JUNE 13, 2005

SUBJECT: Annual Fire Hydrant Maintenance Assessment for Fiscal Year 2006

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following annual assessment resolution has been completed by the Finance Division and the assessments are ready to spread on the tax files. Fire hydrant maintenance rates remain the same as fiscal year 2005.

RECOMMENDATION

Staff recommends that a public hearing be held and that the City Council approve the resolutions on June 13, 2005.

Approved By: City Administrator City Attorney

ATTACHMENT

A-Fire Hydrant Maintenance Annual Assessment Resolution

RESOLUTION 05-_____

A RESOLUTION LEVYING AND ASSESSING PROPERTIES
WITHIN THE CITY OF BILLINGS THE PROPERTY SAFETY
WATER SUPPLY SERVICE CHARGE, PROVIDING FOR
NOTICE, HEARING AND ADOPTION.

WHEREAS, Billings, Montana City Code provides for assessment for property safety water supply service charge annually; and

WHEREAS, said Billings, Montana City Code provides that the City Council shall fix, levy, and assess said charge on or before the second Monday in August.

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

1. SERVICE CHARGE FOR FISCAL YEAR 2006. The Property Safety Water Supply Service Charge for the fiscal year 2006 is hereby fixed, levied and assessed against each and every parcel of real and personal property within the City. Each parcel shall pay to the City that portion of the total Property Safety Water Supply Service Charge imposed annually as hereinafter provided, as the total taxable value of each parcel bears to the total taxable value within the City.

The assessment is **\$0.00911** per taxable value dollar, provided, however:

- (a) Parcels of real property which have no taxable value shall pay an annual charge of \$20.00 per parcel.
- (b) All parcels having taxable value shall pay at least a minimum annual charge of \$1.00 per parcel.

2. NOTICE OF HEARING. On Monday, **June 13, 2005**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the adoption of this resolution.

The City Clerk published notice hereof twice, on June 2 and June 9, 2005, in the Billings Times.

3. CERTIFICATION The City Clerk is hereby directed upon passage and approval of this resolution to certify a copy thereof to the City Administrator of the City of Billings, Montana, who shall certify a copy to the Yellowstone County Clerk and a copy to the Yellowstone County Assessor.

4. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the 13th day of **June, 2005**

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Public Hearing and Resolution to Create Expanded Park Maintenance District No. 4005

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: The existing Park Maintenance District No. 4005 contains 623,997 square feet (14.345 acres) of dedicated parkland. The expansion of Park Maintenance District No. 4005 to include High Sierra Subdivision, 3rd and 4th Filings will not add park or public area to the district. Therefore, there will be no additional development or improvement of park area. As a condition of the High Sierra Subdivision, 3rd and 4th Filing final plat approval, the lots must be included in the park maintenance district. The Resolution to Create the Expanded District completes the process to enlarge the district to include the lots of High Sierra Subdivision, 3rd and 4th Filings in the Park Maintenance District No. 4005. Property Owners have been notified of the passage of the Resolution of Intent on May 23rd, 2005, and of the period for protest from May 27th through June 10th, 2005, and the public hearing and council consideration of the Resolution to Create the Expanded PMD at the June 13, 2005, City Council Meeting. A report of protests and comments received will be provided at the Council Meeting, June 13th, 2005.

ALTERNATIVES ANALYZED:

- Do not expand Park Maintenance District No. 4005
- Expand the Park Maintenance District to add all lots of High Sierra Subdivision 3rd and 4th Filings, which will be assessed for a portion of the cost of maintaining the existing park areas of the district. (Recommended)

FINANCIAL IMPACT: Since there is no additional park being added to the maintenance load, there is no additional cost for maintenance in the expanded district. The expansion area's portion of the maintenance cost for the existing park land is estimated to be \$7,356.88, including the cost for the expansion of \$1,950, for the FY 2006 to be assessed in November of 2005. The assessment rate for this amount is \$0.00545 per square foot of property in District 4005. The assessment for the added lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution to Create the Expanded Maintenance District No. 4005 for High Sierra Subdivision.

Approved By: _____ City Administrator _____ City Attorney _____

ATTACHMENTS:

A. Resolution to Create the Expanded Park Maintenance District No. 4005 (Including Exhibits "A" through "D").

INTRODUCTION

Approval of the Resolution to Create the Expanded Park Maintenance District No. 4005 completes the process to include all lots of High Sierra Subdivision, 3rd and 4th Filings in Park Maintenance District No. 4005 for the maintenance of High Sierra Park.

PROCEDURAL HISTORY

- The original High Sierra Subdivision Maintenance District 4005 was created through Resolution to Create District Number 86-15207. It was approved at the January 27th, 1986, City Council meeting to provide for the maintenance of approximately 14.2 acres of park and public area in High Sierra Subdivision, 1st Filing, installed in accordance with the Subdivision Improvement Agreement for the subdivision.
- The Resolution of Intent To Expand PMD 4005 was approved by City Council on May 23, 2005. It provided for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and set a date for a Public Hearing and Council consideration of the Resolution to Create the Expanded district at the June 13th, 2005, regular City Council meeting.
- Public Notice of Resolution of Intent advertised on May 26th, 2005, and June 2nd, 2005. The Notice is mailed to all affected property owners on May 27th, 2005, and provides for a period for protest and comment from May 27th, 2005 through June 10th, 2005.

BACKGROUND

To provide the funding needed to develop and maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. This assures that the parks are well maintained without increasing the demand on the expenditures of the city general fund and relieves the pressure on existing developed parks. High Sierra Subdivision dedicated all the parkland and constructed the required improvements for the park with the 1st Filing and included all future filings within High Sierra Subdivision. The High Sierra Subdivision, 3rd and 4th Filings, Subdivision Improvements Agreements required the lots to be added to the existing Maintenance District. The proposed expansion of the maintenance district will add 153 additional lots to PMD 2005. There are Waivers of Protest on file for the formation of the park maintenance district for all lots within the High Sierra Subdivision, including the High Sierra 3rd and 4th Filings.

Approval of the Resolution to Create Expanded Park Maintenance District No. 4005 for High Sierra Subdivision, 1st, 3rd and 4th Filings is the last step in the creation process.

ALTERNATIVES ANALYSIS

- Do not expand the maintenance district at this time and maintain the park improvements as they are currently.
- Expand the Park Maintenance District now to assure assessments can be collected from the expanded lots in November, 2005. The High Sierra Subdivision, 3rd and 4th Filings assessments for park maintenance are discussed herein.

STAKEHOLDERS

- The developer has agreed to expand the existing Park Maintenance District to include all lots of High Sierra Subdivision, 3rd and 4th Filings.
- The residents in the added subdivision lots will be aware of the assessment for park maintenance when they purchase a lot or home, and/or a public notice will be advertised and mailed to all property owners within the expansion area informing them of the Expanded Park Maintenance District No. 4005 and of the protest process and Public Hearing scheduled for the June 13th, 2005, City Council meeting.
- Few protests are received annually for the Park Maintenance District assessments that are levied throughout the city.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the general fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city General Fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2006 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division O & M budget this year.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution to Create the Expanded Maintenance District No. 4005 for High Sierra Subdivision.

ATTACHMENTS:

A. Resolution to Create the Expanded Park Maintenance District No. 4005 (Including Exhibits "A" through "D").

RESOLUTION NUMBER 05-

A RESOLUTION TO EXPAND THE BOUNDARIES OF EXTENDED SPECIAL IMPROVEMENT MAINTENANCE DISTRICT NO. 4005 FOR THE PURPOSE OF MAINTAINING THE EXISTING AND FUTURE PARK IMPROVEMENTS IN HIGH SIERRA SUBDIVISION, FIRST FILING TO INCLUDE HIGH SIERRA SUBDIVISION, THIRD AND FOURTH FILINGS.

WHEREAS, City Council of Billings, Montana hereby finds, determines and declares that:

1. The public interest and convenience require expanding the boundaries of Extended Special Improvement Maintenance District No. 4005 created by *Resolution 86-15207 on January 27th, 1986.*
2. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the cost and expenses of the district.

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

1. *Jurisdiction and Creation:* Extended Special Improvement Maintenance District No.4005 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the improvements and it does hereby expand the boundaries of Extended Special Improvement Maintenance District No. 4005. All lands included in the expanded boundaries of Extended Special Improvement Maintenance District No. 4005 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvements and Maintenance:* The general character of the improvements to be maintained is as follows: landscaping, trees, irrigation systems, irrigation system water services, and other park equipment and improvements installed by the developer and as part of a future Special Improvement District.
3. *Boundaries:* The boundaries of the district are described and designated on Exhibit "A" attached hereto.
4. *Maintenance Estimate:* The estimated cost of the proposed expansion maintenance for the current year shall be \$0.00545 per square foot of lot area as described in the Maintenance Estimate attached hereto as Exhibit "D".
5. *Assessment Method:* All of the costs and expenses of the district will be assessed against the entire district, and each lot or parcel of land within the district will be assessed for that part of the whole cost which its assessable area bears to the total assessable area in the entire district, exclusive of streets, avenues, alleys and public places. Assessments for each lot during the current year will be approximately \$0.00545 per square foot of lot area. In accordance with

7-1-1479 MCA, the assessment for each lot in each ensuing year will be set by the City Council by resolution.

6. *Payment of Assessment:* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that the payment of one-half of said annual assessment may be deferred to May 31st of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute the existing fund known as Fund of Special Improvement Maintenance District No. 4005.
7. *Bonds for Improvements:* There will be no bonds sold for this district as it is for maintenance only.
8. *Engineering:* No engineering will be required for the maintenance of the district.
9. *District Accounts:* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana and
APPROVED, this
day _____ of _____, 2005.

CITY OF BILLINGS

By: _____
Charles F. Tooley Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE City Clerk

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Public Hearing and Resolution To Create Expanded Park Maintenance District No. 4014

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: The existing Park Maintenance District No. 4014 contains 279,532 square feet (6.42 acres) of dedicated parkland. It includes a rectangular park area in the northwest corner of the district, along with linear park area along the Big Ditch and miscellaneous park access strips throughout. The expansion of Park Maintenance District No. 4014 to include Goodman Subdivision, 2nd, 3rd and 4th Filings will not add park or public area to the district. Therefore, there will be no additional development or improvement of park area. As a condition of the Goodman Subdivision, 4th Filing final plat approval, the lots must belong to a park maintenance district. The Resolution to Create the Expanded District 4014 completes the process to include all lots of Goodman Subdivision, 2nd, 3rd and 4th Filings in Park Maintenance District No. 4014, as agreed upon in the Subdivision Improvements Agreement for the annexation and development of the Goodman Subdivision. Property Owners have been notified of the passage of the Resolution of Intent on May 23rd, 2005, and of the period for protest from May 27th through June 10th, 2005, and the public hearing and council consideration of the Resolution to Create the Expanded PMD at the June 13, 2005, City Council Meeting. A report of protests and comments received will be provided at the Council Meeting, June 13th, 2005.

ALTERNATIVES ANALYZED:

- Do not expand Park Maintenance District No. 4014
- Expand the Park Maintenance District to include all lots of Goodman Subdivision 2nd, 3rd and 4th Filings, which will be assessed for a portion of the cost of maintaining the existing park areas of the district. (Recommended)

FINANCIAL IMPACT: There is no cost associated with maintenance in the expansion area. The expansion area's portion of the maintenance cost for the existing park land is estimated to be \$7,625, including the cost for the expansion of \$1,900, for the FY 2006 to be assessed in November of 2005. The assessment rate for this amount is \$0.00206 per square foot of property in District 4014. The assessment for the added lots is shown in "Exhibit D" of the attached PMD documents for the coming year. The addition of the Goodman Subdivision 2nd, 3rd, and 4th

Filings to PMD 4014 will result in about a 1/3rd reduction in assessments in the entire district annually.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create the Expanded Maintenance District No. 4014 for the maintenance of the PMD 4014 parks.

Approved By: _____ City Administrator _____ City Attorney _____

ATTACHMENTS:

A: Resolution To Create the Expanded Park Maintenance District No. 4014 (Including Exhibits "A" through "D").

INTRODUCTION

Approval of the Resolution to Create the Expanded Park Maintenance District No. 4014 completes the process to include all lots of Goodman Subdivision, 2nd, 3rd and 4th Filings in Park Maintenance District No. 4014, as provided for in the Subdivision Improvements Agreement for Goodman Subdivision.

PROCEDURAL HISTORY

- The June 14, 2000, Subdivision Improvements Agreement adopted by the Billings City Council for Rush Subdivision committed the developers and the owners of the property within the Rush and Shiloh Point Subdivisions to the development of a 4 acre park at Poly Drive and Larchwood Lane and the creation of a Park Maintenance District to maintain it. Waivers of Protest to the development of the park and the creation of a park maintenance district are on file for the property within the proposed district as part of the Subdivision Improvements Agreement.
- The original Resolution of Intent 02-17917 to Create District 4014 was approved at the October 15, 2002, City Council meeting but could not meet the procedural requirements to advertise and mail out a Public Notice of Intent within the specified time limits. That Resolution was repealed as part of the action on the November 25, 2002, Resolution of Intent.
- It was agreed in the Subdivision Improvement Agreement that the larger 4-acre main park would be developed when 90% of the lots within the 2 subdivisions have been built on.
- The original Rush and Shiloh Point Subdivision Maintenance District 4014 was created through Resolution to Create District Number 03-17943 approved at the January 13th, 2003, City Council meeting to provide for the maintenance of park and street frontage in Rush Subdivision, 6th, 7th and 8th Filings, and Shiloh Point Subdivision, installed in accordance with the Subdivision Improvement Agreements for the two subdivisions.
- The Goodman Subdivision Improvements Agreement for the 2nd, 3rd, and 4th Filings agreed to include the area within the 4014 Rush and Shiloh Point Subdivisions Park Maintenance District and that Cash would be paid in lieu of park dedication.
- The Resolution of Intent To Expand PMD 4014 approved at the May 23rd, 2005, City Council meeting provided for advertisement of a Public Notice of Intent May 26th and June 2nd, 2005, and the mailing of the public notice to affected property owners explaining the protest and comment procedures. It also provided a protest period from May 27th through June 10th, 2005, and set a date for a Public Hearing and Council consideration of the Resolution to Expand the district at the June 13th, 2005, regular City Council meeting.
- A report on the protests and comments received will be provided at the June 13th, 2005, City Council meeting.

BACKGROUND

To provide the funding needed to develop and maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. This assures that the parks are well maintained without increasing the demand on the expenditures of the city General Fund and relieves the pressure on existing developed parks. The Goodman Subdivision Improvements Agreement calls for cash-in-lieu to be provided for its parkland dedication requirement. As a result, it is desirable that the lot owners in Goodman Subdivision be responsible for a portion of the maintenance costs associated with other usable parkland areas in their neighborhood. The proposed expanded maintenance district includes 57 additional lots. There are Waivers of Protest on file for the formation of the park maintenance district for all lots within the Goodman Subdivision.

Approval of the Resolution to Create Expanded Park Maintenance District No. 4014 for Rush, Shiloh Point and Goodman Subdivisions is the last step in the creation process.

ALTERNATIVES ANALYSIS

- Do not expand the maintenance district at this time and maintain the park improvements as they are currently.
- Expand the Park Maintenance District now to assure assessments can be collected from the expanded lots in November, 2005. The Goodman Subdivision 2nd, 3rd and 4th Filings assessments for park maintenance are discussed herein, but will result in reduced assessments in the entire district. This is the staff recommendation.

STAKEHOLDERS

- The developer has agreed to expand the existing Park Maintenance District to include all lots of Goodman Subdivision, 2nd, 3rd and 4th Filings.
- The residents in the subdivision will be made aware of the assessment for park maintenance when they purchase a lot or home, and/or a public notice will be advertised and mailed to all property owners within the expansion area informing them of the Expanded Park Maintenance District No. 4014.
- Few protests are received annually for the Park Maintenance District assessments that are levied throughout the city.
- The addition of the Goodman Subdivision 2nd, 3rd, and 4th Filings will reduce the cost to each property in the district by about 1/3rd of the annual assessments each year.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The extension of quality landscape maintenance services to new subdivision parks through the use of Special Improvement Districts and maintaining them through Park Maintenance Districts continues the Parks 20/20 plan recommendations, and conforms to city policy adopted in 1982 regarding new subdivision parks. The use of Park Maintenance Districts has allowed the use of the PRPL Parks grounds keeping staff to provide professional level maintenance to areas of public grounds and landscaping in new subdivisions as they develop and are brought into the city. This has improved the environment, increased the quality of life for Billings' residents, and

increased the value of surrounding private property. The revenue provided helps support the overall park operations in all of the General Fund supported parks by allowing better trained, more competent staffing and providing added support for state of the art operations and equipment that would be otherwise be limited by General Fund revenue constraints.

Maintaining this park with a maintenance district continues the process of extending maintenance services to the developing areas of Billings even though the revenue growth of the city General Fund has not been adequate to provide for the maintenance of these new parks. Park Maintenance District revenue is estimated to be \$486,683 to offset maintenance expenses in the upcoming 2006 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division O & M budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create the Expanded Maintenance District No. 4014 for the maintenance of the PMD 4014 parks.

ATTACHMENTS:

A: Resolution to Create the Expanded Park Maintenance District No. 4014 (Including Exhibits "A" through "D").

RESOLUTION NUMBER 05-

A RESOLUTION TO EXPAND THE BOUNDARIES OF EXTENDED SPECIAL IMPROVEMENT MAINTENANCE DISTRICT NO. 4014 FOR THE PURPOSE OF MAINTAINING THE EXISTING AND FUTURE PARK IMPROVEMENTS IN RUSH AND SHILOH POINT SUBDIVISIONS TO INCLUDE GOODMAN SUBDIVISION, IMPROVEMENTS INSTALLED BY THE DEVELOPER AS PART OF A FUTURE CONSTRUCTION PHASE OF THE SUBDIVISION.

WHEREAS, City Council of Billings, Montana hereby finds, determines and declares that:

3. The public interest and convenience require expanding the boundaries of Extended Special Improvement Maintenance District No. 4014 created by *Resolution 03-17943 on January 13th, 2003.*
4. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the cost and expenses of the district.

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

10. *Jurisdiction and Creation:* Extended Special Improvement Maintenance District No.4014 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the improvements and it does hereby expand the boundaries of Extended Special Improvement Maintenance District No. 4014. All lands included in the expanded boundaries of Extended Special Improvement Maintenance District No. 4014 are benefited and no lands that are not benefited have been included in said district.
11. *General Character of Improvements and Maintenance:* The general character of the improvements to be maintained is as follows: landscaping, trees, irrigation systems, irrigation system water services, and other park equipment and improvements installed by the developer and as part of a future Special Improvement District.
12. *Boundaries:* The boundaries of the district are described and designated on Exhibit "A" attached hereto.
13. *Maintenance Estimate:* The estimated cost of the proposed expansion maintenance for the current year shall be **\$0.00206** as described in the Maintenance Estimate attached hereto as Exhibit "D".
14. *Assessment Method:* All of the costs and expenses of the district will be assessed against the entire district, and each lot or parcel of land within the district will be assessed for that part of the whole cost which its assessable area bears to the total assessable area in the entire district, exclusive of streets, avenues, alleys and public places. Assessments for each lot during the current year will be approximately **\$0.00206** per square foot of lot area. In accordance with

7-1-1479 MCA, the assessment for each lot in each ensuing year will be set by the City Council by resolution.

15. *Payment of Assessment:* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that the payment of one-half of said annual assessment may be deferred to May 31st of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute the existing fund known as Fund of Special Improvement Maintenance District No. 4014.

16. *Bonds for Improvements:* There will be no bonds sold for this district as it is for maintenance only.

17. *Engineering:* No engineering will be required for the maintenance of the district.

18. *District Accounts:* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana and
APPROVED, this
day _____ of _____, 2005.

CITY OF BILLINGS

By: _____
Charles F. Tooley Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE City Clerk

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Public Hearing for Proposed Trade of Holfeld Subdivision Park Property near Swords Park – Resolution to Proceed

DEPARTMENT: Department of Parks, Recreation & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: Brookside Subdivision is proposed to be platted on property described as Amended Cert. of Survey, Tract A-1, currently designated as Holfeld Subdivision. It is located on the east side of Swords Park north of Swords Lane off Highway 318, and includes an area of the Alkali Creek flood plain that cannot be significantly altered or developed. The proposed Brookside subdivision abuts the 14,673 Square Foot parcel that was dedicated to the City as park in the Holfeld Subdivision some years back. In order to effectively develop the main part of the property, the owner has proposed to trade 56,082 Square Foot (1.3 acres - 3.8 times larger) in the Alkali Creek area where development is very restricted for the Holfeld Park parcel. The proposed trade area includes the Alkali Creek sanitary sewer main easement and is a needed link in the proposed trailway along Alkali Creek. City County Planning strongly supports making the trade because of the need for this link in the Heritage Trail network. A Notice of Intent was published on May 12, and May 19, 2005, and was mailed to all property owners within 300 feet of the Holfeld Park Tract, as required by BMC Chapter 22, Article 22-900. Comments and Protests received shall be reported at the Public Hearing, June 13, 2005.

FINANCIAL IMPACT: The proposed trade will not involve any cost to the city as the developer is committed to financing the resurveying and other work required to make the trade. The trade will result in a net gain of 41,409 Square Feet of park area (almost an acre), albeit a substantial portion is in the Alkali Creek flood plain. The developer has over \$5,000 in documented costs needed to complete the resurvey and develop the documents required to accomplish the trade, if approved.

RECOMMENDATION:

Staff recommends that the City Council approve the Resolution to Proceed and direct staff to complete the trade by preparing for signature and filing the boundary change documents as embodied in Certificate of Survey 1883.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT:

- A. Resolution to Proceed to trade Holfeld Park
- B. Certificate of Survey 1883 plat showing Holfeld Park parcel and “Brookside” property as traded.

INTRODUCTION

Approval of the Resolution to Proceed to trade the Holfeld Park parcel for the Brookside parcel directs staff to prepare the final documents for signature by the Mayor and to be filed with the Yellowstone County Clerk and Recorder to complete the trade as required.

PROCEDURAL HISTORY

- The possibility of trading Holfeld Park for an area along Alkali Creek north of the Public Utilities Sanitary Sewer main was brought forward through City County Planning staff in 2003 as they worked to acquire right-of-way for a trail in the Alkali Creek drainage. The developer proposed a trade with the city for the Holfeld Park parcel as a way to provide more usable area along the Alkali Creek corridor.
- In September of 2003 City County Planning staff outlined the process that would be required to complete a trade contingent on the developer assuming the burden of performing the necessary steps to obtain approval and complete the process with the City.
- The Billings Parks, Recreation and Cemetery Advisory Board considered the proposed trade and supported continuing the process at it's regular meeting November 12, 2003. Further consideration was delayed until now while the necessary steps were taken and the documents developed to be presented for approval and complete the trade.
- The current proposed trade was presented to the PRPL department and considered at the March 9, 2005, Parks, Recreation, and Cemetery Board meeting. Action on the proposed trade was tabled until an appraisal by a neutral firm could be obtained for each of the parcels to be traded.
- The appraisal results were presented at the April 13, 2005, PRC Board meeting, and the board approved a recommendation to the City Council that the trade should be completed.
- The Resolution of Intent was considered and approved at the May 9, 2005 regular City Council Meeting. A Notice of Intention to Trade Holfeld Park was advertised May 12, and May 19, 2005 and copies of the Notice was mailed to all property owners within 300 feet of the Holfeld Park boundaries as required in BMC Chapter 22, Article 22-900.
- The final action is a Public Hearing and consideration by the City Council of the Resolution to Proceed with the trade at this regular City Council meeting.
- If approved, it is the final step needed to complete the trade.

BACKGROUND

- The property for the proposed Brookside Subdivision includes over an acre of Alkali Creek floodplain that cannot be build upon or regraded to be used for building sites. Over 95% of the Holfeld Park property is out of the flood plain and can be built upon.
- The City-County Planning Department has been engaged in an ongoing effort to acquire right-of-way or easements for trail construction in the Alkali Creek Corridor approved the final process needed to do the trade will be completed. City-County Planning has strongly supported the trade as a way to acquire another segment of the corridor needed for the Heritage Trail up Alkali Creek
- The original memorandum discussing the trade considered that the city and the developer would share in the costs for completing it, since both were going to benefit from it. To date

the developer has assumed all of the costs involved and has indicated his willingness to do so in order to complete the trade.

- The Holfeld Park parcel is not part of the original Swords Park property nor is it essential to current plans adopted for Swords Park.
- The park area obtained by the City in the proposed trade is over an acre, which is 3.8 times the size of Holfeld Park. The appraised value of Holfeld Park is \$13,000, while the appraised value of the Brookside Subdivision parcel is \$12,000. The appraisal considered mainly the relative commercial values of each parcel.
- The trade will acquire ownership for the city of the area in the easement that the Alkali Creek sanitary sewer main is constructed in along the Brookside Subdivision property.

ALTERNATIVES ANALYSIS

- Approve the trade to acquire the trail corridor and sanitary sewer right-of-way in return for Holfeld Park. This is the recommendation of the Park, Recreation, and Cemetery Board and the PRPL staff .
- Do not approve the trade and retain Holfeld Park as part of the Swords Park area.
- Continue to negotiate and look for a payment of up to \$1,000 from the developer to compensate for the difference appraised value between the 2 properties.

STAKEHOLDERS

- Brookside Subdivision will be enhanced by the addition of the 14,673 sq. feet in Holfeld Park to augment the buildable area there.
- The City of Billings will gain ownership of right-of-way for the Alkali Creek sanitary sewer main and property that can be used for the Heritage Trail in Alkali Creek.
- There are 5 property owners within 300 feet of Holfeld Park besides the developer and the City of Billings. They will be informed of the possibility of the trade with the proposed Brookside Subdivision property and will receive notice of the date and time of public hearing.
- Billings residents will have another piece of the trail system acquired, will have another part of the Alkali Creek protected in park ownership with assurance of public access for the future.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The trade is consistent with the Parks 20/20 plan recommendations, the Heritage Trail Plan, and consistent with other city, county, state, and federal requirements with regard to floodplain use on creeks and waterways.

RECOMMENDATION

Staff recommends that the City Council approve the Resolution to Proceed and direct staff to complete the trade by preparing for signature and filing the boundary change documents as embodied in Certificate of Survey 1883.

ATTACHMENTS:

- A. Resolution to Proceed to Trade Holfeld Park
- B. Certificate of Survey 1883 plat showing Holfeld Park parcel and “Brookside” property.

RESOLUTION 05 - _____

A RESOLUTION PURSUANT TO BILLINGS, MONTANA CITY CODE, ARTICLE 22-900: SALE, DISPOSAL OR LEASE OF CITY PROPERTY, DESCRIBING THE PROPERTY TO BE TRADED, DECLARING THE INTENT OF THE CITY TO TRADE THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings owns and desires to trade Holfeld Park located in Holfeld Subdivision, and Blake Laughlin owns and desires to trade a portion of Tract A-1 of Certificate of Survey 1883; and

WHEREAS, the location of the properties to be traded are more particularly described as follows:

Holfeld Park consisting of 0.337 acres, and a portion of Tract A-1, of Certificate of Survey No. 1883, consisting of 1.287 acres situated in the SW1/4, Section 27, Township 1N, Range 26E, P. M. M., Yellowstone County, Montana, according to the official plats now on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana under Document No. 577599 and 1367075; and

WHEREAS, the notice required by Section 22-902 of the Billings Montana City Code has been duly published and mailed; and

WHEREAS, the public hearing required by Section 22-902 of the Billings Montana City Code was duly held on the 13th day of June, 2005;

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

That the City staff is authorized to proceed with the trade of the Holfeld Park Tract as shown in the attached exhibit of lots and portions of lots, in return for Tract A-1-B (PARK), of Certificate of Survey No. 1883, as permitted under the requirements of Section 22-902 of the Billings, Montana City Code.

APPROVED AND PASSED by the City Council of the City of Billings, Montana this _____ day of _____, 2005.

THE CITY OF BILLINGS:

BY: _____
CHARLES F. TOOLEY, MAYOR

ATTEST:

MARITA HEROLD, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 13, 2005

TITLE: Public Hearing for Special Review #782

DEPARTMENT: Planning & Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a Special Review to permit a temporary go-kart track on a property zoned Residential 9600 (R-9600) located at 1235 West Wicks Lane. Harvest Church is the owner and Glenn Fournier is the agent. The Zoning Commission conducted a public hearing on May 17, 2005, and is forwarding a recommendation of denial to the City Council.

ALTERNATIVES ANALYZED:

Prior to taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall:

1. Approve the application;
2. Conditionally approve the application;
3. Deny the application;
4. Allow withdrawal of the application; or
5. Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT

The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission is recommending that the City Council deny Special Review #782.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs

INTRODUCTION

The applicant, Harvest Church, is requesting a special review to permit a temporary go-kart track to be located on the existing parking lot on the subject property located at 1235 West Wicks Lane. The subject property is described as Lot 1, Block 4 of High Sierra Subdivision, Second Filing and is generally located on the east side of Wicks Lane, between High Sierra Boulevard and Siesta Avenue.

Based on the submitted information, the church is proposing to operate the proposed track from 8:00 a.m. to noon on Saturdays throughout the summer. The track would have no more than 12 to 15 go-karts racing at one time as specified by Condition #4. The Police Department did express concerns regarding noise and vandalism that might occur as a result of the proposed use. However, a noise study submitted with the application indicates a maximum 27.3 decibel level at the closest fence line to the adjacent residences with all karts running. Section 17-105(3), BMCC, specifies that motorcycles, minibikes, and/or other self propelled vehicles shall not exceed 80 decibels measured at 25 feet from the source. Staff finds that the noise level is acceptable for the limited time period in which the karts will be in operation. In regard to vandalism of equipment, as required by Condition #5, the applicant will be required to remove all equipment and the track at the close of the races each Saturday. The applicant's submittal indicates that the karts and equipment will be stored offsite in a secure location to help prevent vandalism and misuse of the proposed go-kart track.

As originally submitted, the applicant proposed a dirt go-kart track to be located on the north side of the church. Upon review staff found that due to dust mitigation and potential vandalism, the temporary use would be better suited for the existing parking lot located on the south side of the site. The track would be set up each week for the Saturday races and then removed upon the completion of the races. This would provide the church an opportunity to try a temporary track and further examine the compatibility of the track and mitigate any potential impacts to surrounding properties. If the use is found to be incompatible, the track will be required to cease operation. If the use is found to be compatible with the surrounding properties, the applicant will be permitted to continue the temporary use until such time that a complete master plan is submitted for the remaining acreage of the site. At that time, a permanent location for the go-kart track would be submitted for a special review along with the additional outdoor recreational uses the church is proposing for future development.

The Planning Department reviewed the application and recommended conditional approval to the Zoning Commission, provided that the use would be conducted on the existing parking adjacent to the church. On May 17, 2005, the Zoning Commission conducted a public hearing and voted 4-0 to forward a recommendation of denial to the City Council. Discussion regarding the proposed use focused on adverse impacts to the adjacent residential uses, such as noise, pollution and possible vandalism to the subject property and surrounding properties.

PROCEDURAL HISTORY

- The Special Review application was received on April 4, 2005.
- On May 3, 2005, the originally scheduled public hearing was cancelled due to a lack of a quorum.
- On May 17, 2005, the City Zoning Commission conducted a public hearing and forwarded a recommendation of denial to the City Council.

- The City Council will conduct a public hearing and consider this application on June 13, 2005.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The recommended conditions will ensure increased compatibility with the adjoining residential uses.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending **denial** of this application to the City Council.

During the review of this application, Planning staff forwarded the following conditions of approval to the Zoning Commission for consideration:

1. The Special Review approval shall be limited to Lot 1, Block 4, High Sierra Subdivision, Second Filing.
2. The go-kart track shall be limited to the existing church parking lot located on the south portion of the site.

3. The track shall be limited to operating on **Saturdays only** from 8:00 a.m. to 12:00 p.m., May 15th through September 15th. Said times do not include the set up and cleanup of the track each Saturday, which may go above and beyond the specified time, provided that the go-karts are not operated except to load them for removal.
4. No more than 15 go-karts shall be raced at one (1) time.
5. The temporary track and go-karts shall be removed each week and all equipment stored within a completely enclosed and secured site.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

There were two (2) adjacent property owners present at the public hearing to express their concerns regarding the proposed track and the associated noise and dust it would cause in the immediate vicinity of the church. Additionally, there was written public comment from the property owner directly adjacent to the east of the church who was concerned with the proposed and current activities associated with the church. She stated to staff in a telephone conversation on May 4, 2005, that there have been numerous trespassers and loiters on her property, as a result of late night gatherings with the church. She further stated that the proposed go-kart track may cause this situation to be exacerbated.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

The Zoning Commission is recommending that the City Council **deny** Special Review #782.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs

ATTACHMENT A
Zoning Map



ATTACHMENT B
Site Photographs



Figure 1: View east toward existing single family residences.



Figure 2: View north across the subject property toward the adjacent range uses.



Figure 3: View south along the rear of the existing structure toward the adjacent single-family uses and cell towers.



Figure 4: View east toward the existing single-family residences. The go-karts were being tested on this day in early spring in order to complete a noise and dust study (picture submitted by the applicant).

[\(Back to Regular Agenda\)](#)



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, JUNE 13, 2005**

TITLE: Public Hearing for Special Review #783**DEPARTMENT:** Planning & Community Services**PRESENTED BY:** Lora Mattox, Planner II

PROBLEM/ISSUE STATEMENT: A special review request to allow the operation of a powder coating business in Billings Original Town, Lots 17 – 24, Block 143, zoned Controlled Industrial. The subject property is located at 119 South 25th Street. The owner is Montana Rescue Mission; the applicant is Coatings, Inc.; the agents are Jim Huertas and Mitch Lee of Coatings Inc. The Zoning Commission conducted a public hearing on May 17, 2005 and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED:

1. Approval;
2. Conditional approval; or
3. Denial.

FINANCIAL IMPACT: The special review, if approved, would have a negligible impact on taxes generated from the property since it was previously used for industrial purposes.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation per a 4-0 vote that the City Council grant conditional approval for Special Review #783.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Zoning Map
- C. Site Photographs
- D. Site Plan

INTRODUCTION

This is a special review request to operate a powder coating business within an existing building in Billings Original Town, Lots 17- 24, Block 143 zoned Controlled Industrial. Located at 119 South 25th Street. This property currently contains a 19,500 square foot building used for steel fabrication and warehousing and is owned by Montana Rescue Mission.

Coatings, Inc. currently employs 9 residents of Yellowstone County. The square footage offered at this site, coupled with the available power and gas in this building presents an optimum space for the needs of Coatings, Inc. The powder coating process uses electrically charged paint powder to a grounded surface, but is classified the same as a business that uses liquid paint.

By leasing this building, the Montana Rescue Mission can bring in additional dollars that will go towards their current development plan. Coatings, Inc. has plans to lease this site for 2-3 years during which the Montana Rescue Mission renovates the office areas of the warehouse for their use.

The Montana Rescue Mission would lease the referenced space to Coatings, Inc. as is. Coatings, Inc. would like to move its current operations from 441 Riverside Road to 119 South 25th. Coatings, Inc. would inhabit half of this building and perform all services inside the building. The processes of powder coating would be performed on-site and completely enclosed within the walls of the building. No construction is planned for this site by Coatings, Inc.

The Planning Department reviewed the application and recommended conditional approval to the Zoning Commission. Staff felt that this use was compatible with the surrounding zoning and uses. This use will not have the same type of detrimental effect on the surrounding uses as a traditional "paint shop" may have. In addition, because this specific type of business is self-contained and non-polluting, staff felt that this use was appropriate for this location.

The Zoning Commission conducted a public hearing on May 17, 2005. The applicants' agent, Jim Huertas and Mitch Lee attended the public hearing. There was no one in opposition to the proposed special review present at the public hearing and the Planning Department did not receive negative comments from other city departments on this proposal.

This business is exempt from Chapter 27-1100 Landscaping by definition in Section 27-1102 C (b). The site plan meets parking requirements.

PROCEDURAL HISTORY

- The application was received on April 5, 2005.
- The City Zoning Commission voted 4-0 at its hearing on May 17, 2005 for conditional approval of the special review, therefore, forwarding a recommendation to the City Council of conditional approval.
- The City Council will conduct a public hearing for consideration of this application on June 13, 2005.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

2. Complies with all requirements of this chapter.

This application complies with the requirements of the zoning.

3. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

4. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The recommended conditions will ensure increased compatibility with and separation from the adjoining land uses.

The City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Deny the application for a special review use.
2. Grant the application for a special review use.
3. Conditionally grant the application for a special review use.
4. Delay action on the application for a period not to exceed thirty (30) days.
5. Give reasons for the recommendation.

Based on the above criteria, the Zoning Commission voted 4-0 on Special Review #783 and therefore is forwarding a recommendation of conditional approval this application.

The Planning Department during review of this special review forwarded the following conditions of approval to the Zoning Commission for consideration:

6. The special review approval shall be limited to Lots 17 – 24, Block 143 Billings Original Town.
7. The applicant shall comply with all other requirements of Section 27-613.C. of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 17, 2005, for the proposed special review. The result of that hearing resulted in a 4-0 vote, therefore forwarding a recommendation of conditional approval to the City Council.

- The applicants' agent spoke at the public hearing on the powder coating process. There was no other public comment during the public hearing.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- Coordinated economic development efforts that target business recruitment, retention, and expansion.
- Strengthen area economy.
- Create living-wage jobs.

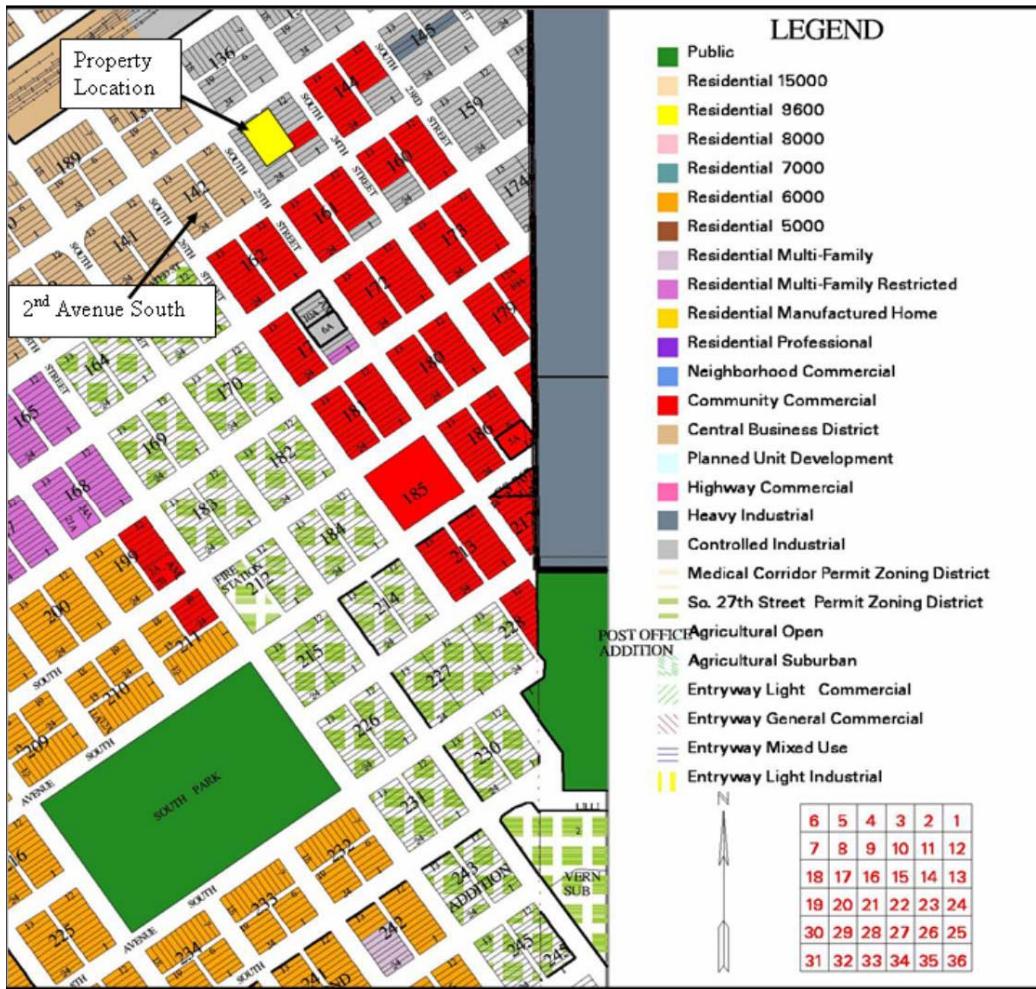
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval for Special Review #783.

ATTACHMENTS

- A. Zoning Map
- C. Site Photographs
- D. Site Plan

ATTACHMENT A
Zoning Map



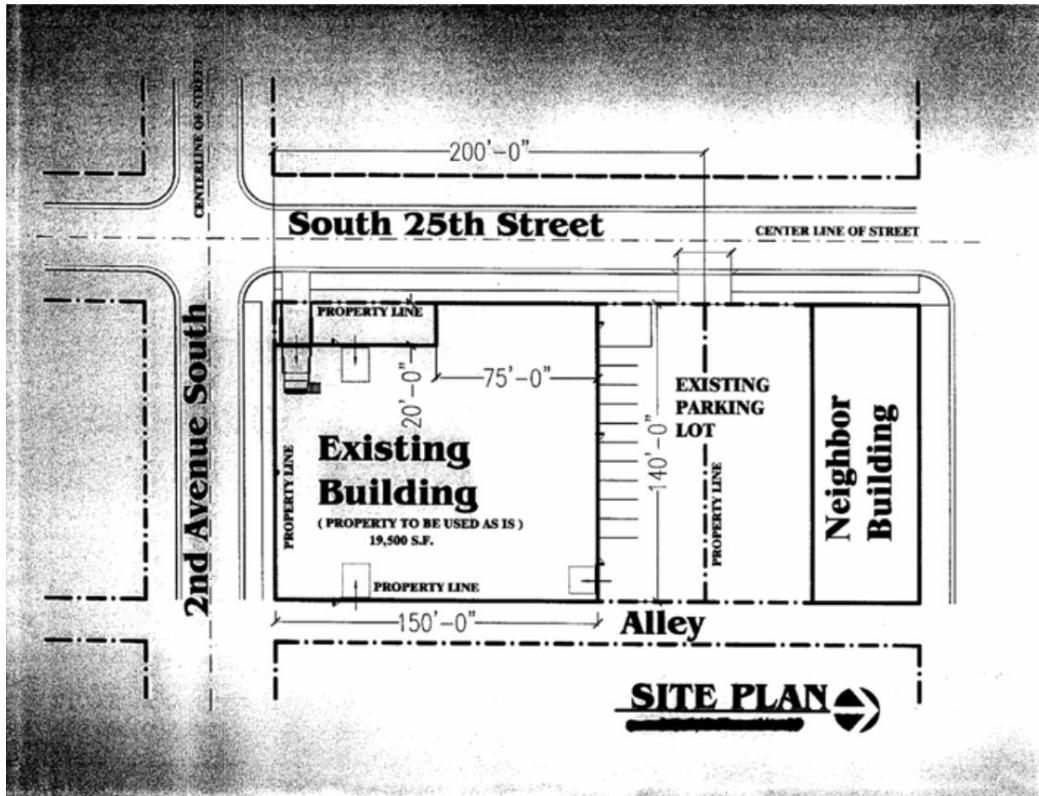
ATTACHMENT B
Site Photographs



View looking south

View looking north

ATTACHMENT C:
Site Plan



[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Public Hearing and Resolution Vacating Madison Avenue Right-of-Way
East of Orchard Lane

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: JL Partnership has petitioned to vacate the Madison Avenue Right-of-Way east of Orchard Lane as shown on Attachment A. The acknowledgement of receipt of petition was approved at the May 9th City Council Meeting. This right-of-way was dedicated as part of the plat for Cassino Subdivision in 1971 to extend Madison Avenue in the future. There is no need to extend Madison Avenue in the future. The right-of-way currently has an irrigation ditch running through it and a trailer house on it. The trailer house existed on the right-of-way prior to annexation into the City. The annexation was conditioned to remove the trailer house if the street is ever to be constructed, which is not planned to be extended in the future. The family that originally platted the subdivision and dedicated the right-of-way still owns both lots within the subdivision.

ALTERNATIVES ANALYZED:

1. Approve vacation of Madison Avenue right-of-way as shown on Attachment A at a cost of \$2,222 to the requestor.
3. Approve vacation of Madison Avenue right-of-way as shown on Attachment A at no cost to the requestor.
4. Do not approve vacation of Madison Avenue right-of-way.

FINANCIAL IMPACT: The petitioners are requesting that the right-of-way be gifted to them due to the fact that it is not needed by the City and they are the original subdivider. However, an appraisal was done by Charles H. Hamwey, and was valued at \$2,222.00. The right-of-way proposed to be vacated is 4,444.50 square feet.

RECOMMENDATION

Staff recommends that Council, after holding a public hearing, approve the vacation of Madison Avenue right-of-way as shown on Attachment A and determine the cost to the requestor.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Letter from Cole Law Firm, representative of JL Partnership
- C. Resolution

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING a portion of
Madison Avenue right-of-way in Cassino Subdivision.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of a portion of Madison Avenue right-of-way in Cassino Subdivision as described hereinafter; and
WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., a portion of Madison Avenue right-of-way in Cassino Subdivision more particularly described as follows:

Beginning at a point on the east right-of-way line of Orchard Lane, said point being situated on the northwest corner of Lot 2, Block 1, Cassino Subdivision; thence, from said point of beginning, N 0°16' W a distance of 30 feet; thence N 89°55' E a distance of 148.15 feet; thence S 00°16 E a distance of 30 feet; thence S 89°55' W a distance of 148.15 feet to the point of beginning; containing an area of 4,444.50 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described a portion of Madison Avenue right-of-way in Cassino Subdivision is in the best interest of the public and can be done without any public detriment. Ownership of the vacated area will revert to the current owner of Lot 2, Block 1, Cassino Subdivision.

PASSED by the City Council and APPROVED this 13th day of June 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Public Hearing and Resolution Vacating S. 26th Street between 1st Avenue S. and 2nd Avenue S.

DEPARTMENT: Public Works/Engineering

PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The Yellowstone Health Partnership/Yellowstone City-County Health Department is proposing an addition to the Community Health Center at S. 27th Street. The building addition along with parking will be located in 2nd Avenue South between S. 26th Street and S. 27th Street and in S. 26th Street between 1st Ave. S. and 2nd Ave. S. The Yellowstone Health Partnership/Yellowstone City-County Health Department had submitted an application to vacate 2nd Ave. S., which was approved on June 14th, 2004. The department is now proposing to vacate S. 26th Street between 1st Ave. S. and 2nd Ave. S., as shown on Attachment A. The acknowledgement of receipt of petition was approved at the May 9th City Council Meeting. This proposed vacation is consistent with the Gateway Business Park Study.

ALTERNATIVES ANALYZED:

5. Approve the vacation of S. 26th Street between 1st Ave. S. to 2nd Ave. S. at a cost to the requestor of \$2.50 per square foot for a total of \$50,000.
6. Approve the vacation of S. 26th Street between 1st Ave. S. to 2nd Ave. S. at no cost
7. Do not approve the vacation of S. 26th Street between 1st Ave. S. to 2nd Ave. S.

FINANCIAL IMPACT: With the vacation of 2nd Ave. S., the Yellowstone Health Partnership/Yellowstone City-County Health Department paid \$2.50 per square foot for the right-of-way, however with the proposed vacation of S. 26th Street, the petitioner is requesting that the city gift it. The proposed right-of-way vacation is 20,000 square feet. Please see attached letter from petitioner. There was no appraisal completed for the parcel in question. The cost for staff to prepare this proposed vacation is approximately \$500.

RECOMMENDATION

Staff recommends that Council, after holding a public hearing, approve the vacation of S. 26th Street between 1st Ave. S. and 2nd Ave. S and determine the cost to the requestor.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

- A. Map Depicting Area to be Vacated
- B. Letter from Perry Howell, CFO, Yellowstone City-County Health Department/YHP
- C. Resolution

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING South 26th
Street between 1st Avenue South and 2nd Avenue South.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of South 26th Street between 1st Avenue South and 2nd Avenue South as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

3. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., South 26th Street between 1st Avenue South and 2nd Avenue South more particularly described as follows:

Beginning at a point which is the northeasterly corner of Block 141 of the Original Town(now City) of Billings, Montana; thence, from said point of beginning, crossing the right-of-way of South 26th Street, N55°23'30"E a distance of 80.00 feet to the northwesterly corner of Block 142 of said Original Town of Billings; thence, along the westerly line of said Block 142, S34°36'30"W a distance of 250.00 feet to the north westerly corner of Lot 23 of said Block 142; thence crossing the right-of-way of said South 26th Street, S55°23'30"W a distance of 80.00 feet to a point on the easterly line of said Block 141; thence along said easterly line, N34°36'30"E a distance of 250.00 feet to the point of beginning; said described tract having an area of 20,000 square feet.

Is hereby discontinued, abandoned and vacated.

4. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described South 26th Street between 1st Avenue South and 2nd Avenue South is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 13th day of June 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Zone Change #757 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: This is a zone change request from R-7,000 to R-6,000 on Lot 6, Block 1 of Burnstead Subdivision 2nd Filing. The subject property is located at 945 N 19th Street in the North Park neighborhood. The property owners are Larry & Judith Hauk. The Zoning Commission held a public hearing on May 17, 2005, and voted 3-0 to recommend approval.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: This zone change should not affect the City's tax base but will preserve the existing property value.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #757 and adopt the determinations of the discussed 12 criteria.

Approved by: _____ **City Administrator** _____ **City Attorney**

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance
- D: Protest Petition

INTRODUCTION

This is a zone change request from Residential 7,000 to Residential 6,000 on Lot 6 of Block 1 of Burnstead Subdivision 2nd Filing. The subject property is located at 945 N 19th Street and has 11,911 square feet in lot area and currently is developed as a 4-unit apartment building. The applicant discovered the underlying zoning district was R-7,000 when they entered an agreement to sell the property. The buyer's lender asked the Planning Department to verify the zoning and if the building could be reconstructed if damaged. The Planning Department informed the lender that the building as constructed was a nonconforming use of the property under R-7,000 zoning and could not be reconstructed as a 4-unit apartment. This lot area and zoning only allows a duplex unit to be constructed on the property.

PROCEDURAL HISTORY

- On April 5, 2005 the Planning Department received the request for a zone change.
- The Zoning Commission held a public hearing on May 17, 2005, and voted 3-0 to recommend approval of the requested Zone Change.
- The City Council will hold a public hearing on June 13, 2005, and make a decision on the zone change application.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on June 27, 2005.

BACKGROUND

The building at 945 N 19th Street was originally constructed as a 3-unit apartment building in 1954 and a fourth unit was added in 1984. According to Planning Department records, this parcel has been zoned R-7,000 since May of 1972 (current zoning code). The building official in 1984 mistakenly determined the zoning was R-6,000 and allowed the fourth unit to be constructed. The applicant would like to have the zoning match the existing use of the property. The R-6,000 zone would allow (by special review) the construction of a new 4-unit apartment building. The applicant does not intend to expand the existing building or increase the number of units on the property. Any additional dwelling units to the existing building would require special review approval by the City Council.

The Planning Department reviewed the application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to R-6,000 to the east and the current use of the property has fit in well with the existing neighborhood. The North Park Neighborhood Plan does indicate the need to maintain the R-7,000 zoning within this area; however, the property has supported and can continue to support a multi-family dwelling without being detrimental to the R-7,000 district.

The City Zoning Commission reviewed this application and held a public hearing on May 17, 2005. The Zoning Commission voted 3-0 to recommend approval based on the attached twelve (12) criteria for zone changes.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The new zoning will bring an existing multifamily dwelling into conformance with the zoning district. The 2003 Growth Policy and the 1993 North Park Neighborhood Plan supports the development of a variety of housing types. While the 1993 North Park Neighborhood Plan specifies that the existing R-7,000 zoning should be protected from increases in development density, this multifamily dwelling has been in existence for over 50 years and the applicant does not intend to increase the number of units in the building.

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning will not increase the traffic generated from this site. Currently the parcel is developed with a 4-unit apartment building. The applicant does not plan any additional dwelling units. The lot area could allow for one additional unit in this building but would require a special review approval from the City Council. The existing streets can handle the amount of traffic generated from the site.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.

4. *Will the new zoning promote health and general welfare?*

The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.

5. *Will the new zoning provide adequate light and air?*

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The R-6,000 allows for maximum lot coverage of 40 percent or 4,764 square feet on this 11,911 square foot lot. The existing lot coverage of ~16 percent will remain the same since no new building is contemplated by the applicant. These features should prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning of Residential-6,000 allows single-family detached dwellings and multifamily units, based on minimum lot areas and special review approval of the City Council. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning will not affect the adjacent streets or traffic patterns.

Water and Sewerage: The City current provides water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: There should be no effect on parks or schools from this rezoning

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*
This area of the City has a number of dwelling densities including single family homes on lots of 7,000 square feet up to 24 units on a 26,000 square foot lot (2022 Burnstead Drive). This lot is on the boundary between a single and two family zoning district (R-7,000) to the west and a single, two family and multifamily zoning districts (R-6,000 and Residential Multifamily-Restricted) to the north and east. Within 600 feet of this property the majority of dwellings are single family or two family homes. To the north and east there are six properties that have been developed at higher densities including an 8-plex in an R-7,000 zoning district.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area. The existing building on the property will retain its value by making it conforming to the zoning regulations.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

STAKEHOLDERS

The Zoning Commission held a public hearing on May 17, 2005 on this zone change. No surrounding property owners attended the public hearing. A protest petition was received on May 16, 2005, and was signed by 23 property owners surrounding the subject property. One letter in favor of the zone change was received by the owner of property at 988 N 18th Street, Elizabeth O'Toole. Mrs. O'Toole attended the public hearing and testified in favor of the zone change. The Planning Department has determined the protest petition is a valid protest of the proposed zone change. This will require a 2/3 vote of the present and voting members of the City Council to pass the zone change request.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #757 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance
- D: Protest Petition

ATTACHMENT A
Site Photographs – Zone Change #757



Subject property view east from N 19th Street



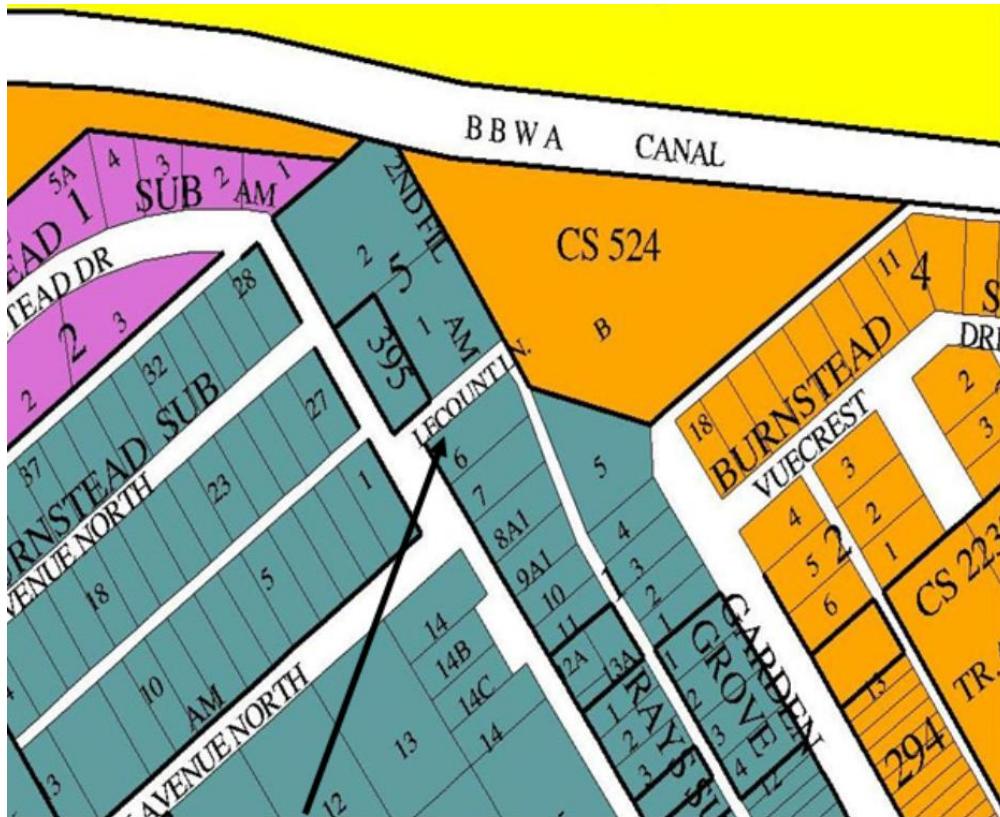
Subject property view of parking area north of existing building



View north on N 19th Street from intersection of Lecount Lane
Multifamily structures in background on Burnstead Drive

ATTACHMENT B

Zoning Map



Subject Property and Surrounding Zoning

**ATTACHMENT C
ORDINANCE NO. 05-**

**AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Lot 6 of Block 1 Burnstead Subdivision 2nd Filing an 11,911
square foot parcel of land. THE SUBJECT PROPERTY IS
LOCATED AT 945 N 19TH STREET.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. **DESCRIPTION.** Lot 6 of Block 1 Burnstead Subdivision 2nd Filing containing 11,911 square feet of land, more or less and is presently zoned Residential-7,000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential-7,000** to **Residential-6,000**, and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential-6,000** zones as set out in the Billings, Montana City Code.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 13, 2005.

PASSED, ADOPTED AND APPROVED on second reading June 27, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#757

ATTACHMENT D - Protest Petitions and validation Zone Change

#757

AGAINST ZONE CHANGE #757

The property owners whose signatures appear on this petition are against proposed Zone Change #757 which would change the current zoning for Lot 6, Block 1 of Burnstead Subdivision 2nd filing from Residential-7,000 to Residential 6,000. The property is located at 945 North 19th Street.

Signature	Street Address	Phone
1. <i>Calley Wickman</i>	1103 N. 19th	252-5942
2. <i>Dary Whelan</i>	1103 North 19 th	252-5942
3. <i>Patricia Sapping</i>	1912 11 th AVE North	259-4917
4. <i>Aura Melton</i>	1906 11th AVE N	1071-8433
5. <i>Seth D</i>	940 N. 18th St.	672-0221
6. <i>Jeff Whelan</i>	930 N. 18th st	248-8201
7. <i>Rid Den</i>	920 N. 18 th St	243-0459
8. <i>Maryan Seilstad</i>	917 N. 19th St.	860-0961
9. <i>Mark</i>	919 N. 19 St.	248-3017
10. <i>Pat Boland</i>	915 N 19th	860-2784
11. <i>Mark W. Melton</i>	943 N. 19 th	622-6936
12. <i>George Whelan</i>	1901 10 th Ave N	259-9650
13. <i>Linda M. Whelan</i>	1901 10 th AVE N	259-9650

ATTACHMENT D, Continued
Protest Petitions and Validation Zone Change #757

AGAINST ZONE CHANGE #757

The property owners whose signatures appear on this petition are against proposed Zone Change #757 which would change the current zoning for Lot 6, Block 1 of Burnstead Subdivision 2nd filing from Residential-7,000 to Residential 6,000. The property is located at 945 North 19th Street.

Signature	Street Address	Phone
14. Donald J O'Brien	1913 10 th AVE NORTH	259-1006
15. Barbara O'Brien	1913 10 th Ave. No.	259-1006
16. M. Ann Blodoe	1916 10th ave n	259-4241
17. Sheila Clark	1905 10 th Ave. N	—
18. Doris Kleist	10 922 N 19 th st.	252-7332
19. Hubert Patterson	1918-10 th AVE, N	24538825
20. David H. Sideman	1111 North 19 th ST	259-4627
21. Paul E. J. Tarr	1819 LeCount Ln.	252-0574
22. Carol Engle	1819 LeCount Ln	252-0574
23. Shirley Washler	1902 11 th Ave. N	252-3619
24.		
25.		
26.		

ATTACHMENT D, Continued
Protest Petitions and Validation Zone Change #757

Zone Change #757 - 945 N 19th Street

Record #	Geocode	Tax ID #	Street Address	Record Property Owner
1	3103333215440000	D05870	N18TH ST	Billings Bench Water Association
2	3103333215090000	A03981	1819 LECOUNT LN	Justin & Carol Engle
3	3103333215100000	D05860	1103 N 19TH ST	Gary & Colleen Wichman
4	3103333212200000	A03950	1902 11TH AVE N	Shirley Vashler
5	3103333215110000	A03967	945 N 19TH ST	Subject Property
6	3103333215420000	A03966	988 N 18TH ST	Elizabeth O'Toole
7	3103333215120000	A03967A	943 N 19TH ST	Jack Nickels & Robert Hedrick
8	3103333212190000	A03924	1901 10TH AVE N	Everett & Linda Miller
9	3103333215130000	A03968	929 N 19TH ST	John Gountanis
10	3103333212180000	A03925	1905 10TH AVE N	Sheila Clarke
11	3103333215140000	A03968A	921 N 19TH ST	John Gountanis
12	3103333209240000	D05802	924 N 19TH ST	Karl Giebink

Valid Protest?

Yes - 50% of property owners with 150 feet of the subject property have signed a protest against the zone change

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: Zone Change #758 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: This is a zone change request from R-6000 to Residential Multifamily-Restricted on Lot 1 of Robinson Subdivision. The subject property is located at 416 Orchard Lane. The property owner is T.J. Van Winkle and the agent is Eric Van Winkle. The Zoning Commission held a public hearing on May 17, 2005, and voted 2-1 to recommend approval.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: This zone change should increase the City's tax base when the property is developed and the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #758 and adopt the determinations of the discussed 12 criteria.

Approved by: _____ **City Administrator** _____ **City Attorney**

ATTACHMENTS:

A: Site photographs
B: Map
C: Ordinance

INTRODUCTION

This is a zone change request from Residential 6,000 to Residential Multifamily – Restricted on Lot 1 of Robinson Subdivision. The subject property is located at 416 Orchard Lane and has 15,000 square feet in lot area and currently supports a single family home. The applicant applied for and received a zone change from R-7,000 to R-6,000 in 2003 and intended to construct a duplex in addition to the single family home on the property. That building plan was never completed. The applicant now intends to construct a triplex apartment building in addition to the single family home.

PROCEDURAL HISTORY

- On April 5, 2005, the Planning Department received the application for a zone change.
- The Zoning Commission held a public hearing on May 17, 2005, and voted 2-1 to recommend approval of the requested Zone Change.
- The City Council will hold a public hearing on June 13, 2005, and make a decision on the zone change application.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on June 27, 2005.

BACKGROUND

A 4-plex apartment exists directly north of the subject site at 402 Orchard Lane and a duplex exists directly east of the property at 417 Orchard Lane. Gunn Subdivision, a proposed 32-lot residential development, has received preliminary approval for land directly west and north of the subject property. The owner's agent, Eric Van Winkle, runs an auto repair business at 428 Orchard Lane as a nonconforming use of the property directly south of the subject parcel. The neighborhood is currently a mix of zoning districts ranging from R-9,600 to Controlled Industrial. Orchard Lane is designated as a collector street and carries an average of 1,800 vehicle trips per day. This proposed zoning would allow either a tri-plex apartment in addition to the single family home or up to a 7-plex apartment building if the single family home was removed.

The Planning Department reviewed the application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to R-6,000 to the east, west and north and there are other multi-family dwellings in the neighborhood. The RMF-R zone is compatible with the adjacent collector street. The proposed Gunn Subdivision should be compatible with the multifamily housing including the existing 4-plex at 402 Orchard Lane and the proposed multifamily development on this lot. The improvement of Lux Avenue for the Gunn Subdivision increases the possibility the property will be developed in a timely manner. The City Zoning Commission reviewed this application and held a public hearing on May 17, 2005. The Zoning Commission voted 2-1 to recommend approval based on the attached twelve (12) criteria for zone changes.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated using the 12 criteria that are set out in MCA 76-2-304. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*

The new zoning will help to curb leapfrog development by allowing redevelopment and infill in an existing and growing city neighborhood. The 2003 Growth Policy supports the development of a variety of housing types and encourages infill projects. The proposed zoning is compatible with surrounding zoning and with existing developments.

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning will increase the traffic generated from this site. The new traffic generated would vary depending on the chosen density of the development. At a minimum, a tri-plex unit would add up to 30 vehicle trips per day to Orchard Lane. This would not have significant impact on the existing collector street.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.

4. *Will the new zoning promote health and general welfare?*

The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.

5. *Will the new zoning provide adequate light and air?*

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The RMF-R zone allows for maximum lot coverage of 55 percent or 8,250 square feet square feet on this 15,000 square foot lot. The existing lot coverage of 10.5 percent could increase significantly with the construction of a tri-plex apartment. The maximum lot coverage should still prevent the overcrowding of land in this area.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning of RMF-R allows single-family and multifamily dwellings, based on minimum lot area. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning will not have a significant effect on the adjacent streets or traffic patterns.

Water and Sewerage: The City current provides water but not sewer service to the property and has adequate facilities to serve this property. Any development of the property will require connection to the sanitary sewer service available in Orchard Lane.

Schools and Parks: There should be no effect on parks or schools from this rezoning.

Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.

9. *Does the new zoning give reasonable consideration to the character of the district?*
This area of the City has a number of dwelling densities including single family homes on lots of 6,000 square feet up to 4 units on a 10,000 square foot lot (402 Orchard Lane). This lot is on the boundary between a single and two family zoning district (R-7,000) to the south and a single, two family and multifamily zoning districts (R-6,000) to the north, west and east. Within 600 feet of this property the majority of dwellings are single family or two family homes. To the north and east there are two properties that have been developed at higher densities including a 4-plex in an R-6,000 zoning district.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area. The existing building on the property will retain its value and will be conforming to the zoning regulations.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission held the public hearing on May 17 2005, and T.J. Van Winkle explained the proposal to the commission. She intends to develop the tri-plex when the Gunn Subdivision is under construction and the building will have an address on the extension of Lux Avenue. Prior to the public hearing the Planning Department received four (4) letters of objection to the zone change. No opponents of the proposal were present at the public hearing. The major concern of those objecting to the zone change was noise and general lack of proper supervision of similar rental housing developments.

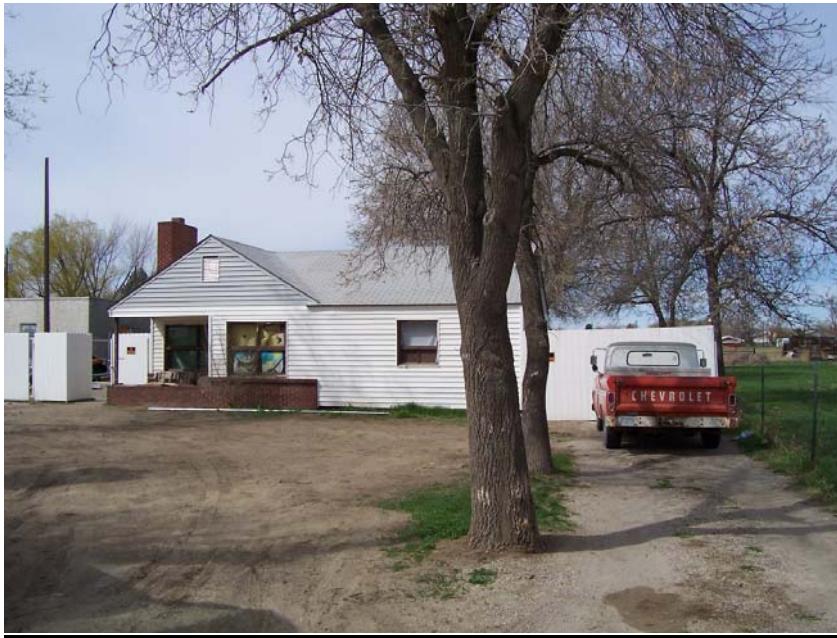
RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #758 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

ATTACHMENT A



416 Orchard Lane view west from Orchard Lane



View north on Orchard Lane
4-plex apartment middle left and towing company in middle right of photograph



View east across from subject property
Duplex unit at 417 Orchard Lane

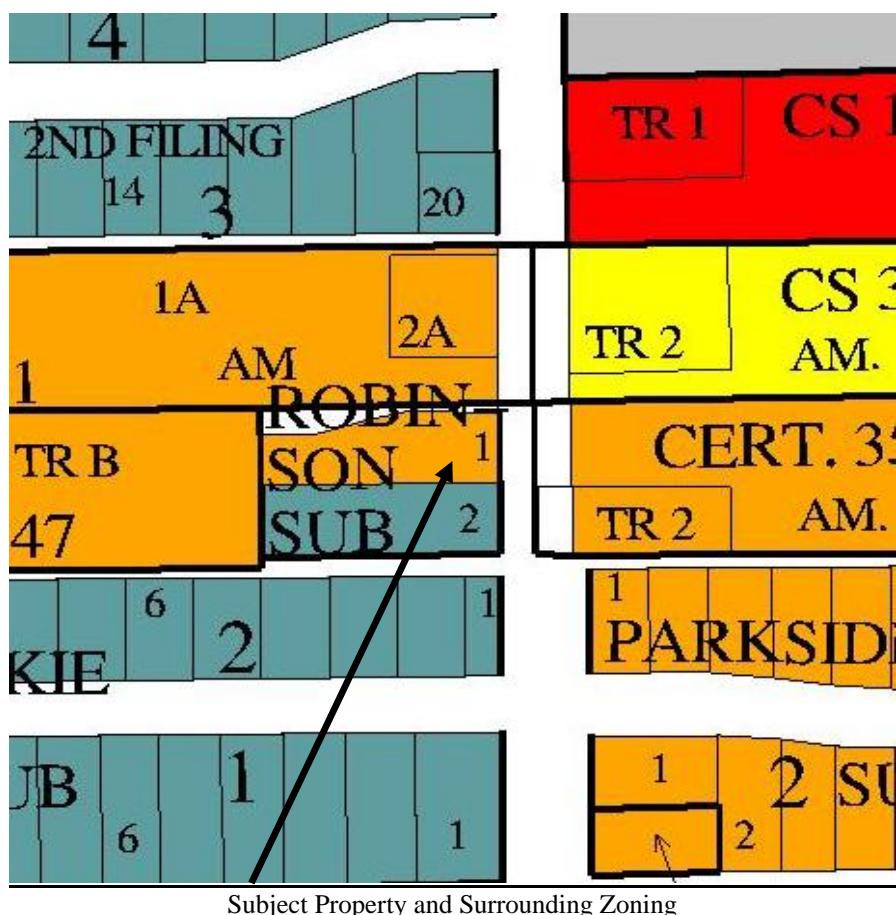


View south at 428 Orchard Lane (aka 424 Orchard Lane)
Existing nonconforming auto repair shop

ATTACHMENT B

Zoning Map

Zone Change #758



**ATTACHMENT C
ORDINANCE NO. 05-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION

ON Lot 1 Robinson Subdivision a 15,000 square foot parcel of land.

**THE SUBJECT PROPERTY IS LOCATED AT 416
ORCHARD LANE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. **DESCRIPTION.** A tract of land known as Lot 1 Robinson Subdivision containing 15,000 square feet of land, more or less and is presently zoned Residential-6,000 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential-6,000** to **Residential Multifamily-Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multifamily-Restricted** zones as set out in the Billings, Montana City Code.

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **EFFECTIVE DATE.** This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading June 13, 2005.

PASSED, ADOPTED AND APPROVED on second reading June 27, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#758

[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, June 13, 2005**

TITLE: Zone Change #759 Public Hearing and 1st Reading of Ordinance**DEPARTMENT:** Planning and Community Services**PRESENTED BY:** Nicole Cromwell, AICP, Planner II, Zoning Coordinator

PROBLEM/ISSUE STATEMENT: The Planning Department has identified sections in the Unified Zoning Regulations that are inconsistent, are difficult to interpret or have placed an unreasonable burden on public utility providers. Staff is proposing to correct these problems but an interim zoning regulation is required while staff conducts the necessary research to modify the Regulations. An interim zoning regulation is allowed by MCA Section 76-2-306 (Municipal zoning) as an emergency measure in order to promote the public health, safety, morals, and general welfare. The Board of County Commissioners adopted the interim zoning regulation on May 24, 2005. The City Zoning Commission held a public hearing on the interim zoning regulation on May 17, 2005 and voted 3-0 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-306 allows the adoption of an interim zoning regulation as a matter of urgency without the review of the 12 criteria normally evaluated for zone changes. Interim zoning regulations may only be in effect for six (6) months from the date of enactment. The City Council may:

1. Approve the interim zoning regulation
2. Deny the interim zoning regulation
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the interim zoning regulation.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #759 and allow the interim zoning regulation to be effective for a period not to exceed six (6) months.

Approved by: _____ **City Administrator** _____ **City Attorney**

ATTACHMENTS:

- A: Ordinance
- B: MCA 76-2-306
- C: Preliminary pipeline route for Williston Basin Interstate

INTRODUCTION

In February 2005, Williston Basin Interstate Pipeline contacted the Planning Department regarding the interpretation of the Unified Zoning Regulations as they relate to natural gas pipelines and utility transmission and distribution lines. Williston Basin Interstate Pipeline is engaged by ConocoPhillips to provide a gas source for a new low-sulfur diesel refining unit at the plant in Billings. The proposed and most feasible pipeline route would run south of Interstate 90 from S 24th Street West east to the City of Billings Water Treatment Plant on Belknap Avenue. The implied and explicit restrictions within the existing Unified Zoning Regulations revealed the proposed route would be prohibited in some areas and require a special review in all other zoning districts.

PROCEDURAL HISTORY

- On April 11, 2005 the Board of County Commissioners initiated the process to adopt an interim zoning regulation related to utility and pipeline transmission and distribution systems.
- On April 24th and May 1, 2005 the legal advertisement of the public hearing for the County Zoning Commission was published in the Billings Gazette.
- On April 17th, April 24th and May 15th the legal advertisement of the public hearing for the City Zoning Commission was published in the Billings Gazette.
- On Monday May 9, 2005 the County Zoning Commission conducted the public hearing for the interim zoning regulation. The Commission forwarded a recommendation of approval to the Board of County Commissioners.
- On Tuesday May 17th, 2005 the City Zoning Commission conducted the public hearing for the interim zoning regulation. The Commission voted 3-0 to forward a recommendation of approval to the City Council.
- On Tuesday May 24th, 2005 the Board of County Commissioners voted to approve the interim zoning regulations and allow the regulation to be in effect for a period not to exceed six (6) months.
- The City Council will hold a public hearing on June 13, and make a decision on the interim zoning regulation.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on June 27, 2005.

BACKGROUND

The Planning Department reviewed the regulations in light of the location of gas pipelines within the city and county as well as other utility transmission and distribution lines for electricity and telecommunications. The regulations clearly require a special review for these types of installations in all commercial zoning districts and are prohibited in all residential zoning districts except for Agriculture Open Space where a special review is required. The department also considered the zoning history for these types of applications within the city and county. Less than five (5) such installations ever received a special review approval however, there are hundreds of public utility transmission and distribution lines in this community. The current configuration of the regulation is unworkable. New public utility lines to service residential subdivisions or replacement and rehabilitation of existing service lines would be prohibited in residential zoning districts. Zoning districts extend into public right of ways so existing lines under the Interstate or arterial streets are not immune from the zoning restrictions. The City

Council on May 9, 2005 approved a 15-year franchise to Montana Dakota Utilities to provide gas distribution services within city right-of-ways. Under current regulations parts of this distribution system may not conform to the zoning especially in residential zoning districts. The interim zoning regulation will allow utility transmission and distribution systems to be in conformance with zoning while the Planning Department develops the necessary changes to the zoning regulations.

Interim zoning regulations are limited to a maximum of one (1) year by state statute. The Planning Department believes the inconsistencies and un-defined use categories can be remedied. This will take approximately six (6) months of research to develop new regulations that address the needs of the growing community and the utilities that provide services to that community.

The proposal for an Interim Zoning Regulation will allow the Williston Basin project as well as new subdivisions and commercial projects to proceed while the City Council and Board of County Commissioners consider final changes to the regulations.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the interim zoning regulation. The Montana Code Annotated allows cities and counties to adopt interim zoning regulations when a matter of public health, safety or welfare is a concern and a matter of urgency is present. Interim zoning regulations have been adopted by the city and county to handle such land use issues as entryway development. If the interim zoning regulation is not adopted, the Williston Basin gas supply line to the ConocoPhillips refinery will not be completed. In addition, extension of utilities to new residential subdivisions may not be initiated until final changes to the current zoning regulations are researched, formulated and proposed to the City Council. Utility companies – both public and private – have installed new transmission and distribution lines throughout the community without awareness or Planning Department enforcement of the zoning regulation restrictions.

STAKEHOLDERS

The Zoning Commission held a public hearing on May 17, 2005 on the interim zoning regulation. Scott Besmer, engineer for Williston basin Interstate Pipeline, Dan Farmer of Montana Dakota Utilities and a representative from ConocoPhillips attended the public hearing and spoke in favor of the interim zoning regulation.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #759 and allow the interim zoning regulation to be effective for a period not to exceed six (6) months.

ATTACHMENTS:

- A: Ordinance
- B: MCA 76-2-306
- C: Preliminary pipeline route for Williston Basin Interstate

**ATTACHMENT A
ORDINANCE NO. 05-**

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-305 AND SECTION 27-306; SETTING STANDARDS FOR ALL UTILITY AND PIPELINE TRANSMISSION AND DISTRIBUTION SYSTEMS, ADOPT THE REVISIONS AS AN INTERIM ZONING REGULATION AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA*, provides for the enactment as a matter of urgency an interim zoning regulation. The City Zoning Commission and staff have reviewed the proposed interim zoning regulation and determined there is a matter of urgency to be addressed by the interim zoning regulation. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the interim zoning regulation.

2. DESCRIPTION. The interim zoning regulation shall apply to all land within the City Of Billings.

3. INTERIM ZONING REGULATION. That Section 27-305 of the BMCC be amended to read as follows:

minimum Area Requirements												
TRANSMISSION AND DISTRIBUTION LINES (ELECTRIC) AND ACCESSORY STRUCTURES	A SR	A	A	A	A	A	A	A	A	A	A	A
TRAVEL TRAILER PARKS	SR	SR										
UTILITIES (PUBLIC SERVICE INSTALLATIONS): – Station only – Storage yard	A SR	SR										
VETERINARY CLINICS: – Boarding – Outpatient only	A A	SR										

and that Section 27-306 of the BMCC be amended to read as follows:

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
49 ELECTRIC, GAS, AND SANITARY SERVICES: – Offices only – Municipal water supply (4941) or sewerage (4952) treatment facilities – 4953 Refuse systems* – Sanitary landfills – Transmission and distribution, electric and gas – Production, manufacture and generation, electric or gas – All others this group	A	A	A	A	A	A	A	A SR	A SR
* See BMCC Sec. 27-605 Hazardous Waste Facilities									

4. **REPEALER.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the

other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

6. EFFECTIVE DATE. This ordinance shall be effective from and up to six (6) months after final passage and as provided by law.

PASSED by the City Council on first reading June 13, 2005.

PASSED, ADOPTED AND APPROVED on second reading June 27, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#759 – Interim Zoning Regulation

Montana Code Annotated

Municipal Zoning

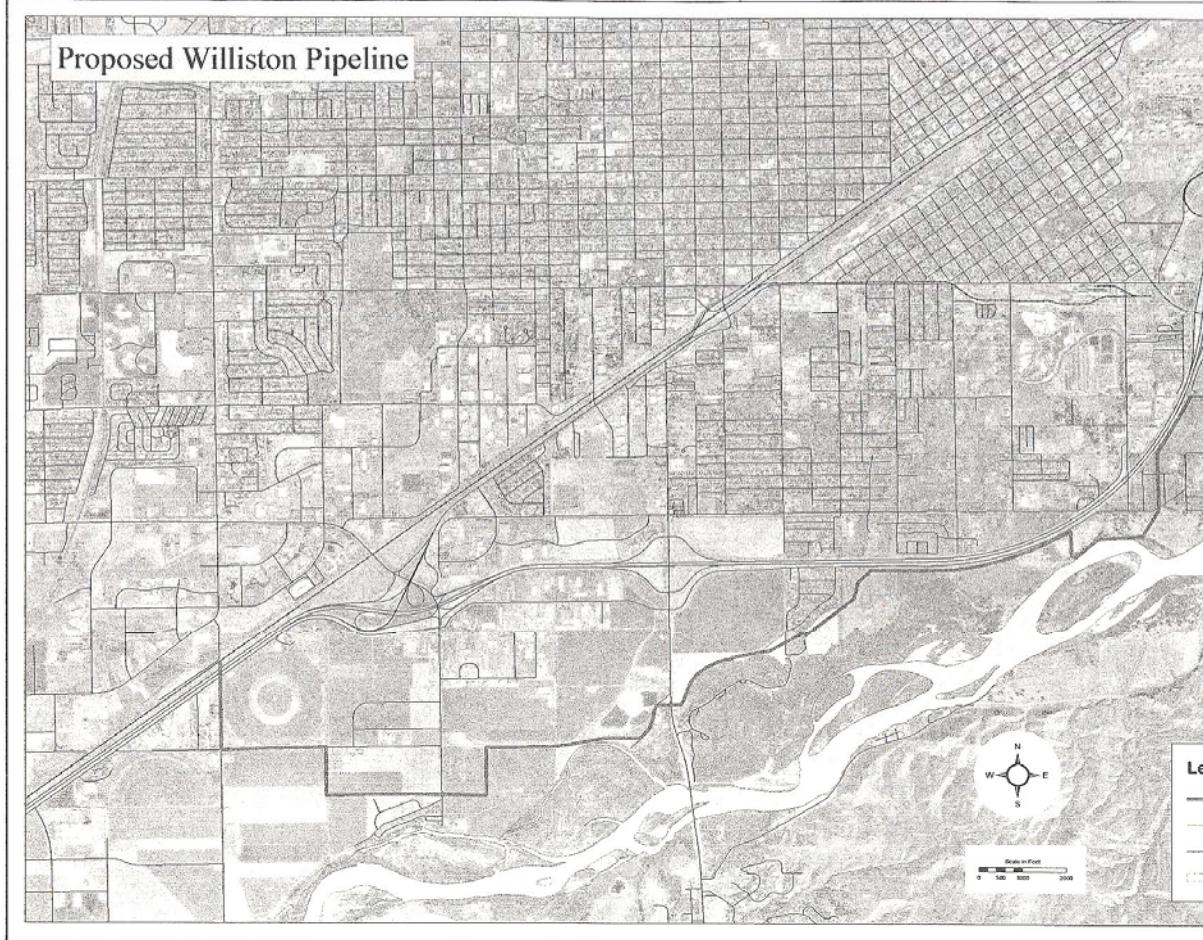
76-2-306. Interim zoning ordinances. (1) The city or town council or other legislative body of such municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required preliminary to the adoption of a zoning ordinance, may adopt as an urgency measure an interim ordinance prohibiting any uses which may be in conflict with a contemplated zoning proposal which the legislative body is considering or studying or intends to study within a reasonable time.

(2) Such interim ordinance shall only be applicable within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and shall take effect upon passage; provided, however, a hearing is first held upon notice reasonably designed to inform all affected parties and in no event shall notice be less than publication in a newspaper of general circulation at least 7 days before the hearing.

(3) Such interim ordinance shall be of no further force and effect 6 months from the date of adoption thereof. However, after notice pursuant to [76-2-303](#) and pursuant to public hearing, the legislative body may extend such interim ordinance for 1 year. Any such extension shall require a two-thirds vote for passage and shall become effective upon passage. Not more than two such extensions may be adopted.

History: En. 11-2711 by Sec. 1, Ch. 488, L. 1975; R.C.M. 1947, 11-2711.

Attachment C
Williston Basin preliminary pipeline route



[\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 13, 2005

TITLE: City Administrator Contract Review

DEPARTMENT: Administrative Services

PRESENTED BY: Rick Harden, HR Manager

PROBLEM/ISSUE STATEMENT: At the May 23, 2005, Billings City Council meeting, Councilmember Boyer moved to add to the June 13, 2005, agenda discussion/review of City Administrator Kristoff Bauer's contract. This motion was seconded by Council member Brown and subsequently passed.

FINANCIAL IMPACT: Dependent on Council action(s).

RECOMMENDATION

There is no staff recommendation.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

- A – Partial minutes from May 23, 2005, City Council Meeting
- B – Billings City Charter Article IV
- C – Kristoff Bauer Employment Agreement

[\(Back to Regular Agenda\)](#)