

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 27, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Mayor Tooley

ROLL CALL

MINUTES – June 13, 2005

COURTESIES

PROCLAMATIONS

- Homeownership Month - June

BOARD & COMMISSION REPORTS – Development Process Advisory Review Bd.

ADMINISTRATOR REPORTS – Kristoff Bauer

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #17 & #18 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:**

Action delayed from 6/13/05.

	Name	Board/Commission	Term	
			Begins	Ends
1.		Human Relations	07/01/05	12/31/09
2.		Human Relations	07/01/05	12/31/06

3.		Animal Control	07/01/05	12/31/09
4.		Board of Adjustments	07/01/05	12/31/09
5.		Board of Adjustments	07/01/05	12/31/09
6.		Library Board	07/01/05	12/31/09
7.		Zoning Commission	06/27/05	12/31/07
8.		Community Development	6/27/05	12/31/07
9.		Board of Adjustments	06/27/05	12/31/05
10.		Parks/Rec/Cemetery	06/27/05	12/31/08

- 2. Unexpired term of Gayle Tompkins.
- 7. Unexpired term of David Gelder
- 8. Unexpired term of Aldo Rowe
- 9. Unexpired term of Danny Graves
- 10. Unexpired term of Sandy Graves

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

B. Bid Awards:

(1) Wastewater Treatment Plant Administration Building Electrical Improvements. (Opened 6/07/05). (Delayed from 6/13/05). Recommend Ace Electric for Schedules I through VI, \$132,405.00 plus a 10% contingency of \$13,240.00 for a total of \$145,645.00.

[\(Corresponding Staff Memo B1\)](#)

(2) Airport Terminal Kitchen Floor Replacement. (Opened 6/14/05). Recommend no action at this time.

[\(Corresponding Staff Memo B2\)](#)

(3) Airfield Lighting Control. (Opened 6/14/05). Recommend rejecting all bids and rebidding at a later date.

[\(Corresponding Staff Memo B3\)](#)

(4) Airfield Tractor with Pull-Type Field Mower. (Opened 6/14/05). Recommend Yellowstone Implement, \$83,591.00.

[\(Corresponding Staff Memo B4\)](#)

(5) Lower Level Airport Terminal Restroom Upgrades. (Opened 6/14/05). Recommend rejecting the sole bid.

[\(Corresponding Staff Memo B5\)](#)

(6) Covert Alarm System Replacement for Billings Logan International Airport. (Opened 6/14/05). Recommend Industrial Communication and Electrical, \$27,711.54.

[\(Corresponding Staff Memo B6\)](#)

(7) 2005 Castlerock Park Sidewalk Improvements. (Opened 6/14/05). Recommend CMG Construction Inc., \$64,766.00.
[\(Corresponding Staff Memo B7\)](#)

(8) Parking Control System for Park 4 Garage. (Opened 6/14/05). Recommend Ace Electric, Inc., \$79,850.00.
[\(Corresponding Staff Memo B8\)](#)

(9) W.O. 05-01: 2005 Water and Sewer Line Replacement Project – Schedules 1 & 2. (Opened 6/21/05). Recommendation to be made at meeting.
[\(Corresponding Staff Memo B9\)](#)

(10) 2005 Water Leak Restoration Project. (Opened 6/21/05). Recommendation to be made at meeting.
[\(Corresponding Staff Memo B10\)](#)

C. Amendment #7, Professional Services Agreement, Airport Business Park Master Plan and Airport Fuel Study, Morrison-Maierle, Inc., \$55,153.00.
[\(Corresponding Staff Memo C\)](#)

D. Professional Services Agreement, W.O. 05-04: Terrace Estates Storm Water Mitigation, Interstate Engineering, Inc., \$19,900.00.
[\(Corresponding Staff Memo D\)](#)

E. Professional Services Agreement, SID 1365: Lake Heights Drive Extension, Engineering, Inc., \$19,453.00.
[\(Corresponding Staff Memo E\)](#)

F. Veterinarian Services Contracts for spay/neuter and minor veterinary services at the Billings Animal Shelter, with: (1) Victoria C. Hamer, DVM, (2) Mark Francis, DVM, (3) Amy Lamm, DVM, and (4) Diane L. Scollard, DVM, term: 7/1/05 to 6/30/06.
[\(Corresponding Staff Memo F\)](#)

G. Lease Agreement for Park I garage ground level space, Associated Employers of Montana, \$32,028.00 revenue, term: 1 year with three one-year options to renew.
[\(Corresponding Staff Memo G\)](#)

H. Approval of Landlord's Consent and Estoppel Certificate for transfer of Stewart Park Antenna Site Lease from 3 Rivers PCS Inc. to MTPCS, LLC, \$2,500 annual rent and \$2,500 use fee for each antenna installed.
[\(Corresponding Staff Memo H\)](#)

I. Memorandum of Understanding with Billings School District #2 for three (3) High School Resource Officers, \$60,000.00 to defray salary and benefits for officers.
[\(Corresponding Staff Memo I\)](#)

J. Memorandum of Understanding with Billings School District #2 for two (2) Middle School Resource Officers, \$50,000.00 to defray salary and benefits for officers.
[\(Corresponding Staff Memo J\)](#)

K. Approval of Right-of-Way Agreements for Grand Avenue Widening:
(1) W.O. 00-15, Parcel 126: Nielsen Enterprises, LLC, a tract of land located in Lot 11, Block 2, Sunset Subdivision, 2nd filing, \$28,100.00.
(2) W.O. 00-15, Parcel 127: Nielsen Enterprises, LLC, a tract of land located in the west 50 feet of Lot 12, Block 2, Sunset Subdivision, 2nd filing, \$13,800.00.
[\(Corresponding Staff Memo K\)](#)

L. Approval of Department of Housing and Urban Development, Economic Development Initiative Grant for West Billings Flood Hazard Assessment, \$297,600.00.
[\(Corresponding Staff Memo L\)](#)

M. Affordable Housing Fund, request from Community Development, Inc. (CDI) for \$300,000.00 HOME funds and \$50,000.00 CDBG funds for a 49-unit, multi-family rental complex known as Lincoln Springs Apartments on Lincoln Lane, terms: 3%, 40-year loan with payback beginning in year 6 after project completion.
[\(Corresponding Staff Memo M\)](#)

N. Affordable Housing Fund, request from Katie Schwend for an additional \$73,195.00 to rebuild the substandard 6-plex property located at 2202-2212 2nd Ave. N., terms: 0% interest, 20-year loan.
[\(Corresponding Staff Memo N\)](#)

O. Acknowledging receipt of petition to vacate Holfeld Lane Right-of-Way, Blake Laughlin, petitioner, and setting a public hearing date for 7/25/05.
[\(Corresponding Staff Memo O\)](#)

P. Street Closures:
(1) Yellowstone County "Captain Clark Signature Days", Yellowstone County Lewis and Clark Bicentennial Commission, N. Broadway between 2nd & 3rd Aves. N (leaving 2nd & 3rd Aves. N open to traffic), July 22, 2005.
[\(Corresponding Staff Memo P1\)](#)

(2) YMCA 2005 Montana Marathon, Molt Rd. to Rimrock Rd., Rimrock Rd to 38th St. W, 38th St. W to Poly Dr., Poly Dr. to Virginia Ln., Virginia Ln. to Parkhill Dr., around Pioneer Park to 3rd St. W and disbanding at Daylis Stadium, September 18, 2005.
[\(Corresponding Staff Memo P2\)](#)

(3) Deaconess Billings Clinic Classic Street Party, N. Broadway between 3rd & 4th Aves. N, and alley between 3rd and 4th Aves. N, August 25-28.

[\(Corresponding Staff Memo P3\)](#)

Q. W.O. 04-12: Alkali Creek Road Right-of-Way acquisition, Tract 2B of Amended Tract 2, C/S 727, Kenneth J. Rolle, Trustee, \$11,264.00.

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

R. Resolution of Intent to dispose of City-owned property described as Lots 1-8, Block 226, O.T., located on the northwest corner of 8th Avenue South and South 27th Street and setting a public hearing date for 7/25/05.

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

S. Resolution of Intent to dispose of City-owned property described as Lots 13-19, Block 231, O.T., located on the southeast corner of 8th Avenue South and South 28th Street and setting a public hearing date for 7/25/05.

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

T. Resolution of Intent to create Park Maintenance District #4029 in Cottonwood Grove Subdivision and setting a public hearing for 7/25/05.

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

U. Resolution authorizing Commitment Agreements with the Dept. of Natural Resources and Conservation regarding the Sale of \$12,176,000.00 Water System Revenue Bonds, Series 2005 and \$5,650,000.00 Wastewater Revenue Bonds, Series 2005.

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

V. Second/final reading ordinance amending BMCC Sections 14-301- 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.

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

W. Second/final reading ordinance for 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.

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

X. Second/final reading ordinance for 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.

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

Y. Bills and Payroll.

(1) May 27, 2005

[\(Corresponding Staff Memo Y1\)](#)

(2) June 3, 2005

[\(Corresponding Staff Memo Y2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** approving the filing of an annual Federal Transit Administration (FTA) Section 5307 grant application with the U.S. Department of Transportation for \$1,172,329.00. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

3. **PUBLIC HEARING AND VARIANCE #CC05-01:** a site variance from the Site Development Ordinance, BMCC Sections 6-1203(h)(3), Section 6-1203(i)(4) and 6-1203(i)(7) regarding curb cuts of 77.25 feet and to be 4' 10" from the radius, and backing maneuvers within the right-of-way. Subject property is located on Lots 1-11, 34-46 and the east 10' of Lot 12, Block 26, Yellowstone Addition, 2nd filing being generally located between Central & St. Johns Avenues and between 5th and 6th Streets West. Albertsons, Inc., applicant. Staff recommends approval of the variances. **(Action:** approval or disapproval of Staff recommendation.)

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

4. **PUBLIC HEARING AND VARIANCE #OP05-02:** a variance from the Site Development Ordinance, BMCC Section 6-1203(r) regarding limited access through the alley. Subject property is located on Lot 3, Block 2, Arrowhead Subdivision, 1st filing and generally located at 1442 Main Street. Park's Martial Arts, applicant. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

5. **PUBLIC HEARING AND RESOLUTION** approving a Council Contingency Appropriation for joining the Big Sky Economic Development Corporation for \$1,000.00. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

6. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending the BMCC by adding Sections 18-1101 – 18-1116; prohibiting graffiti, defining terms, providing for

a procedure whereby graffiti can be remediated, establishing an effective date and providing a severability clause. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

7. **PUBLIC HEARING AND RESOLUTION** approving the *Frank Property Urban Planning Study* and expanding the Urban Planning Area to include Tracts 1 and 2, C/S 3139; Tract 1, C/S 2379; and two unplatted tracts containing 50 acres, located near the intersection of Grand Avenue and 58th St. W. Douglas and Ronald Frank, owners. Planning Board recommends denial. **(Action:** approval or disapproval of Planning Board recommendation.)

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

8. **STALEY/WESTWARD HO PROPERTY:**

A. **PUBLIC HEARING AND RESOLUTION** approving the *Staley/Westward Ho Property Urban Planning Study* and expanding the Urban Planning Area to include Tract 1, C/S 1871 and Tract 2A, C/S 2465, 115 acres located at the intersection of Rimrock Rd. and 70th St. W. Larry Staley and Westward Ho, owners. Planning Board recommends denial. **(Action:** approval or disapproval of Planning Board recommendation.)

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

B. **ACKNOWLEDGING RECEIPT OF PETITION TO ANNEX #05-06:** a 115-acre property located at the intersection of Rimrock Road and 70th Street West, described as Tract 1, C/S 1871 and Tract 2A, C/S 2465. Larry Staley and Westward Ho, Inc., petitioners and setting a public hearing for 7/11/05. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

9. **FOXTAIL VILLAGE SUBDIVISION, 2ND FILING:**

A. **PUBLIC HEARING AND RESOLUTION** approving the *Foxtail Village Subdivision, 2nd filing Urban Planning Study* and expanding the Urban Planning Area to include Tract 123 of the Sunny Cove Fruit Farms property, a 9.32-acre parcel located near the northeast corner of Grand Ave. and 60th St. W intersection. Kenmark Corporation, owner; Mark Kennedy, agent. Planning Board recommends approval. **(Action:** approval or disapproval of Planning Board recommendation.)

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

B. **ACKNOWLEDGING RECEIPT OF PETITION TO ANNEX #05-04:** a 9.32-acre parcel located at the northeast corner of the intersection of Grand Ave. and 60th Street West, Tract 123, Sunny Cove Fruit Farms, Kenmark Corporation, petitioner, and setting a public hearing for 7/11/05. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

- 10. PUBLIC HEARING AND SPECIAL REVIEW #784:** a special review to permit an all-beverage liquor license with gaming at a proposed new Town Pump gas station/convenience store/casino located at 3150 King Ave. W in a Controlled Industrial zone described as Tracts 1C-2 and 10, C/S 1479 Amended. Town Pump and Affiliates, LLC, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 10\)](#)
- 11. PUBLIC HEARING AND SPECIAL REVIEW #785:** a special review to permit an all-beverage liquor license with gaming to an existing beer and wine license located on Lots 10-18, Block 103, O.T. and generally located at 3324 1st Avenue North in a Community Commercial zone. Greg and Becky Pekovich, owners. Zoning Commission recommends conditional approval and waiver of the 600' separation requirement. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 11\)](#)
- 12. PUBLIC HEARING AND SPECIAL REVIEW #786:** a special review to have a fenced outdoor storage yard for scaffolding and other construction material on Lot 2, Block 2, Holiday Business Park Subdivision and generally located at 1348 Holiday Circle in a Highway Commercial zone. Optima Venture, LP, owner/agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 12\)](#)
- 13. PUBLIC HEARING AND SPECIAL REVIEW #787:** a special review to locate an all beverage liquor license for on-premise consumption with gaming in a new building on Lot 5-B, Block 3, Midland Subdivision, 3rd filing and generally located at 920 S. 24th Street West in a Controlled Industrial zone. Cape France Enterprises, Joann Cape, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 13\)](#)
- 14. PUBLIC HEARING AND SPECIAL REVIEW #788:** a special review to permit a beer and wine license with gaming in a new building on Tract 4D, Studer Acreage Tracts and generally located at 1251 S. 32nd Street West in a Controlled Industrial zone. Doc & Eddy's, George Frank, owner; Charles B. Goldy, Jr. of cbg architects, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 14\)](#)
- 15. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #755:** a zone change from Public to R-7,000 on a 14,673 square foot tract of land

formerly known as Holfeld Park and located in the SW4 of Section 27, T1N, R26E, north of Swords Lane and south of Alkali Creek and the Billings Bench Water Association canal. Blake Laughlin and PRPL, owners, Engineering, Inc. 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.)

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

16. SANDSTONE DOWNTOWN REDEVELOPMENT DISTRICT:

A. PUBLIC HEARING AND FIRST READING ORDINANCE relating to the Downtown Redevelopment District and the creation of a new Urban Renewal Area; authorizing the removal of certain property from the Downtown Redevelopment District, establishing such property as a new 27th Street Urban Renewal Area, adopting an Urban Renewal Plan, therefore including a Tax Increment provision, approving an Urban Renewal Project therein and authorizing the issuance of Tax Increment Urban Renewal Revenue Bonds. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

B. RESOLUTION Approving Development Agreement with Downtown Billings Investors, LLC for the redevelopment of Lots 5-10, Block 92 O.T. (Sandstone Downtown Redevelopment Project,) providing a subsidy of \$450,000.00 for land, \$2,000,000.00 in Tax Increment Funds (TIF) and \$1,722,500.00 in Parking Funds and authorizing the mayor to execute said agreement. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

17. ANNUAL ASSESSMENTS FOR FY 2006:

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 delayed from 6/13/05). **(Action:** approval or disapproval of Staff recommendation.)

- (A)(1) Arterial Construction Fee
- (A)(2) Light Maintenance Districts
- (A)(3) Storm Sewer Maintenance
- (B) Fire Hydrant Maintenance

[\(Corresponding Staff Memo 17A\)](#)

[\(Corresponding Staff Memo 17B\)](#)

18. APPOINTMENT of Interim City Administrator. Staff recommends the appointment of an interim City Administrator while the search for a permanent Administrator is conducted and authorizing the Mayor to sign a contract with the individual selected. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 18\)](#)

19. **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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

SUBJECT: Boards & Commissions –Appointments and Reappointments
DEPARTMENT: City Administrator’s Office
PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are term expired or vacant due to resignations. Term expiration dates on these vacancies are 6/30/05 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.		Human Relations	07/01/05	12/31/09
2.		Human Relations	07/01/05	12/31/06
3.		Animal Control Board	07/01/05	12/31/09
4.	Michael Paterson	Board of Adjustments	07/01/05	12/31/09
5.		Board of Adjustments	07/01/05	12/31/09
6.	Lloyd Mickelson	Library	07/01/05	12/31/09
7.		Zoning Commission	06/27/05	12/31/07
8.		Community Development	06/27/05	12/31/08
9.		Board of Adjustments	06/27/05	12/31/05
10.		Parks/Rec/Cemetery	06/27/05	12/31/08

2. Unexpired term of Gayle Tompkins.
7. Unexpired term of David Gelder.
8. Unexpired term of Aldo Rowe.

9. Unexpired term of Danny Graves.
10. Unexpired term of Sandy Graves.

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

Attachment

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 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 05 wastewater capital fund. Bids were opened on June 7 as follows:

Ace Electric:.....\$132,405
Yellowstone Electric:.....\$143,709
Colstrip Electric:\$146,990 *

* Non-responsive bid due to failure to acknowledge all addendums and improper submittal of bid form.

RECOMMENDATION

Staff recommends that Council award bid Schedules I through VI for the Wastewater Treatment Plant Administration Building Electrical Improvements to Ace Electric in the amount of \$132,405 plus a 10% contingency of \$13,240 for a total award amount of \$145,645.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: No Action on Award of Airport Restaurant Kitchen Floor Replacement Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The existing tile floor in the kitchen area of the Airport Terminal Building restaurant is over 50 years old, and has become detached in a number of areas from the concrete sub floor slab below it and needs to be replaced. In the heavy traffic areas, the floor tiles have been repeatedly patched to try to prevent the tiles from additional breaking, but the damage has now migrated throughout the kitchen and is becoming a safety, health, and maintenance risk. This project will remove the existing floor and wall base tile, thoroughly degrease and clean the concrete sub floor slab, and install new flooring tile and base with epoxy adhesive and grout. This project is part of the City's approved Capital Improvement Program, and was advertised in the *Billings Times*, at the Builders Exchange, and on the City's web site.

<u>COMPANY</u>	<u>BID AMOUNT</u>
No Bids Received	
Engineers Estimate	\$100,000.00

FINANCIAL IMPACT:

The total cost of this project is estimated at \$100,000. Sufficient funds are budgeted in the Airport's Capital Improvement Program to cover the cost of this project.

RECOMMENDATION

Staff recommends that no action be taken on this item at this time. This project was advertised in the *Billings Times*, at the Builders Exchange, on the City's web site, and contractors were contacted by phone. In spite of these efforts, no bids were received to perform this project. Staff will revise and rebid this project at a later date.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Reject All Bids Received for the Airfield Lighting Control System Equipment Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: This Airfield Lighting Control System Equipment Project, which is included in the City's Capital Improvement Program, will update the Airport's airfield lighting control system equipment and electrical vault. The existing airfield lighting control system is over twenty years old and does not have the ability to alert personnel when a circuit is showing signs of an electrical problem. The new control system will provide an electronic monitoring system and regulators that receive inputs from the lighting circuits that sense if there is a problem with an existing circuit and relay that information, via computer, to Airport personnel prior to the circuit failure. Additionally, because this system uses fiber optic cable, the possibility of electrical damage due to lightning strikes on the airfield will be reduced. Finally, this system will also provide state-of-the-art "touch screen" airfield lighting control to air traffic controllers who are responsible for the intensity of the runway lights at night and during low visibility conditions. We received the following bids on this system:

<u>SUPPLIER</u>	<u>BID AMOUNT</u>
Yellowstone Electric	\$891,649
Ace Electric	\$934,990
Engineers Estimate	\$700,000

FINANCIAL IMPACT:

The total cost of this project was estimated at \$700,000. Bids were substantially higher and will be rejected. There will be no financial impact at this time.

RECOMMENDATION

Staff recommends the City Council reject all bids due to the significant cost above the engineers estimate. This project will be reviewed, revised where necessary, and rebid at a later date.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Award of a New Tractor with Heavy-Duty Mower Deck for the Airport
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: This tractor, equipped with a heavy-duty mower deck, will be used to mow the natural grass area in the Aircraft Operation Area (AOA). The AOA is the area inside the Airport's security fence that surrounds the airfield and totals about 1,300 acres. This area must be regularly mowed to be in compliance with Federal Aviation Administration (FAA) guidelines. Regular mowing is also a critical part of our Wild Life Management program to reduce the number of bird and animal strikes on the airfield. This tractor with a heavy-duty mower deck will replace a 1985 tractor that is no longer reliable to complete this important function. This equipment is part of the City's approved equipment replacement program. We advertised for this equipment in the *Billings Times* and received the following bids:

<u>CONTRACTOR</u>	<u>BID</u>
Yellowstone Implement	\$83,591.00
Western Plains	No Bid
Estimate	\$80,000.00

FINANCIAL IMPACT:

The total cost of this equipment is \$83,591. We have sufficient funds budgeted to cover the cost of this project.

RECOMMENDATION

Staff recommends that the City Council approve the award of a New Tractor with Heavy-Duty Mower Deck to the low bidder Yellowstone Implement, for the amount of \$83,591.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Reject Bid for Remodeling Project for Airport Terminal Building's Lower Level Restrooms

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Airport Terminal Building's lower level restrooms have not been remodeled since they were built in 1958, and still use the original tank style water closets and metal privacy stalls. Additionally, the integrity of the floor and wall tiles have deteriorated over the years due to heavy use and building movement. Cracks in the tiles' grout allow water to seep into the sub flooring and adjacent areas when the areas are cleaned. This project will provide new floor and wall tile, install new water closets with water conserving flush valves, and install plastic laminated privacy stalls that are easier to maintain and replace as needed. This project, which is part of the City's approved Capital Improvement Program, was advertised in the *Billings Times*, at the Builders Exchange, and on the City's web site. In spite of these efforts, one bid was received for this project, which exceeded our budget and project estimates:

<u>COMPANY</u>	<u>BID AMOUNT</u>
Fisher Construction	\$58,991
Engineers Estimate	\$40,000

FINANCIAL IMPACT:

The total cost of this project was estimated at \$40,000. There will be no financial impact at this time.

RECOMMENDATION

Staff recommends that the City Council reject the sole bid for the Airport Terminal Building's Lower Level Restrooms Remodel.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Award of Airport Terminal Building's Covert Alarm Paging System Replacement

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Transportation Security Administration (TSA) requires that all doors leading into the Security Identification Display Area (SIDA) send an audio alarm message to the pagers worn by the Airport Police Officers if a door is forced open or remains open after a predetermined time period. We also anticipate that the TSA will begin to require covert alarms at the airline ticket counters and boarding gates, and at the car rental offices. The existing 13-year-old paging system is not expandable and is becoming unreliable. The pagers no longer pick up every alarm, the audio alarm messages are difficult to understand, and replacement parts are difficult to obtain. The new system will provide new state-of-the-art interface equipment and pagers, and will have the ability to be expanded to meet the anticipated future needs. This project, which is part of the City's approved Capital Improvement Program, was advertised in the *Billings Times*, at the Builders Exchange, and on the City's web site. In spite of these efforts, we received one bid for this project:

<u>COMPANY</u>	<u>BID AMOUNT</u>
Industrial Communication and Electrical	\$27,711.54
Engineers Estimate	\$40,000.00

FINANCIAL IMPACT:

The total cost of this project is \$27,711.54. Sufficient funds are budgeted in the Airport's Capital Improvement Program to cover the cost of this project.

RECOMMENDATION

Staff recommends that the City Council award the Airport Terminal Building's Covert Paging Alarm System to the sole bidder Industrial Communication and Electrical, for the amount of \$27,711.54.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Castle Rock Park ADA Walks Bid Recommendation
DEPARTMENT: Parks, Recreation, and Public Lands Department
PRESENTED BY: Don Kearney, Director, PRPL Department

PROBLEM/ISSUE STATEMENT: This project is to construct 1650 lineal feet of 6 foot wide accessible internal park sidewalk in Castle Rock Park, at Wicks Lane and Nutter Boulevard. Bids were opened for the project at the regular bid opening, at 2:00 p.m., on June 14, 2005, at City Hall. Bids were received from **4** Billings area firms.

FINANCIAL IMPACT: Funding for the project is through regular appropriation in the FY2005 Capital Improvement Program:

Location of Work: Castle Rock Park, Wicks Lane at Nutter Boulevard
Funding Sources: City of Billings CIP General Fund - \$72,000.00

Estimated Approved Dollar Amount for Project	\$60,000
Architecture and Engineering	\$ 9,995
Miscellaneous	\$ 2,005
Funding available for Construction	\$72,000

The lowest and best bid received was from **CMG Construction Inc.** of Billings, Montana, for a total amount of **\$ 79,616.00**. The low bid received exceeds the budget for the project. The project was divided into 5 total segments to maximize the amount of work for the funding available. The following were identified as the highest priority segments to be constructed:

- East Segment "A" \$42,266.00
- West Segment "B" \$13,500.00
- West Segment "C" \$9,000.00

TOTAL \$64,766.00

An additional \$2,761.00 is needed to fully fund the construction of the 3 segments of the above project. This funding has been identified through cost savings from other projects.

The bid tabulation summary is attached.

RECOMMENDATION

Staff recommends that Council approve the award of the bid for the Castle Rock Park ADA Walks project to **CMG Construction Inc.** for the bid amount of \$ **64,766.00**.

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

ATTACHMENTS:

- A. Invitation to Bid Advertisement (2 pages)
- B. Completed Bid Proposal Form
- C. Castle Rock Park ADA Walks Bid Tabulation Summary

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Replacement of Parking Garage Control Equipment
DEPARTMENT: Administrative Services – Parking Division
PRESENTED BY: Liz Kampa-Weatherwax, Parking Division Director

PROBLEM/ISSUE STATEMENT: Replacement has been slated for the garage control equipment (ticket, gate, card and PC equipment) in the Park 4 garage. Replacement is needed due to the equipment's age, inoperability and unavailability of replacement parts. As required by law, this contract was advertised for competitive bidding on May 26, and June 2, 2005. The bid opening was held on Tuesday, June 14, 2005, and the following bids were received for this contract:

- 1) Yellowstone Electric Co. - \$85,498
- 2) Ace Electric, Inc. - \$79,850

Staff included an alternate bid for an intercom system. Because the project is over budget, the intercom system, if needed, will be addressed at a later date.

ALTERNATIVES ANALYZED:

- Approve a contract to complete the replacement of the garage control equipment for the Park 4 Parking Garage.
- Continue to use the existing equipment. This would mean replacing equipment on a piece by piece basis as needed, which would be costly and time-consuming.

FINANCIAL IMPACT: \$71,000 has been budgeted for this project through a supplemental request for FY05. The difference will be made up in savings from other areas of the budget.

RECOMMENDATION

Staff recommends that Council award the contract to replace the garage control equipment for the Park 4 garage to Ace Electric, Inc. in the total amount of \$79,850.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: W.O. 05-01, 2005 Water and Sewer Replacement Projects, Contract Award

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: This project will provide water, sewer, and storm drainage facilities infrastructure improvements and replacement of utilities in various locations in the City of Billings. These areas have been identified for utility rehabilitation/replacement by City Staff. The bids were opened on June 21, 2005 for contract award at the June 27, 2005 council meeting to allow the construction to coordinate with other current city projects.

FINANCIAL IMPACT: Based upon the bids received, funding for the project would be available through the following funding sources.

Project Number	<u>WO 05-01</u>
<u>Amount and Sources of Funds</u>	
City Utilities Funds	\$6,203,343.88
Storm Drainage Funds	\$ 200,000.00
Street Reconstruction Funds	\$ 86,000.00
Total	\$6,489,343.88

The following bids were opened on June 21, 2005.

Schedule 1 – Gateway Triangle	
Firm	Bid
COP Construction	\$3,328,315.00
Western Municipal Construction	\$3,481,707.00
Engineer's Estimate	\$3,377,419.50

Total Engineer's Estimate - \$5,261,419.50

Schedule 2 - Central, Poly, S. 29th & S. 30th Streets, Harvard & Michigan	
Firm	Bid
Chief Construction Specialties	\$1,787,605.00
Western Municipal Construction	\$2,288,301.00
Engineer's Estimate	\$1,884,000.00

RECOMMENDATION

Staff recommends that Council award a construction contract for Schedule 1 to COP Construction in the amount of \$3,328,315.00 and a construction contract for Schedule 2 to Chief Construction Specialties in the amount of \$1,787,605.00. Total amount for Schedules 1 & 2 is \$5,115,920.00.

Approved By: City Administrator _____ City Attorney _____

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

B10

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: 2005 Water Leak Restoration Project Bid Award
DEPARTMENT: Public Works
PRESENTED BY: David Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project involves repairing damage to the street right-of-way caused by water main leaks this past winter. The repairs involve street paving, curb and gutter, sidewalk, drive approach, and street striping repair or replacement. We received bids on June 21 and are recommending award.

FINANCIAL IMPACT: There are sufficient funds in the FY05 budget to cover the award amount (account #502-7512-609-3680). Bids were received on June 21, 2005 as follows:

Hardrives Construction, Inc.	\$ 52,548.46
Studer Construction	\$ 64,036.97
Total Asphalt Repair	\$ 79,855.50

RECOMMENDATION

Staff recommends that Council award the bid for construction of the 2005 Water Leak Restoration Project to Hardrives Construction, Inc. in the amount of \$52,548.46.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Approval of Amendment #7 with Morrison-Maierle, Inc. for the Airport Business Park Master Plan and Airport Fuel Study

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 #7 includes the required engineering design, and preliminary cost estimates for the development of the Airport Business Park Master Plan and the Airport Fuel Study. The scope of work and fees associated with these projects was reviewed and negotiated by Airport staff.

The Airport Business Park Master Plan will identify the estimated costs for the installation of the required water, sanitary sewer, storm water lines, roads and site work needs to further develop this area. The Airport Fuel Study will provide staff with information about above ground fuel tanks, self-service aircraft fuel stations, the installation of underground fuel tanks in hangar areas, and additional pertinent information relative to design concepts, estimated costs, Spill Prevention Containment and Counter Measures (SPCC) required by the Environmental Protection Agency (EPA), and fire code compliance issues. Including Amendment #7, the total engineering work under this agreement during the first four years has totaled \$1,900,640, 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 #7 with Morrison-Maierle, Inc. is \$55,153. Budget authority is available in the Fiscal Year 2005 budget to complete the Airport Business Park Master Plan and Airport Fuel Study.

RECOMMENDATION

Staff recommends that the City Council approve Amendment #7 to the Morrison-Maierle, Inc. term contract in the amount of \$55,153 to cover the engineering services needed to complete the Airport Business Park Master Plan and Airport Fuel Study.

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

INTRODUCTION

To address the infrastructure needs for the future growth of the Airport Business Park and to ensure that Airport staff has as much information as possible to address a number of different tenant requests for specialized fueling alternatives, an Airport Business Park Master Plan and an Airport Fuel Study need to be completed. Since the Airport has a five-year term contract with Morrison-Maierle, Inc. to provide engineering design, survey, and contract administration for Airport Capital projects and other general Departmental engineering services as needed, Airport staff would like to amend the base agreement to accomplish this work.

BACKGROUND

In the Airport's Business Park, the majority of the utility infrastructure and buildings were installed by the Air Force in the 1960s. The City inherited the infrastructure and buildings in the mid 1970s and has been utilizing these assets ever since. Currently, a large governmental agency presence has developed in the Airport Business Park area, with all of the City owned buildings occupied at some level. The Bureau of Land Management (BLM) has built a wild lands fire fighting air-tanker base in the area, and recently notified us that they have plans to build a wild lands fire station near the air-tanker base in the near future. Because potential growth in this 28 acre area could be hampered by the limitations that exist with the current utility infrastructure, Airport staff has determined that a master plan study of this area should be undertaken so future capital projects can be determined and planned for in the City's five year Capital Improvement Program. This plan will also identify potential uses and possible revenues that might be compatible for this area.

The Airport Fuel Study is a need that resulted from a number of different special requests from our tenants regarding fueling and fuel storage. The requests include installing a self-service fueling station for aircraft, allowing an above ground fuel tank for a car rental company's use, installing an underground fuel storage tank in front of a hangar, and a tenant request to start a fuel consortium using their own truck and underground fuel storage tank. We would like Morrison-Maierle, Inc. to review these issues, specifically addressing:

- Compliance with National Fire Protection Agency guidelines for fuel handling and use.
- Impacts of complying with the Spill Prevention Control and Counter Measures (SPCC) as mandated by the Environmental Protection Agency (EPA).
- Review of local, State, and Federal requirements for the installation of above ground storage tanks and how these are applied to airport installations.
- General overview of the viability of a self-service fueling operation on an airport and the design options to develop these installations.
- General look at how other airports in the northwest region are addressing some of these issues.

The Amendment #7 to the Morrison-Maierle Engineering agreement for this work requires City Council approval so that the Airport can have Morrison-Maierle complete these two projects.

RECOMMENDATION

Staff recommends that the City Council approve Amendment #7 to the Morrison-Maierle, Inc. term contract in the amount of \$ 55,153 to cover the engineering services needed to complete the Airport Business Park Master Plan and the Airport Fuel Study.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Services Agreement for WO 05-04 Terrace Estates Storm Water Mitigation

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City has been made aware of a storm water problem that exists on Calico Avenue in Terrace Estates 3rd Filing. At this location, the existing storm drain doesn't have adequate capacity to handle minor storm events. This causes the excess run-off to overtop the curb, gutter, and sidewalk and flow down a hillside on private property. The property owner is having significant erosion of his property. If erosion is allowed to continue, it may undermine the foundation to the house. This project would construct a channel to convey the excess run-off from minor and major storm events. Interstate Engineering, Inc. has been selected to do the design and construction administration for this project. The City Engineer's Office has reviewed the work and budget for the professional services contract and feels that it is in line with similar projects. The Services Agreement is on file in the City Clerk's Office for review.

FINANCIAL IMPACT: The Services Agreement with Interstate Engineering, Inc. is for the amount of \$19,900.00. This will be funded with Storm Drain Funds allocated in FY '05.

<i>CIP Number</i>	ENG0501
<i>Budget Amount for Current Fiscal Year</i>	
Storm Drain Funds	\$ 50,000.00
<i>Previous Encumbrances</i>	\$ 0.00
<i>Encumbrances from this Council Memorandum</i>	\$ 19,900.00
<i>Budget Fund Balance after this Council Memorandum</i>	\$ 30,100.00

RECOMMENDATION

Staff recommends that Council authorize the mayor to sign the Services Agreement for WO 05-04 with Interstate Engineering, Inc. in the amount of \$19,900.00.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Services Agreement for SID 1365 – Lake Heights Drive Extension
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1365 will construct approximately 400 feet of street improvements for Lake Heights Drive in Lake Hills Subdivision. SID 1365 has been designed and construction of the project has been awarded to Empire Sand and Gravel Co. The City of Billings would like to enter into a Services Agreement with Engineering, Inc. to do the Construction Administration for this project. The City Engineer’s Office has reviewed the work and budget for the Services Agreement and feels that it is in line with similar projects. The Professional Services Contract is on file in the City Clerk’s Office for review.

FINANCIAL IMPACT: The Services Agreement with Engineering, Inc. is for the amount of \$19,453.00. Total estimated cost for this will be recovered through direct assessment of property owners within the district boundary.

RECOMMENDATION

Staff recommends that Council authorize the mayor to sign the Services Agreement for SID 1365 with Engineering, Inc. in the amount of \$19,453.00.

Approved By: City Administrator ____ City Attorney ____

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Veterinarian Services Contracts July 1, 2005 to June 30, 2006
DEPARTMENT: Police Department/Animal Shelter Division
PRESENTED BY: Jerry Archer, Chief of Police

PROBLEM/ISSUE STATEMENT: The Billings Animal Shelter is requesting City Council approval to enter into contracts with area Veterinarians for spay/neuter surgery and minor veterinary services to be performed on animals adopted from the Billings Animal Shelter. Approval will ensure that animals adopted from the Billing Animal Shelter will not be contributing to the pet overpopulation problem currently facing the Billings community.

FINANCIAL IMPACT: The pet adopter pays all costs for the spay/neuter and other minor veterinary services provided to the animals adopted from the Animal Shelter, as these costs are included in the adoption fees currently charged. Estimates costs for surgeries would be \$40,000 and estimated cost for testing would be \$10,000.

RECOMMENDATION

Staff recommends City Council approve the attached contracts for Veterinarian Services at the Billings Animal Shelter. Veterinarians will spay/neuter pets and provide minor veterinary services for animals adopted. The surgery and services will be performed at the Animal Shelter surgical facility. These services will begin July 1, 2005. The following Veterinarians would be participating:

- Victoria C. Hamer DVM
- Mark Francis DVM
- Amy Lamm DVM
- Diana L. Scollard DVM

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Sample contract for veterinarian services

INTRODUCTION

Attached are contracts the Billings Animal Shelter would like to enter into with local Veterinarians to deal with the current pet overpopulation problem facing the Billings area, and to provide for minor veterinary care of animals adopted from the Billings Animal Shelter.

BACKGROUND

Spay/neuter surgery services, contracted with local Veterinarians, were approved by City Council on January 1, 2002 for a six month period. City Council again approved contracts for the period of July 1, 2002 to June 30, 2003 with an option of contract renewal of up to three years. We now bring before you contracts to begin on July 1, 2005. Prior to this program, the Billings Animal Shelter performed euthanasia on approximately 2,500 animals per year, since the introduction of this program. Those numbers have continued to decrease and in 2004, the number was below 2,000 animals euthanized. City Ordinance requires that all animals adopted from the Billings Animal Shelter be sexually altered, at the new pet owner's expense. Requests for Proposals were sent to 52 veterinarians in Yellowstone County, and was published in the Billings Times on April 28th and May 5th, 2005, for bids due by May 20, 2005. Four proposals were received and we are requesting approval of the attached 4 contracts. Expenses will continue to be collected and the surgeries and services will be performed prior to the animal leaving the Animal Shelter's control.

RECOMMENDATION

Staff recommends and requests that City Council approve the attached contracts for Veterinarian Services at the Billings Animal Shelter. Veterinarians will spay/neuter pets and provide minor veterinary services for animals adopted. The surgery will be performed at the Animal Shelter surgery facility. These services will begin July 1, 2005. The following veterinarians would be participating:

- Victoria C. Hamer DVM
- Mark Francis DVM
- Amy Lamm DVM
- Diana L. Scollard DVM

ATTACHMENT

A - Sample contract for veterinarian services

AGREEMENT BETWEEN/CITY OF BILLINGS
AND (VETERINARIAN) FOR
VETERINARY SERVICES/ FOR THE
BILLINGS ANIMAL SHELTER

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the City of Billings, hereinafter referred to as "City", and _____, D.V.M., hereinafter referred to as "Veterinarian";

WITNESSETH;

WHEREAS, the City is desirous of receiving the services of a licensed veterinarian to provide services for animals at the Billings Animal Shelter; and,

WHEREAS, the Veterinarian is licensed to practice veterinary medicine in the State of Montana and is desirous of assisting the City in such matters;

NOW, THEREFORE, in consideration of the mutual benefits to flow to each other and the covenants and agreements hereinafter contained, the parties hereto agree as follows:

SECTION 1. SCOPE OF SERVICES. The City agrees to engage the Veterinarian, and the Veterinarian hereby agrees to perform in a good and professional manner, all duties and services assigned to him/her by the City. The services may be amended, extended, or modified in accordance with Section 9 of this agreement. Unless subsequently modified, the Veterinarian will perform the following services:

- a. Perform surgical procedure to sterilize each male cat, female cat, male dog, and female dog. In addition, neutering procedure will include the requirement to sterilize puppies and kittens as young as six (6) weeks of age. The Veterinarian may decline to perform the surgery for health or reasons of safety with anesthesia for the animal.
- b. Perform minor Veterinarian services as needed such as vaccinations, microchip implantation, health examination and testing.
- c. Provide Veterinarian Technician Assistant to assist with surgery.
- d. Follow-up treatment on animals with complications relating to surgery.

In connection with the services performed by the Veterinarian, the City agrees to provide or reimburse the Veterinarian for the following;

- (1) Surgical space for the Veterinarian at the Billings Animal Shelter facility.
- (2) All drugs, equipment and supplies necessary.

(3) Processing of the necessary paper work on each animal treated at the facility.

SECTION 2. TERM. This agreement shall begin on July 1, 2005, and continue through and including June 30, 2006, with an option by the City to renew for additional one-year periods up to three years, and subject to mutual, written agreement of the parties.

SECTION 3. COMPENSATION. For all services actually, timely and faithfully performed, the Veterinarian will be paid as follows:

- a. The Veterinarian shall be paid 40.00 (per animal for surgery) \$10.00 (per animal for vaccinating, micro-chipping and health testing). This based on current fees charged the new pet owner at time of adoption, all increases in charges for surgical certificates shall be passed to the Veterinarian
- b. The Veterinarian shall be reimbursed for all costs associated with drugs, supplies, and materials necessary for the surgeries not provided by the City.
- c. As a condition precedent for any payment, the Veterinarian shall submit monthly, an invoice to the City requesting payment for services properly rendered and expenses due. The Veterinarian's invoice shall describe with reasonable particularity each service rendered, the date thereof and the time expended. The Veterinarian's invoice shall be accompanied by such documentation or data in support of expenses for which payment is sought as the City may require. Each invoice shall bear the signature of the Veterinarian, which signature shall constitute the Veterinarian's representation to the City that the services indicated in the invoice have reached the level stated, have been properly and timely performed as required herein, that the expenses included in the invoice have been reasonably incurred in accordance with this agreement, that all obligations of the Veterinarian covered by prior invoices have been paid in full, and that the amount requested is currently due and owing, there being no reason known to the Veterinarian that payment of any portion thereof should be withheld. Submission of the Veterinarian's Invoice for final payment shall further constitute the Veterinarian's representation to the City that upon receipt by the City of the amount invoiced, all obligations of the Veterinarian to others, including its consultants, incurred in connection with the services, will be paid in full. The Veterinarian shall submit invoices to the City at the following address:

Billings Animal Shelter
302 Edward
Billings, MT 59101

- d. The City shall make payment to the Veterinarian, of all sums properly invoiced under the provisions of this paragraph.

Payments shall be made to the following address:

(VETERINARIAN)

- e. The Veterinarian shall not be reimbursed for out of pocket expenses.

SECTION 4. INDEPENDENT CONTRACTOR. In the performance of this agreement, the Veterinarian will be acting in the capacity of an independent contractor, and not as an agent, employee, partner, joint venture or associate of the City. The Veterinarian shall be solely responsible for the means, method, techniques, sequences, and procedure utilized by the Veterinarian in the full performance of this contract. The Veterinarian, nor anyone employed by the Veterinarian shall represent, act, purport to act, or be deemed to be the agent, representative, employee or servant of the City.

SECTION 5. INSURANCE.

- a. The Veterinarian shall provide and maintain, at his/her own expense during the term of this agreement, a policy or policies of professional liability insurance. Coverage must be afforded, under an "occurrence" form policy in limits not less than \$ 500,000.00. It is required that Professional Liability Insurance coverage be provided for all acts and omissions that occur during the term of this agreement and shall insure the Veterinarian against any and all claims which may arise out of or in connection with the performance of any services pursuant to this agreement. If this coverage is written on a claims made form, proof of extended reporting period coverage is required. Said professional liability insurance shall be in full force and effect for the entire duration of this agreement, including any extensions or renewals thereof.
- b. The Veterinarian shall provide the City with a certificate of insurance or photocopy of the active insurance policy, with a thirty (30) day notice of cancellation, within ten (10) days after this agreement is executed.
- c. If the initial insurance expires prior to the completion of the work, a renewal certificate shall be furnished thirty (30) days prior to the date of expiration.

SECTION 6. INDEMNIFICATION. The Veterinarian will indemnify and hold the City, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees and other expenses or liabilities of every kind and character arising out of or directly or indirectly relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement or the performance hereof. In the event the City is alleged to be liable on account of alleged acts or omissions, or

both, of the Veterinarian, sub-veterinarians or agents, the Veterinarian will defend such allegation through counsel chosen by the City. Furthermore, the Veterinarian will pay all judgments costs, fees and expenses of any defense including but not limited to, all attorney's fees and expenses, court costs, and expert witness fees and expenses. This indemnification provision will survive the termination of this agreement.

SECTION 7. TERMINATION.

- a. Termination for Cause. If the Veterinarian fails to fulfill his/her obligations under this agreement in a timely and satisfactory manner, or if the Veterinarian breaches any of the provisions, covenants, or stipulations under this agreement, then the City shall have the right to terminate this agreement by giving the Veterinarian written notice of termination at least fifteen (15) days before the effective date of termination. The written notice shall state the cause(s) and specify the time allotted for correction of the cause(s). In the event the Veterinarian fails or is unable to correct the cause(s) within the time frame, the City shall be liable to pay the Veterinarian for any services satisfactorily rendered prior to the effective date of the termination under this paragraph. Waiver or breach of any provision of this agreement shall not be deemed to be a waiver of any other breach, and shall not be construed to be a modification of the terms of this agreement.
- b. Termination without Cause. The City or the Veterinarian may terminate this agreement at any time by giving written notice to the other specifying the termination date, which shall be not less than sixty (60) days from the date said notice is received. If this agreement is terminated by either party under the terms of this paragraph, the Veterinarian shall be paid an amount to adequately compensate him/her for that portion of the work and services satisfactorily performed prior to the termination date. The amount to be paid under this paragraph shall be determined by the City after consultation with the Veterinarian.
- c. Termination Due to Lack of Funds. In the event funds to finance this agreement become unavailable, the City may terminate this agreement upon no less than twenty-four (24) hours' notice, written and delivered to the Veterinarian. Said notice of termination shall be delivered by certified mail, return receipt requested, or in person with signed proof of delivery. The City shall be the sole and final authority as to the availability of funds.

SECTION 8. NOTICES. Except as otherwise provided herein, any notice, acceptance, request, or approval from either party to the other party shall be in writing and sent by certified mail, return receipt requested, and shall be deemed to have been received when either deposited in the United States Postal Service mailbox or personally delivered with signed proof of delivery. The City's representative and the Veterinarian's representative are:

City: David Klein
Billings Animal Shelter

P.O. Box 1178
Billings, MT 59103

Veterinarian:

SECTION 9. COORDINATION. The services to be provided under this agreement shall be coordinated between the Veterinarian and David Klein, Supervisor Billings Animal Shelter or his designee. The City's coordinator and the Veterinarian fully agree to maintain a close working relationship with each other in order to facilitate the productive and efficient operation of this agreement.

SECTION 10. ASSIGNMENT OF INTEREST. Neither party will assign or transfer any interest in this agreement without prior written consent of the other party.

SECTION 11. LAWS AND REGULATIONS. The veterinarian will comply with all laws, ordinances, regulations, and building code requirements applicable to the work required by this agreement. The Veterinarian is presumed to be familiar with all state and local laws, ordinances, code rules and regulations that may in any way affect the work outlined in this agreement. If the Veterinarian is not familiar with state and local laws, ordinances, code rules and regulations, the Veterinarian remains liable for any violation and all subsequent damages or fines.

SECTION 12. SUCCESSORS AND ASSIGNS. The City and Veterinarian each bind the other and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this agreement.

SECTION 13. COLLUSION. By signing this agreement the Veterinarian declares that this agreement is made without any previous understandings, agreement, or connections with any persons, veterinarians or corporations and that this agreement is fair, and made in good faith without any outside control, collusion, or fraud.

SECTION 14. CONFLICT OF INTEREST. The Veterinarian warrants that neither it nor any of its employees have any financial or personal interest that conflicts with the execution of this agreement. The Veterinarian shall notify the City of any conflict of interest due to any other clients, contracts, or property interests.

SECTION 15. GOVERNING LAW AND VENUE. This agreement shall be governed in accordance with the laws of the State of Montana. Venue is in Yellowstone County, Montana.

SECTION 16. SEVERABILITY. If any provision of this agreement is declared void by a court of law, all other provisions will remain in full force and effect.

SECTION 17. PROJECT RECORDS. The Veterinarian will retain all records relating to this agreement for three (3) years after the completion of all work is performed. The Veterinarian will make available to the City any and all records relating to this agreement for copying and inspection upon written request of the City. Furthermore, the Veterinarian will make any records relating to this agreement available to any state, federal or regulatory authorities who may wish to review, inspect or copy these records.

SECTION 18. THIRD PARTY BENEFICIARIES. This agreement does not create any relationship with, or any rights in favor of any third party.

SECTION 19. NON WAIVER. The failure of any party to exercise any right in this agreement will not waive such right in the event of any further default or non-compliance.

SECTION 20. ATTACHMENTS. All Exhibits attached to this agreement are incorporated into and made part of this agreement by reference.

SECTION 21. AMENDMENTS. The parties may amend this agreement only by mutual written agreement of the parties.

SECTION 22. CONSTRUCTION. This agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this agreement.

SECTION 23. ENTIRE AGREEMENT. This agreement constitutes the entire agreement and supercedes all prior written or oral agreements, understandings, or representations.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed for the uses and purposes therein expressed, on the day and year first above written.

CITY OF BILLINGS

By: _____
CHARLES F. TOOLEY, MAYOR

VETERINARIAN

By: _____

ATTEST BY:

MARITA HEROLD, CITY CLERK

APPROVED AS TO FORM:

BRENT BROOKS, CITY ATTORNEY

056.generic vet contract/Attachment

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Lease Agreement for Associated Employers of Montana
DEPARTMENT: Administrative Services – Parking Division
PRESENTED BY: Liz Kampa-Weatherwax, Parking Division Director

PROBLEM/ISSUE STATEMENT: The ground level of the Park 1 garage has six tenants that lease retail/office space. Associated Employers of Montana’s current lease agreement expired May 31, 2005. This memo shall serve as a request to approve and sign a new space lease agreement with Park 1 Garage tenant, Associated Employers of Montana, for one year with three one-year options to renew.

FINANCIAL IMPACT: The revenues are projected in the FY 2006 budget. Revenue for the first year will be \$32,028 (4,179 square feet x \$7.66). Revenue for the subsequent years, if renewed, will be \$32,028 plus or minus the percentage change in the Consumer Price Index – all urban consumers.

RECOMMENDATION

Staff recommends that Council approve the lease agreement with Associated Employers of Montana for one year, with three one-year options to renew in the amount of \$32,028.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

Lease agreement with Associated Employers of Montana (3 copies)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Approval of Landlord's Consent for Transfer of Stewart Park Antenna Site Lease

DEPARTMENT: Department of Parks, Recreation, and Public Lands

PRESENTED BY: Don Kearney, PRPL Director

PROBLEM/ISSUE STATEMENT: In 1998 a 50 foot by 40 foot antenna tower site in Stewart Park along with easements for access and power supply was leased by **3 Rivers PCS, Inc.** from the City of Billings. The period of the agreement is 15 years from the date of approval, February 23, 1998. Another communication firm, **MTPCS, LLC**, is proposing to acquire the 3 River PCS, Inc. lease for the premises for the remaining term of the lease. Article I, Paragraph G of the agreement with 3 Rivers PCS, Inc., allows such transfer of the lease, provided approval of the Lessor (the City of Billings) is obtained. Attached as Exhibit "A" is the Landlord's Consent and Estoppel Certificate that provides the City's approval of the transfer of the Lease as required in the agreement.

FINANCIAL IMPACT: The lease agreement is for \$2,500 annually as rent for the ground space and a \$2,500 Use Fee for each antenna installed on the tower. There is currently a single antenna there, but up to 3 can be placed on it. The agreement provides for the fees to be adjusted annually by the amount of change in the Consumer Price Index during the previous year. The transfer would be of the lease in its entirety and would not change obligations and payments due from the lessee during the remaining term of the lease. The yearly payments have been received when due and are up to date with no payment in arrears.

RECOMMENDATION

Staff recommendation is that the City Council approve the Landlord's Consent and Estoppel Certificate as attached.

ATTACHMENTS:

- A. Three copies – Landlord's Consent and Estoppel Certificate for transfer of Stewart Park Antenna Tower Site Lease, including Letter of Request.
- B. Exhibit "A" – Original Agreement

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

SUBJECT: Memorandum of Understanding for 3 High School Resource Officers
DEPARTMENT: Police Department
PRESENTED BY: Jerry Archer, Chief of Police

PROBLEM/ISSUE STATEMENT: Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places one officer in each of the three public high schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2005, to June 30, 2006, and is scheduled to be approved by the School Board at its June 20, 2005, meeting. City Council is being asked to approve this MOU and authorize the Mayor to sign.

FINANCIAL IMPACT The total cost of the 3 officers in the SRO positions is \$174,797.68. The Billings Public Schools will provide a \$60,000 payment to the City of Billings to defray some of the salary and benefit costs. At one time, the City had a grant to help fund these positions, but the grant has ended and the officers are now funded by the public safety fund. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

RECOMMENDATION

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2005 to June 30, 2006.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Memorandum of Understanding –School Resource Officers for High Schools – 7 pages

**MEMORANDUM OF UNDERSTANDING
SCHOOL RESOURCE OFFICER PROGRAM
AT BILLINGS WEST, SENIOR AND SKYVIEW HIGH SCHOOLS**

**CITY OF BILLINGS POLICE DEPARTMENT
BILLINGS PUBLIC SCHOOLS**

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this _____ day of _____, 2005 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a ten (10) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth. In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

MISSION STATEMENT - BILLINGS POLICE DEPARTMENT

The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.

MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM

Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.

**BILLINGS POLICE DEPARTMENT
SCHOOL RESOURCE OFFICER PROGRAM
PROGRAM OBJECTIVES**

1. Friendly contact between the Police Department and the City's youth.
2. Assistance and information sharing concerning problems and issues affecting the schools and students.
3. Education of children regarding the role of laws, courts, and Police in society.
4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.
5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.
6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.
7. Effective problem solving and liaison with neighborhoods surrounding the high schools, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;

- ◆ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;

- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

◆ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property and bring perpetrators to justice;

◆ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

◆ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

◆ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

◆ are considered by the City of Billings as “non-exempt” employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

◆ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

◆ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

◆ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to

achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

- ◆ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

- ◆ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

SELECTION AND FINANCIAL CONSIDERATION

Three (3) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. One officer will be assigned to each of the three Billings Public High Schools.

In return for services provided by the three officers, the Billings School District will pay to the City of Billings the sum of Sixty Thousand Dollars (\$60,000) by July 30, 2005.

PROGRAM ASSESSMENT

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

- ◆ Success of established goals and objectives.
- ◆ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
- ◆ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

EFFECTIVE DATE

This Memorandum of Understanding is effective July 1, 2005, and shall remain in effect through June 30, 2006, unless renewed by agreement of both parties or terminated as provided herein.

TERMINATION OF AGREEMENT

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Sixty Thousand Dollars (\$60,000) will be retained by the City of Billings in order to maintain the high school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Sixty Thousand Dollars (\$60,000) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2005/2006 school year and the number of school days remaining after the date of termination of the agreement.

NOTICES

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street
Billings, MT 59101

MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this ____ day of _____, 2005.

SCHOOL DISTRICT #2

Attest:

Leo Hudetz
Clerk

By: _____
ROD SVEE
Superintendent

CITY OF BILLINGS

Attest:

City Clerk

By: _____
Mayor

Approved as to form:

City Attorney

061.MOU with School District

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

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

SUBJECT: Memorandum of Understanding for 2 Middle School Resource Officers

DEPARTMENT: Police Department

PRESENTED BY: Jerry Archer, Chief of Police

PROBLEM/ISSUE STATEMENT: Pursuant to City Council approval, the Billings Police Department and the Billings Public Schools have developed a School Resource Officer (SRO) program which places two officers in the middle schools. The attached Memorandum of Understanding (MOU) makes provisions for program objectives and guidelines, officer selection processes, financial consideration and effective date and provisions for termination of the agreement. The MOU is for a period of one year, from July 1, 2005, to June 30, 2006, and is scheduled to be approved by the School Board at its June 20, 2005, meeting. City Council is being asked to approve this MOU and authorize the Mayor to sign.

FINANCIAL IMPACT: The total cost of the 2 officers in the SRO positions is \$112,899.13. The Billings Public Schools will provide a \$50,000 payment to the City of Billings to defray some of the salary and benefit costs of the 2 officers. At one time, the City had a grant to help fund these positions, but the grant has ended and the officers are now funded by the public safety fund. The officers do report back to the Police Department during the summer months and help the department accomplish various tasks during those months.

RECOMMENDATION

Staff recommends that City Council approve the attached Memorandum of Understanding between the City of Billings and the Billings Public Schools effective July 1, 2005 to June 30, 2006.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Memorandum of Understanding – School Resource Officers for Middle Schools - 7 pages

**MEMORANDUM OF UNDERSTANDING
SCHOOL RESOURCE OFFICER PROGRAM
AT BILLINGS MIDDLE SCHOOLS**

**CITY OF BILLINGS POLICE DEPARTMENT
BILLINGS PUBLIC SCHOOLS**

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this _____ day of _____, 2005 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed a ten (10) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth. In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

MISSION STATEMENT - BILLINGS POLICE DEPARTMENT

The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.

MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM

Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.

**BILLINGS POLICE DEPARTMENT
SCHOOL RESOURCE OFFICER PROGRAM
PROGRAM OBJECTIVES**

1. Friendly contact between the Police Department and the City's youth.
2. Assistance and information sharing concerning problems and issues affecting the schools and students.
3. Education of children regarding the role of laws, courts, and Police in society.
4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.
5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.
6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.
7. Effective problem solving and liaison with neighborhoods surrounding the **middle schools**, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

- ◆ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;

- ◆ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;

- ◆ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

◆ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property and bring perpetrators to justice;

◆ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

◆ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

◆ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

◆ are considered by the City of Billings as “non-exempt” employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

◆ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

◆ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

◆ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to

achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

- ◆ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

- ◆ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

SELECTION AND FINANCIAL CONSIDERATION

Two (2) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. Two officers will be assigned to the four Billings Public Middle Schools.

In return for services provided by the two officers, the Billings School District will pay to the City of Billings the sum of Fifty Thousand Dollars (\$50,000) by July 30, 2005.

PROGRAM ASSESSMENT

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

- ◆ Success of established goals and objectives.
- ◆ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
- ◆ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
- ◆ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
- ◆ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
- ◆ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

EFFECTIVE DATE

This Memorandum of Understanding is effective July 1, 2005, and shall remain in effect through June 30, 2006, unless renewed by agreement of both parties or terminated as provided herein.

TERMINATION OF AGREEMENT

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Fifty Thousand Dollars (\$50,000) will be retained by the City of Billings in order to maintain the middle school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Fifty Thousand Dollars (\$50,000) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2005/2006 school year and the number of school days remaining after the date of termination of the agreement.

NOTICES

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street
Billings, MT 59101

MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this ____ day of _____, 2005.

SCHOOL DISTRICT #2

Attest:

LEO HUDETZ
Clerk

By: _____
ROD SVEE
Superintendent

CITY OF BILLINGS

Attest:

City Clerk

By: _____
Mayor

Approved as to form:

City Attorney

061A.MOU with School District middle schools

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: WO 00-15 Grand Avenue Right-of-Way Agreements with Nielsen Enterprises, LLC

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Work Order 00-15 Grand Avenue will widen Grand Avenue from 8th Street West to 12th Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified with Work Order 92-11 but was further defined on the design plans for the project and must be acquired prior to construction. Nielsen Enterprises, owners of Lot 11 and the west 50 feet of Lot 12, Block 2, Sunset Sub. 2nd Filing, has agreed to sell the necessary right-of-way as shown on the attachments and grant temporary construction easements. The City Engineer's Office is working on the subdivision plats which will dedicate the right-of-way.

ALTERNATIVES ANALYZED:

1. Approve the Right-of-Way Agreements with Nielsen Enterprises and authorize the mayor to sign the subdivision plats once completed.
2. Do not approve the Right-of-Way Agreements with Nielsen Enterprises or authorize the mayor to sign the subdivision plats once completed.

FINANCIAL IMPACT: The cost of the right-of-way and construction easement from Nielsen Enterprises is \$41,900.00 which matches the right-of-way agreements. This will be paid out of Gas Tax in which \$595,000 has been allocated in FY '05 for Grand Avenue.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreements with Nielsen Enterprises and authorize the mayor to sign the subdivision plats for Nielsen Enterprises dedicating the right-of-way once completed.

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

ATTACHMENT

A. Right-of-Way Agreements with Nielsen Enterprises

INTRODUCTION

Work Order 00-15 Grand Avenue will widen Grand Avenue from 8th Street West to 12th Street West. The City Engineer's Office has been negotiating for the necessary Right-of-Way from the adjacent property owners for the last year. The Right-of-Way needed was identified on the design plans for the project and must be acquired prior to construction. There are fourteen properties on Grand Avenue in which the City needs to purchase right-of-way.

PROCEDURAL HISTORY

The City Engineer's Office obtained appraisals for all the necessary right-of-way on Grand Avenue and started negotiations with the property owners. The City Engineer's Office then requested and got approved in a Council Work Session to offer land value plus full value for any signs within the requested right-of-way. Once all of the right-of-way properties have been acquired, the City Engineer's Office will begin the construction process, which is anticipated to start in the spring of 2006.

BACKGROUND

The City Engineer's Office has been negotiating with property owners on Grand Avenue from 8th Street West to 12th Street West for the necessary right-of-way to widen Grand Avenue to a 5-lane section for the last year. There are a number of driveways on Grand Avenue and to accommodate frequent left-turns and traffic volumes, it is necessary to widen Grand Avenue to include a two-way left-turn lane. The design for this project has been completed by Kadrmas, Lee, & Jackson. Once all of the right-of-way has been acquired, construction will begin and is anticipated to take six months to complete.

ALTERNATIVES ANALYSIS

Approve the Right-of-Way Agreements with Nielsen Enterprises and authorize the mayor to sign the subdivision plats once completed. Under this option, the City Engineer's Office will complete the subdivision plats dedicating the right-of-way and the right-of-way agreements and the plats will be recorded with the Clerk and Recorder's Office.

Do not approve the Right-of-Way Agreement with Nielsen Enterprises or authorize the mayor to sign the subdivision plats once completed. Under this option, negotiations might fail and further negotiations with other property owners could be in jeopardy.

RECOMMENDATION

Staff requests that Council approve the Right-of-Way Agreements with Nielsen Enterprises and authorize the mayor to sign the subdivision plats for Nielsen Enterprises dedicating the right-of-way once completed.

ATTACHMENTS

- A. Right-of-Way Agreements with Nielsen Enterprises

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Department of Housing and Urban Development, Economic Development Initiative Grant – West Billings Flood Hazard Assessment

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On April 28, 2005, the Planning and Community Services Department was notified of grant funding approval “for the City of Billings, Montana West Side Planning and Development Project” in the amount of \$297,600. The funding is authorized by The Consolidated Appropriations Act of 2005, and is provided by the Department of Housing and Urban Development, Economic Development Initiative funds for certain special projects. This project was part of a funding request submitted to the congressional delegation by the City of Billings in late 2004. While the money has been appropriated, the City is required to submit an application for the grant by July 6, 2005. This memo is to request that the City Council act on the application for federal assistance.

ALTERNATIVES ANALYZED: The flood potential for the West Billings area has long been recognized as a threat to property and lives . Since the flood of 1937, several reports and studies have documented the flood hazard but no recommendations have been implemented. The proposed “West Billings Flood Hazard Assessment” will clearly define the areas of flood risk, in accordance with the Federal Emergency Management Act floodplain standards, and develop mitigation strategies to reduce flood hazards to existing and future developments. Action by the Council will determine the safety of existing and future residents.

FINANCIAL IMPACT: Approval of the grant application will have no fiscal impact on the City of Billings.

RECOMMENDATION

Staff recommends that Council approve the application for federal assistance in the amount of \$297,600 for the West Billings Flood Hazard Assessment.

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

ATTACHMENT

A. Application for Federal Assistance

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Affordable Housing Fund – Lincoln Springs Apartments
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Ramona Mattix, Planning Director; John Walsh, Community Development Manager; and Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Community Development, Inc. (CDI) in response a Request for Proposals. CDI intends to construct a 49-unit, multi-family rental complex located on Lincoln Lane in Billings Heights. They are proposing all 49-units to be targeted to families at or below 55% of Median Income. The project was approved in March by the Montana Board of Housing for Low Income Housing Tax Credits. The total estimated project cost is \$5,242,400.

ALTERNATIVES ANALYZED: Alternatives would be (1) To fully fund the project at \$350,000, (2) Fund the project at a reduced level, or (3) Deny funding for the project.

FINANCIAL IMPACT: CDBG and HOME funds are provided by the U.S. Department of Housing & Urban Development to the City for affordable housing projects. There is approximately \$390,454 currently available for allocation from the current year and an additional \$386,587 will be available for allocation after July 1st.

Affordable Housing funding available through the CDBG/HOME programs is as follows:

FY 04-05 CDBG/HOME funds available	\$ 390,454
Lincoln Springs Request	<u>350,000</u>
Balance, if approved	\$ 40,454
FY05-06 CDBG/HOME	<u>\$ 346,133</u>
Balance available for new projects:	\$ 386,587

CDI is proposing the HOME/CDBG funds be committed to the project as a 3% interest, 40 year, fully amortized loan. They have requested payback be deferred until after the project has been completed for 5 years.

RECOMMENDATION

The Community Development Board and Staff recommends the City Council approve the request from CDI in the amount of \$300,000 from the HOME program and \$50,000 from CDBG, as a 3%, 40 year loan; with payback beginning in year 6 after project completion.

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

INTRODUCTION

Montana State University-Billings recently completed a Housing Needs Analysis for the City of Billings. This report identified concerns related to the affordability and condition of rental units. Mail survey respondents indicated that low-income residents, elderly residents and single parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. The Lincoln Springs project proposed by CDI is designed to help address this need.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened. Approximately 2 out of every 3 renter households are considered low income and 32% of renter households are cost burdened and living in overcrowded and/or substandard housing. This translates into approximately 3,805 households in Billings that could be assisted by the proposed project. The Housing Needs Assessment included a community survey which found that 33.7% of the respondents believe that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community.

PROCEDURAL HISTORY

November, 2004	CDI presents application to Community Development
January, 2004	Potential conflict of interest identified with CDI partnership with CHIP
March 2004	Project approved for Low Income Housing Tax Credits
May 3, 2005	Project presented to CD Board; applicant present to answer questions.
June 7, 2005	Staff recommendation to CD Board
June 27, 2005	CD Board and Staff Recommendation to City Council

BACKGROUND

This project consists of 8 two-story, six-unit buildings with a mix of two, three and four bedroom units. There will be a Community Building which includes a manager's unit, manager's office, common laundry, computer room, exercise room, kitchen, lounge/meeting room, tot lot, sports court and adequate parking.

In reviewing the application staff reviewed a list of possible issues or concerns discussed below:

Payment in Lieu of Taxes (PILT)

CDI, as a non-profit organization, is offering a PILT which is a common practice for them with other affordable housing projects that they have completed. This issue will need to be addressed separately by CDI with the taxing entities.

Organizational Strengths

This will be the largest project in Montana developed, owned and operated by CDI. CDI has 3 other LIHTC in Montana located in Corvallis (36 units), Dillon (24 units), and Anaconda (10 units). The other projects they own and operate are in Idaho, Utah, Wyoming and Alaska, Nevada, Arizona and Washington State. CDI is a private nonprofit organization specializing in real estate and community development and was founded in 1994. The CEO and Co-Chair have a collective 22 years of affordable housing development and management experience. They

have extensive knowledge and experience with affordable housing programs including Low Income Housing Tax Credits, HOME, HUD Section 202 and Section 811 programs as well as numerous Rural Development programs.

Displacement & Relocation

A small house is located on the property that has recently been occupied. CDI will need to comply with federal relocation requirements as applicable related to the tenant. CDI is prepared to pay relocation costs, if necessary. Before a Development Agreement is signed documentation will be required regarding the status of the tenant to ensure relocation requirements have been met. The Development Agreement will also stipulate that CDI is responsible for Relocation Assistance if required.

Financial Plan

Sources of funding for the project are as follows:

City of Billings HOME/CDBG	\$ 350,000
Low Income Housing Tax Credits	\$ 3,330,519
Permanent Loan	\$ 1,480,000
Deferred Developer's Fee	<u>\$ 81,881</u>
TOTAL	\$ 5,242,400

The management fee proposed by CDI is \$18,400 annually. LIHTC projects require a considerable amount of paperwork and specialized knowledge on the part of the management team. Discussions with local property managers indicate this fee is a little high, but not out of line, for this type of project. Another local LIHTC project property manager is charging 5% of the project's Annual Operating Income for their services. If this were the case with this project, the Management Fee would be \$14,173, annually.

CDI is proposing to acquire a permanent loan in the amount of \$1,480,000. This loan is amortized over a 30-year period at 7% interest; however the loan term is 15 years. This would require an annual payment of \$124,180 dollars, which is reflected in CDI's pro forma. The pro forma includes the payment to the City of \$15,000 annually, starting in year 6. It is also typical of these types of projects to defer part of the Developer's Fee as CDI is proposing.

HOME Program Requirements

The estimated construction cost per square foot of the living space is \$102. This is consistent with other recent projects that have been funded. CDI is proposing 5 units be HOME assisted. HOME cost per square foot of the 5 units proposed to be HOME assisted is \$70. HOME per unit subsidy is \$70,000. Maximum subsidy for a 3-bedroom unit is \$81,563 and a 2-bedroom unit is \$63,049. As such 5 of the 3 and 4 bedroom units would **have** to be HOME assisted. CDI is requesting 7% of total project costs from City, which would equal 4 units. They are targeting 5 units to be HOME assisted, which translates to 10% of the total and meets HOME requirements.

The HOME 25% match requirement is being met through a reduction in architectural and engineering fees and construction loan fee waivers for \$164,500. Also a portion of the property tax exemption will be used if approved.

Low Income Housing Tax Credits (LIHTC) Restrictions & Requirements

This application ranked 4th out of 6 funded applications by the Montana Board of Housing for Low Income Housing Tax Credits. It received a total of 103 points out of a possible 118. Developments must score a minimum of 90 points as a threshold for further consideration. This project was awarded LIHTC in March.

LIHTC require that owners target no less than 40% of the units to be rented to household with incomes at or below 60% of Median Income. CDI has elected to provide 40 units at 50% of Median Income and 8 units at 55% Median Income. LIHTC rules also require projects to remain rent and income restricted for a minimum period of 15 years. CDI is proposing this project be restricted for 31 years. The LIHTC rent and income restrictions are enforced through Restrictive Covenants that are recorded against the title of the property at closing.

10% of the Montana's LIHTC allocation must be set aside for projects involving qualified nonprofit organizations. CDI is a nonprofit, however, they are partnering with a local non-profit as well, Community Housing Investment Program (CHIP). CHIP and CDI have a Memorandum of Agreement in which CHIP will receive \$40,000 of the \$460,000 Developer's fee, have 1% of .49% ownership interest in the project, and will also have first right of refusal at the end of the 31 year tax credit compliance period.

In reviewing the application for cost limitations, CDI has followed the LIHTC allowed percentages with regard to construction contingency, Developer's Fees, builder's overhead and General Requirements.

ALTERNATIVES ANALYSIS

Alternatives would be (1) To fully fund the project at \$350,000; (2) Fund the project with a reduced amount of funds; and (3) Not assist in funding the project. If the project is not funded by the City, CDI would reduce the number of units targeted to very low and extremely low-income tenants.

STAKEHOLDERS

- Stakeholders include the Heights Area Task Force who has indicated support for this project.
- Low Income families and individuals in the community. This project is targeted to families and individuals with incomes less than 55% of Median Income.
- Disabled individuals and families in the community. The proposed project will have 6 to 8 units targeted for disabled households. One of those units will be accessible for individuals with sensory impairments and 2 of them will be set-aside for HIV/AIDS positive tenants.
- Surrounding property owners. By funding this project, a new quality-housing complex with amenities to complement the neighborhood will be constructed.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The property is located within the City limits and is appropriately zoned as Neighborhood Commercial. Parking & landscaping are required and are being included in the site plan. CDI

has site control, as evidenced by a purchase agreement included in the application. Finally, the project meets the following three strategies in the City's Consolidated Plan.

- Promote New Affordable Housing Opportunities
- Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs
- Improve the economic conditions of lower income households in the community

SUMMARY

An overall review of the funding for the project reveals that the amount of subsidy per unit is consistent with other similar projects that the City has funded. HOME match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment. The owner/developer has extensive experience, both in developing and managing Low Income Housing Tax Credit projects and is knowledgeable of the HOME program requirements as well.

RECOMMENDATION

The Community Development Board and Staff recommends the City Council approve the request from CDI in the amount of \$300,000 from the HOME program and \$50,000 from CDBG, as a 3%, 40 year loan; with payback beginning in year 6 after project completion.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Affordable Housing Fund-2202-2212 2nd Avenue North
DEPARTMENT: Planning & Community Services Department
PRESENTED BY: Ramona Mattix, Director, John Walsh, Community Development Manager
& Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Katie Schwend in March of 2004 in response a Request for Proposals issued by the City. Her proposal was to assist her in rebuilding the property located at 2202-2212 2nd Ave. North. This property was a severely substandard 6-plex apartment building. At the time of the application the applicant felt she had enough funds to complete the project, but due to the length of time between the initial architects feasibility study and the actual construction of the units, the cost of building materials almost doubled, increasing the estimated project costs. Additional funding is necessary and Ms. Schwend is requesting the Citys increase its current loan to her by \$73,195 from \$92,000 to \$165,195.

ALTERNATIVES ANALYZED: Alternatives would be (1) to not assist with more funds for the project. By not funding this project, the applicant would have to secure conventional financing to complete the project which would increase the cost to her which would be passed on to the renters. This would ultimately result in the City losing six much needed units of quality, affordable housing. (2) Fund the additional request.

FINANCIAL IMPACT: CDBG and HOME funds are provided by HUD to the City for affordable housing projects. Total **new** estimated project cost is \$251,139. CDBG/HOME Funding currently available for allocation is follows:

FY2004-05 CDBG & HOME funds	\$ 390,454
FY2005-06 CDBG & Home funds	\$346,133

A separate recommendation to allocate \$350,000 of these funds to the Lincoln Springs Project is pending.

RECOMMENDATION

The Community Development Board and Staff recommend the City approve an additional \$73,195 loan from the Affordable Housing Fund to Ms. Schwend, as a 0% interest deferred loan with a 20-year term, as required by the HOME program for new construction of rental housing. These funds will be used for the project concept proposed by her to finish building six units of affordable rental housing at 2202 – 2212 2nd Ave. North.

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

INTRODUCTION

In June 2004, City Council approved a 0% interest, deferred loan to Katie Schwend for \$92,000. Her proposal was to reconstruct a severely substandard 6-plex and re-build in the same location, a new complex consisting of six, one bedroom apartments targeted to households at or below 50% Median Income. Data from the 2000 Census indicates the following statistics supporting the need for this type of project.

- Yellowstone County had a 19% increase in householders living alone under 65 in the past 10 years, or 7,470 individuals.
- 47% of renter households in Yellowstone County have incomes below \$20,000.
- The average monthly rent for a one-bedroom apartment in Billings in 2004 was \$390; proposed contract rent for these units is \$350

Montana State University-Billings recently completed a Housing Needs Assessment for the City of Billings. This report identified concerns related to the affordability and condition of rental properties. The Assessment indicates that twice as many renters than homeowners are cost burdened. Approximately 2 out of every 3 renter households are considered low income and 32% of renter households are cost burdened and living in overcrowded and/or substandard housing. The Housing Needs Assessment included a community survey which found that 33.7% of the respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community.

PROCEDURAL HISTORY

- October 28, 2003 Ms. Schwend met with CD Board to introduce and answer questions regarding the proposed project.
- March, 2004 Schwend application received in the Community Development office.
- April, 2004 Staff reviewed application and met with developer to resolve questions and provide additional development assistance
- May, 2004 Proposal presented to CD Board for recommendation to City Council. CD Board requested further examination of the project.
- June, 2004 Proposal presented to CD Board for second time with owners present to answer questions.
- June 28, 2004 CD Board Recommendation to City Council for approval
- May, 2005 Community Development office receives a request from Ms. Schwend for an additional amount of funds needed to complete the project
- June 7, 2005 Staff Recommendation to CD Board for additional funds.
- June 27, 2005 CD Board Recommendation to City Council

BACKGROUND

Ms. Schwend submitted an application to the Community Development Division to assist with reconstruction of six, one bedroom apartments located at 2202 – 2212 2nd Ave. North. These properties were severely substandard. Demolition and construction activities began and

expenses began to mount to more than the funds available to the applicant. Ms. Schwend took out an additional bank loan to try to meet the expenses. In response to the required HOME Program environmental review, the State Historical Preservation Officer had several changes that had to be implemented that required additional drawings from the architect as well as changing some of the construction materials, which added additional, unexpected cost to the project. Another additional cost to the project was the one-year it took between when the initial cost feasibility analysis was completed and when the project was initiated. During this delay in funding, construction materials almost doubled in cost. Thereby making it impossible to meet the actual construction costs. Ms. Schwend applied for and received funding for this project from the Downtown Billings Downtown Façade Improvement Program.

After reviewing the project income and expenses as identified on the application it was determined the amount of debt service the project can afford is \$83,511. This calculation is based on a debt coverage ratio of 1.25; which will give a loan to value of 75%, as required by the lender on their letter of intent. The fair market value of the property is calculated based on a capitalization rate of 10%, which was set by calling a local appraiser who determined this rate using the comparison method. Income used to figure this debt service was at the proposed rent of \$350 per month, and the rate and term used that was quoted on the bank's letter of intent. Ms. Schwend has already borrowed \$58,659.92 from the bank to assist with purchase and rehab of the property. These funds have been spent.

In order for Ms. Schwend to complete the project without additional assistance from the City she would need to borrow an additional \$73,195. Using the same formula as above, the rents would have to increase to \$575 per month in order for the project to meet this debt service. This is definitely not an affordable rent and well above the Fair Market Rent for a 1 bedroom unit. Because the HOME and CDBG funds have already been invested in this project, this project must comply with income and rent restrictions imposed by these programs. If further 0% interest, deferred loan funds are not approved, it would be difficult, if not impossible, for Katie to comply with these restrictions and not have a negative balance for this property.

ALTERNATIVES ANALYSIS

Alternatives would be (1) to not assist with more funds for the project. By not funding this project, Katie would have to secure conventional financing to complete the project, which would increase the cost to them which would be passed on to the renters. This would ultimately result in the City losing six much needed units of quality, affordable housing. (2) Fund the additional request.

STAKEHOLDERS

Stakeholders include:

- Those single people in the community at or below 50% of Median Income these units will serve.
- Surrounding property owners, whose property values will increase with the demolition of the substandard, boarded up property that was previously located on this site.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This project meets the following strategies proposed in the City's Consolidated Plan.

- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.
- Promote New Affordable Housing Opportunities.
- Improve the economic conditions of lower income households in the community.

SUMMARY

The applicant originally had asked for \$122,000 from the City and was given \$92,000. Because the HOME and CDBG funds have already been invested in this project, this project must comply with income and rent restrictions imposed by these programs. If further 0% interest, deferred loan funds are not approved, it would be difficult, if not impossible, for Ms. Schwend to comply with these restrictions and not have a negative balance for this property. With the addition of this request, HOME/CDBG funds committed per unit would be \$27,533; well below the maximum per unit cost allowed.

RECOMMENDATION

The Community Development Board and Staff recommend the City approve an additional \$73,195 loan from the Affordable Housing Fund to Ms. Schwend, as a 0% interest deferred loan with a 20-year term, as required by the HOME program for new construction of rental housing. These funds will be used for the project concept proposed by her to finish building six units of affordable rental housing at 2202 – 2212 2nd Ave. North.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Vacation of Holfeld Lane Right of Way
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Blake Laughlin, owner of Certificate of Survey 1883, Tract 1-A, has requested that the city vacate Holfeld Lane. Holfeld Lane is a small right-of-way that connects Certificate of Survey 1883, Tract 1-A to Swords Lane in the Heights. The city has no use for the right-of-way, and it will become Mr. Laughlin’s access to Swords Lane.

ALTERNATIVES ANALYZED:

- 3. Approve acknowledgement of petition to vacate Holfeld Lane Right-of-Way as shown on Attachment A and set a public hearing for July 25, 2005.
- 4. Do not approve acknowledgement of petition to vacate Holfeld Lane Right-of-Way.

FINANCIAL IMPACT: Rod Wilson, a local realtor in town, has come up with two comparison sales in the area. Rod Wilson has determined that the Holfeld Right-of Way is valued at \$.85 per square foot. The total area proposed to be vacated is 5,350 square feet. The total cost Mr. Laughlin would have to pay the city is \$4,547.50.

RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petition to vacate Holfeld Lane Right-of-Way and set a public hearing for July 25, 2005.

Approved By: City Administrator _____ City Attorney _____

- ATTACHMENT
A.Map Depicting Area to be Vacated
B.Comparison Sales from Rod Wilson

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Yellowstone County “Captain Clark Signature Days” Street Closure Request

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Don Kearney, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Yellowstone County Lewis and Clark Bicentennial Commission requests the closure of North Broadway between 2nd Avenue N. and 3rd Avenue N. (leaving 2nd and 3rd Avenues open to traffic) on Friday, July 22, 2005, from 3:00 pm to 9:00 pm for it’s Captain Clark Signature Days Celebration. The event will include music, food on the street, a family atmosphere, and reflectives of the historical Lewis and Clark.

Recommended conditions of approval include Yellowstone County Lewis and Clark

Bicentennial Commission:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event 60 days in advance
3. Clean the area to be used after the event and provide and empty waste cans
4. Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event.
5. Provide a certificate of insurance naming City of Billings as additional insured
6. Provide and install adequate traffic barricades and signs directing motorists around closure
6. Have a 10’ lane on either side of street that is free of kiosks or any obstacles other than pedestrians to allow for emergency vehicles

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended).
2. Deny the street closures

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit (\$30.00). Police, traffic control and litter removal for are to be paid for by Yellowstone County Lewis and Clark Bicentennial Commission.

RECOMMENDATION

Staff recommends that Council approve the closure named above for the Captain Clark Signature Days Celebration

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

ATTACHMENTS

- A. Letter and brochure outlining event (2 pages)
- B. Right of Way Special Activity Permit application (2 pages)
- C. Map outlining closure (1 page)
- D. Certificate of insurance (2 pages)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: YMCA 2005 Montana Marathon Street Closure Request
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Don Kearney, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Bill Clagg, of the YMCA, along with several event sponsors, requests partial street closures for their seventh annual Montana Marathon event on Sunday, September 18, 2005, from 6:30 am to 1:00 pm. The route is as follows: Molt Road to Rimrock; Rimrock to 38th Street W; 38th Street W to Poly Drive; Poly Drive to Virginia Lane; Virginia Lane to Parkhill Drive, around Pioneer Park to 3rd Street and disbanding at Daylis Stadium. Volunteers will secure the course and provide crossing guards. Mr. Clagg will coordinate with County and State Departments for Molt Road usage.

Recommended conditions of approval include YMCA:

1. Contact all businesses and making them aware of the event 60 days in advance
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
4. Provide certificate of insurance naming City of Billings as additional insured
5. Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

1. Approve request to close streets for the event (recommended)
2. Deny the street closure

FINANCIAL IMPACT: There are no costs to the City of Billings other than administrative time to process permit (\$30.00). Traffic control and litter removal are to be paid for by the event sponsors.

RECOMMENDATION

Staff recommends that Council approve the closures named above for the seventh annual Montana Marathon.

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

ATTACHMENTS

- A. Brochure outlining event (1 page)
- B. Right of Way Permit Application (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 pages)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Deaconess Billings Clinic Classic Street Party Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Don Kearney, Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

Tony Banovich of the Deaconess Billings Clinic requests the temporary closure of N. Broadway between 3rd Ave. N. and 4th Ave. N. from Thursday, August 25, from 12:00 midnight until Sunday, August 28, at 5:00 pm; as well as the alley between that runs between 3rd Ave. N. and 4th Ave. N. from Friday, August 26, 2005 at 9:00 pm through Sunday, August 28, 2005 at 5:00 am for their annual Classic Street Party.

Recommended conditions of approval include Billings Deaconess Clinic:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper open container and noise permits from Police Department
- Contact all businesses and make them aware of the event 60 days in advance
- Provide security for event
- Clean area to be used and provide and empty waste cans after the event
- Notify all emergency facilities, bus lines, and media at least two weeks in advance of the event
- Provide a certificate of insurance naming City of Billings as additional insured
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a 20' emergency vehicle access lane on either side of the street which is free of kiosks or anything other than pedestrians

ALTERNATIVES ANALYZED:

- Approve request to close streets for the event (recommended)
- Deny the street closures

FINANCIAL IMPACT:

There are no costs to the City of Billings other than administrative time to process application

RECOMMENDATION

Staff recommends that Council approve the temporary closures named above for the annual Deaconess Billings Classic Street Party.

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

ATTACHMENTS

- A. Letter from Deaconess Billings Clinic outlining events (2 pages)
- B. Right of Way Permit Application (2 pages)
- C. Course map (1 page)
- D. Certificate of insurance (2 pages)

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: W.O. 04-12, Alkali Creek Road, Right-of-Way Acquisition
DEPARTMENT: Public Works/Engineering Division
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Council must approve this Right of Way Agreement with Kenneth J. Rolle in order to construct and maintain the Alkali Creek Road improvements. The property to be acquired is a 40-foot wide by 1300-foot length (1.194 acre) strip of land along the frontage of Mr. Rolle's property on Alkali Creek Road. Of the 40-foot width, 30 feet is currently a perpetual road easement established by Yellowstone County in 1884. The appraisal for this parcel valued the 0.896 acre easement land at \$0.00, and the 10-foot by 1300-foot strip (0.298 acres) at \$9,024.00. The appraisal valued just compensation for fence relocation at \$2,240.00. The total cost of the acquisition is \$11,264.00 (\$0.00+\$9,024.00+\$2,240.00). The road project includes a re-alignment of the curve in front of Mr. Rolle's property that necessitates a change in the right of way. The Right of Way Agreement also stipulates that the City will construct two sanitary sewer stub outs and relocate the driveway culvert into the property, both tasks are already part of the Alkali Creek road project, so there is no added cost. The exempt plat and warranty deed for this property acquisition have been submitted to County staff for review. The Right of Way Agreement is on file with the City Clerk's office.

FINANCIAL IMPACT: The cost of the 1.194 acres is \$11,264.00. Funding is available for this acquisition in the project's budget.

RECOMMENDATION

Staff recommends that Council approve the Right of Way Agreement with Kenneth J. Rolle at a cost of \$11,264.00.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Resolution of Intent to Dispose of City Property – Lots 1-8, Block 226, Billings Original Town

DEPARTMENT: Planning and Community Services

PRESENTED BY: Ramona Mattix, Planning Director, and John Walsh, Community Development Manager

PROBLEM/ISSUE STATEMENT: Aztec Properties LLC is interested in purchasing City owned property on the northwest corner of 8th Avenue South and South 27th Street. Aztec is interested in using the site to construct a Meineke Car Care Center. Aztec is currently constructing a facility on Avenue B near Shiloh and Grand. Aztec's vision for the S. 27th Street land is to construct a similar facility with one less shop bay. Prior to consideration of the sale of this site, the City is required to approve a resolution of intent to dispose of the property and advise adjacent neighbors and the community of the proposed action. The City will also advertise for bids to determine if there are other proposals for the site.

ALTERNATIVES ANALYZED: The site is available for redevelopment. Alternative projects will be considered as part of the bid process. The City has not pursued the option of acquiring adjacent properties to assemble land for a larger redevelopment site.

FINANCIAL IMPACT: The City land (28,000 sq. ft.) could generate approximately \$85,000 in revenue. The site, including structures that existed at the time, was acquired for redevelopment purposes in three transactions in the 1980s for \$113,000 using Tax Increment (3 lots) and CDBG (5 lots) resources.

RECOMMENDATION

Staff recommends that the Council approve the attached Resolution of Intent to Sell City-Owned Property on Lots 1-8, Block 226, Original Town and authorize staff to advertise for bid proposals for development of the property. The Resolution of Intent sets a public hearing date on the disposal of the property for July 25th.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Resolution of Intent to Sell City-Owned Property (1)
- B. Letter from Aztec Properties LLC (2)

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 SOLD, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on the northwest corner of 8th Avenue South and South 27th Street and described as Lots 1-8, Block 226, Billings Original Town, now City of Billings, in the City of Billings, Yellowstone County, Montana, and,

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands, giving the public the opportunity to be heard regarding such action, and setting a public hearing date, 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:

PUBLIC HEARING. The public hearing date has been set for July 25, 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 issue on July 14th and July 21, 2005 and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area.

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

THE CITY OF BILLINGS:

**BY: _____
Charles F. Tooley MAYOR**

**ATTEST:
~~Marita Herold, CMC/AAE CITY CLERK~~**

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Resolution of Intent to Dispose of City Property – Lots 13-19, Block 231, Billings Original Town
DEPARTMENT: Planning and Community Services
PRESENTED BY: Ramona Mattix, Planning Director, and John Walsh, Community Development Manager

PROBLEM/ISSUE STATEMENT: homeWORD is interested in purchasing City owned property on the southeast corner of 8th Avenue South and South 28th Street. homeWORD, which has recently completed the Acme Hotel, has been working with the South Side Task Force to develop affordable housing at this site. homeWORD’s project concept calls for the donation of the site for this purpose and utilizing Low-Income Tax Credits and HOME funds to achieve their goals. Prior to consideration of the sale of this site, the City is required to approve a resolution of intent to dispose of the property and advise adjacent neighbors and the community of the proposed action. The City will also advertise for bids to determine if there are other proposals for the site.

ALTERNATIVES ANALYZED: The site is available for redevelopment. Alternative projects will be considered as part of the bid process. The City has not pursued the option of acquiring adjacent properties to assemble land for a larger redevelopment site.

FINANCIAL IMPACT: The City land (24,500 sq. ft.) could generate approximately \$75,000 in revenue. The land was acquired for redevelopment purposes in 1994 using Tax Increment resources at a cost of \$23,553.

RECOMMENDATION

Staff recommends that the Council approve the attached Resolution of Intent to Sell City-Owned Property on Lots 13-19, Block 231, Original Town and authorize staff to advertise for bid proposals for development of the property. The Resolution of Intent sets a public hearing date on the disposal of the property for July 25th.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Resolution of Intent to Sell City-Owned Property (1)
- B. Letter from homeWORD (2)

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 SOLD, DECLARING THE INTENT OF THE CITY TO DISPOSE OF THE PROPERTY AND AUTHORIZING CITY OFFICIALS TO PROCEED.

WHEREAS, the City of Billings finds it necessary or desirable to dispose of property it currently owns, located on the southeast corner of 8th Avenue South and South 28th Street and described as Lots 13-19, Block 231, Billings Original Town, now City of Billings, in the City of Billings, Yellowstone County, Montana, and,

WHEREAS, Article 22-900 BMCC requires the city to declare its intention to dispose of such lands, giving the public the opportunity to be heard regarding such action, and setting a public hearing date, 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:

PUBLIC HEARING. The public hearing date has been set for July 25, 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 issue on July 14th and July 21, 2005 and to mail a copy of such notice to all property owners within the three hundred (300) foot notification area.

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

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

Marita Herold, CMC/AE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Resolution of Intent to Create – PMD No. 4029, Cottonwood Grove Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Don Kearney, Director

PROBLEM/ISSUE STATEMENT: Cottonwood Grove Subdivision contains boulevard area on 54th Street West, street landscaping on Colton Boulevard, and a storm water detention area. The development and improvement of these areas 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 these public area improvements. As a condition of the Cottonwood Grove Subdivision, 1st Filing final plat approval, the subdivision must provide for the maintenance of the public landscaping areas by establishing a park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Cottonwood Grove Subdivision in Park Maintenance District No. 4029.

ALTERNATIVES ANALYZED:

- Create Park Maintenance District 4029 now to assure assessments can be collected in November 2005, to pay costs of maintenance as the public area improvements are developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create Park Maintenance District 4029 at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$2,885.00 for the first year. The assessment rate for this amount is \$0.00239 per square foot of property in District 4029. The estimate of the first year costs and assessment rate 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. 4029 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the July 25th, 2005, City Council meeting.

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

ATTACHMENTS:

A: Resolution of Intent to Create Park Maintenance District No. 4029; and Exhibits A-D thereto attached.

INTRODUCTION

Approval of the Resolution of Intent to Create Park Maintenance District No. 4029 for the maintenance of Cottonwood Grove Subdivision public areas is the first step in creating the Park Maintenance District by setting a date for the Public Hearing, notifying the property owners included within the district of the intended action, and considering the Resolution to Create the district at the July 25th City Council meeting.

PROCEDURAL HISTORY

- The Cottonwood Grove Subdivision, 1st Filing has been approved and filed. The final plat of Cottonwood Grove Subdivision, 2nd Filing is proposed to be submitted to the Planning Department in early June, 2005.
- The annexation conditions and Subdivision Improvements Agreement provides for the public landscape improvements to be installed by private contract as the subdivision is developed and with Waivers of Protest filed and recorded for all lots within the subdivision that allow the creation of a Park Maintenance District to maintain the public areas.
- The Resolution of Intent To Create Park Maintenance District 4029, if approved, provides for advertisement and mailing of a public notice to property owners within the proposed district explaining the protest and comment procedures and protest period. It sets a date for a Public Hearing and Council consideration of the Resolution to Create the district at the July 25th, 2005, regular City Council meeting.

BACKGROUND

In the past, subdivisions have been platted along arterial streets with the back of the lots along it and the lot fronts facing inward and away from the major thoroughfare to leave an undeveloped right-of-way strip that is poorly or not maintained. Since the mid-1990s, developers of subdivisions have been required to improve these strips and create a home-owners association or Park Maintenance District to assure maintenance and upkeep of them by the subdivision or PRPL Parks grounds keeping staff. This provides a professional level of maintenance to areas of public landscape as they develop and are brought into the city.

The Cottonwood Grove Subdivision, 1st Filing, Subdivision Improvements Agreement calls for the public areas to be maintained and the Park Maintenance District to be created. The proposed maintenance district includes all lots in both filings of Cottonwood Grove Subdivision. 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 Cottonwood Grove Subdivision.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4029 for Cottonwood

Grove 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 25th, 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 maintenance of the public areas and the creation of the Park Maintenance District. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the maintenance of the public areas in Cottonwood Grove Subdivision.
- The appearance of poorly or non-maintained strips along a number of major arterial streets has a negative impact on the Billings community. The purchasers of the properties within the district will be aware of the public area maintenance required within the subdivision when they buy the property. Existing property owners shall be notified via the creation process.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

The use of maintenance districts to provide maintenance and upkeep for parks, public rights-of-way, and public areas provides means to assure adequate maintenance of high visibility open space and landscape that otherwise would not be cared for. This has improved the environment, increased the quality of life for Billings's residents, and increased the value of surrounding businesses and 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 state of the art operations and equipment. The City Council has supported creation of Park Maintenance Districts and the addition of contract maintenance for other public areas as a way to provide well-maintained public landscape at a time when the general fund revenues are not available for these purposes.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intention to Create Park Mntce. District No. 4029 and set July 25, 2005 as the date for the Public Hearing and consideration of the Resolution to Create Park Maintenance District 4029 for Cottonwood Grove Subdivision.

ATTACHMENT

A: Resolution to Create Park Maintenance District No. 4029; and Exhibits A-D thereto attached.

RESOLUTION No. 05-_____

A RESOLUTION DECLARING IT TO BE THE
INTENTION OF THE CITY COUNCIL TO
CREATE A SPECIAL IMPROVEMENT
MAINTENANCE DISTRICT FOR THE
PURPOSE OF MAINTAINING EXISTING
AND FUTURE PUBLIC AREA IMPROVEMENTS
IN COTTONWOOD GROVE SUBDIVISION,
FIRST AND SECOND FILINGS.
CITY OF BILLINGS, MONTANA

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

Section 1. Proposed Special Improvement Maintenance District; Intention To Create Special Improvement Maintenance District. The City proposes to maintain certain public area improvements to benefit certain property located in the City of Billings, Montana. The improvements consist of existing and future public area improvements in Cottonwood Grove Subdivision, First and Second Filings, 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 public area improvements made with the development of Cottonwood Grove Subdivision, First and Second Filings. 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 Special Improvement Maintenance District No. 4029 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 Special Improvement Maintenance District and the territory which will benefit and be

benefited by the maintenance of the Cottonwood Grove Subdivision, First and Second Filings, 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: boulevard in 54th Street West, landscaping, trees, irrigation systems, irrigation system water services, weed control, storm detention facilities, and other public area 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 eligible properties within the District are to be assessed for a portion of the costs of maintaining the existing and future Cottonwood Grove 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 has been lifted. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the Cottonwood Grove Subdivision, Public Area Improvements, 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 eligible properties in the District will be assessed for their proportionate share of the costs of maintaining the Cottonwood Grove Subdivision, First and Second Filings, Public Area Improvements. The total square footage in the District to be assessed is 1,206,422 square feet. The costs of maintaining the Improvements for the first year shall be \$0.00239 per square foot of each lot 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 Cottonwood Grove Subdivision, First and Second Filings, Park 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 Cottonwood Grove Subdivision, First and Second Filings, Public Area Improvements may make and file with the City Clerk until 5:00 p.m. M.D.T., July 15th, 2005, on the expiration date of said 15-day period, written protest against the proposed Special Improvement Maintenance District No. 4029, 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 25th, 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 30th, and July 7th, 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 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

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

SUBJECT: Resolution Authorizing Commitment Agreements with the Department of Natural Resources and Conservation Regarding the Sale of the Water and Wastewater Revenue Bonds

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Department of Natural Resources and Conservation (DNRC) has provided the City with commitment letters authorizing the issuance of revenue bonds to pay the cost of making improvements to the City’s water and wastewater system. The letters establish the amount of funds the City is borrowing, description of the projects, and estimated loan terms and closing date. Upon approval, the City will proceed with the issuance of the Bonds.

The amount in the FY06 revenue budget is \$11.3 million. However, recent rains are anticipated to reduce water sales. Therefore, the amount for the water loan was increased to \$12.1 million. The City will only borrow as much as needed after calculating available reserves.

FINANCIAL IMPACT:

Wastewater System Revenue Bond	\$ 5,650,000
Water System Revenue Bond	\$ 12,176,000

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution.

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

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney
 EXHIBIT A- Commitment Agreements

ATTACHMENT A

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "A RESOLUTION OF CITY OF BILLINGS, MONTANA, AUTHORIZING THE ENTERING INTO, EXECUTION, AND DELIVERY OF COMMITMENT AGREEMENTS WITH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION REGARDING THE SALE AND DELIVERY OF THE CITY'S \$12,176,000 WATER SYSTEM REVENUE BOND (DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005 AND \$5,650,000 WASTEWATER SYSTEM REVENUE BOND (DNRC WASTEWATER REVOLVING LOAN PROGRAM), SERIES 2005" (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 regular meeting on June 27, 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 and seal officially this ____ day of June 27, 2005

City Clerk

RESOLUTION NO. _____

A RESOLUTION OF CITY OF BILLINGS, MONTANA,
AUTHORIZING THE ENTERING INTO, EXECUTION, AND
DELIVERY OF COMMITMENT AGREEMENTS WITH THE
DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION REGARDING THE SALE AND DELIVERY OF
THE CITY'S \$12,176,000 WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM),
SERIES 2005, AND \$5,650,000 WASTEWATER SYSTEM REVENUE
BOND (DNRC WASTEWATER REVOLVING LOAN PROGRAM),
SERIES 2005

WHEREAS, pursuant to Montana Code Annotated Title 7, Chapter 7, Part 44, the City Council (the "Council") of City of Billings, Montana (the "City") is authorized to issue its revenue bonds to pay the costs of making improvements to the City's municipal water and sewer systems (the "Systems"); and

WHEREAS, the Department of Natural Resources and Conservation (the "DNRC") has provided to the City Commitment Letters, copies of which are attached as Exhibit A (the "Commitment Letters") pursuant to which the DNRC will loan the City the following amounts to pay the costs of financing certain improvements to the Systems as described on Exhibit A hereto (the "Projects") and the City will evidence its obligation for the Loans by the issuance of its Bonds in the same amounts, respectively as shown below (the "Bonds"):

\$12,176,000 Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2005
\$5,650,000 Wastewater System Revenue Bond (DNRC Wastewater Revolving Loan Program), Series 2005; and

WHEREAS, the City has reviewed the Commitment Letters; and

WHEREAS, it is the judgment and determination of the Council that it is in the best interest of the City to approve the Commitment Letters and confirm its intention to issue the Bonds to the DNRC;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City as follows:

1. Approval of Commitment Agreement. The Council hereby approves the terms of the Commitment Letters and hereby authorizes the Mayor and City Administrator (or designee) to execute and deliver a copy of this Resolution to the DNRC.

2. Authority to Proceed. The Mayor and City Administrator (or designee) of the City are hereby authorized to take all actions necessary and desirable to proceed with the issuance of the Bonds to the DNRC in accordance with the provisions of the Commitment Letters and other applicable provisions of Montana law, subject to the final resolutions authorizing the issuance of each series of Bonds being presented to the Council for approval before the Bonds are issued.

PASSED AND APPROVED this 27th day of June, 2005.

Mayor

Attest: _____
City Clerk

COMMITMENT AGREEMENT

Revenue Bond

**Water Pollution Control State
Revolving Fund Program**

between

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

and

CITY OF BILLINGS

**Headwork and Treatment Plant Project
SRF #C-301205-01**

Estimated Loan Amount.....**\$5,650,000**

COMMITMENT AGREEMENT
Water Pollution Control State
Revolving Fund Program

This Commitment Agreement (as amended or supplemented in accordance with the terms hereof, the "Agreement"), is entered into this _____ (day) of _____ (mo) , _____ (yr) , between the Department of Natural Resources and Conservation of the State of Montana (the "Department") and the **City of Billings** (the "Borrower").

In consideration of the mutual covenants, representations and agreements contained herein, the Department and the Borrower hereby agree as follows:

Section 1. Definitions, Recitals and Other Provisions of General Application.

1.1. Definitions. For purposes of this Agreement, capitalized terms herein shall have the respective meanings assigned them in this paragraph 1.1 and in the initial paragraph hereof, unless the context hereof clearly otherwise requires:

"Act" shall mean collectively Montana Code Annotated, Title 17, Chapter 5, Part 8, as amended, and Title 75, Chapter 5, Part 11, as amended.

"Administrative Expense Surcharge" shall mean a surcharge on the Loan charged by the Department to the Borrower equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

"Administrative Fee" shall mean a fee equal to fifty-seven and one-half hundredths of one percent (0.575%) of the initial Committed Amount, to be retained by the Department from the proceeds of the Loan.

"Board" shall mean the Board of Examiners of the State of Montana, or any successor to its function as issuer of the State's Bonds.

"Bond" shall mean the **\$5,650,000 Sewer System Revenue Bond** (DNRC Revolving Loan Program), Series **2005**, issued to the Department to evidence the Loan.

"Bond Resolution" shall mean the resolution, in form and substance satisfactory to the Department, adopted by the Governing Body, authorizing the sale of the Bond to the Department and prescribing the terms thereof and establishing the security therefor.

"Borrower Act" shall mean Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended.

"Clean Water Act" shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commitment Agreement Resolution" shall mean a resolution, in form and substance satisfactory to the Department, duly adopted by the Governing Body authorizing the Borrower to execute and deliver this Agreement.

"Committed Amount" shall mean the dollar amount shown on the cover hereof.

"Costs of Issuance" shall mean all items of expense directly or indirectly payable by or reimbursable to the Department and related to the authorization, sale and issuance of State Bonds the proceeds of which are used to fund the Loan, including but not limited to the Board's fees, costs of preparation and reproduction of documents, initial fees and charges of the Trustee, underwriters' discount, legal fees and charges, fees and disbursements of consultants and professionals, fees and charges for preparation and execution of such State Bonds, rating agency fees and any other cost, charge or fee in connection with the original issuance of such State Bonds.

"Department" shall mean the Department of Natural Resources and Conservation of the State of Montana, or any successors to its functions under the Program.

"DEQ" shall mean the Department Environmental Quality of the State of Montana, or any successors to its functions under the Program.

"EPA" shall mean the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

"Governing Body" shall mean the council, board or other body that establishes legislative policy for the Borrower.

"Indenture" shall mean the Indenture of Trust, to be entered into between the Board and a corporate trustee, as such may be amended or supplemented from time to time in accordance with the provisions thereof, and pursuant to which the State Bonds are to be issued.

"Loan" shall mean the loan made to the Borrower by the Department pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the Project Costs.

"Loan Date" shall mean **September 1, 2005**.

"Loan Loss Reserve Surcharge" shall mean a fee equal to one percent (1.00%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of principal and interest on the Loan are payable.

"Origination Fee" 1% of the committed amount to be used to pay the Borrower's Pro Rata Share of the Costs of Issuance of the State Bonds.

"Program" shall mean the Water Pollution Control State Revolving Fund Program established under the Act, pursuant to which the Department will issue and sell the State Bonds and use the proceeds thereof and certain other funds to make the Loan to the Borrower.

"Project" shall mean the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the Loan, and which is more fully described on Exhibit A hereto.

"Project Costs" shall mean the costs of the Project and the costs relating to the Loan that may be paid from proceeds of the Bond under the Borrower Act and that qualify as eligible costs under the Program, including, without limitation, costs of design, engineering, construction and equipping the Project, contingencies, interest payable on the Loan during construction, deposits to a reserve or revolving fund to secure the Bond, the Origination Fee and the Administrative Fee payable under the Program. Exhibit B contains a list of known Project Costs in amounts estimated as of the date of this Agreement.

"Rules" shall mean the rules promulgated by the Board of Natural Resources and Conservation and the Board of Environmental Review implementing the Program.

"State Bonds" shall mean the General Obligation Bonds (Water Pollution Control State Revolving Fund Program) issued or to be issued by the Board from time to time under the Act and the Indenture.

"System" shall mean the existing wastewater system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the Project.

1.2. References and Construction. All references in this instrument to designated "Sections", other subdivisions are to the designated Sections, and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context clearly indicate otherwise. This Agreement shall be construed in accordance with the laws of the State of Montana.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: A description of the Project.

Exhibit B: A listing of all known components of Project Costs and the estimated amounts thereof as of the date of this Agreement.

Exhibit C: A summary of certain provisions of the Bond Resolution, which does not purport to be complete or definitive.

Section 2. Representations by the Department. The Department makes the following representations as the basis for its covenants herein:

2.1 The Board is authorized by the Act to issue and sell the State Bonds and apply the proceeds thereof to make loans or refinance loans to local government units and to purchase bonds or notes issued by local government units. Pursuant to this authorization, the Board, the Department and the DEQ have created and implemented the Program.

2.2. The Department has received an application from the Borrower to participate in the Program for the purpose of obtaining the Loan in the maximum principal amount equal to the Committed Amount to finance all or a portion of the Project Costs.

2.3. The Board will provide funds for the Program by issuing and selling the State Bonds from time to time in amounts sufficient, with other available funds, including EPA capitalization grant funds, to fund loans to the participants in the Program, including the Borrower. Based on the application of the Borrower, the Committed Amount of the Loan is estimated to be sufficient to pay (i) **\$5,650,000** of costs of the Project, (ii) **\$0** of interest on the Loan during construction, (iii) a deposit of **\$0** to the reserve fund that will secure the Bond, (iv) an origination fee of **\$0**, and (v) **\$0** of the Administrative Fee. The average annual interest rate on the Loan, inclusive of the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge (but not taking into account the Origination Fee or the Administrative Fee), was based on an estimated interest rate of **three and three quarters** percent 3.75% per annum. This interest rate reflects an estimated interest cost based on market conditions evaluated during preparation of the agreement. A maximum interest rate of **four and one half** percent **4.5%** is established as a ceiling for purposes of this commitment agreement, not to be exceeded without written authorization of the borrower and the Department.

2.4. The covenants and collateral, if any, securing the Bond (exclusive of the revenues of the System) shall be contained in the Bond Resolution and such other security instruments, if any, as the Department shall require. Forms of such documents (and the forms of other documents that are required to be delivered by the Borrower to the Department with the Bond under paragraph 4.3. hereof) will be provided the Borrower and its bond counsel by the Department. A summary of certain provisions of the Bond Resolution, which outlines the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the revenues of the System, required to secure the Loan are contained in Exhibit C

hereto. The summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirement outlined in Exhibit C are available from the Department upon written request.

Section 3. Representations by the Borrower. The Borrower makes the following representations as the basis for its covenants herein:

3.1. The Borrower is duly organized and validly existing as a political subdivision of the State of Montana, has power to enter into this Agreement and, by proper action of its Governing Body, has authorized the execution and delivery of this Agreement.

3.2. The Governing Body has duly authorized the undertaking of the Project. The Borrower has obtained or made all permits, findings and approvals, required to the date hereof by any governmental agency or authority, including the EPA, for the Project, and for any necessary wastewater rate increase required for the issuance of the Bond or to pay principal thereof or interest thereon. Construction of the Project has complied and will comply with all federal and state regulations, including, without limitation, DEQ and EPA regulations and standards. The Project and the proposed Loan meet the standards of eligibility of the Program, as expressed in the Act and the Rules.

3.3. The undertaking of the Project and the issuance of the Bond in a principal amount equal to the Committed Amount to finance Project Costs and to evidence the Loan is authorized under the Borrower Act and the issuance of the Bond in a principal amount equal to the Committed Amount will not (i) cause the indebtedness of the Borrower to exceed any constitutional or statutory limitation or (ii) violate any term, condition or provision of or constitute a default under any resolution, contract or agreement to which the Borrower is a party or by which the Borrower is bound.

3.4. The execution, delivery and performance of this Agreement have been duly authorized by the Borrower, as evidenced by a certified copy of the Commitment Agreement Resolution, adopted by the Governing Body and delivered to the Department with this Agreement.

3.5. Construction of the Project is currently estimated to begin **July 15, 2005**, and to be completed by **August 31, 2007**.

3.6. The application of the Borrower to participate in the Program which has been furnished to the Department is, as of the date hereof, accurate and complete. Any financial information furnished as part of the application is true and complete as of the dates and for the periods indicated, and there has been no material adverse change in the financial position of the Borrower or the System since the last such date or period nor has there been any material change in the character or the number of users of the System, which has not been disclosed to the Department in writing.

Section 4. Covenants of the Borrower and the Department.

4.1. The Borrower agrees to undertake construction of the Project and to comply with all pertinent provisions of applicable federal, state and local law, including DEQ and EPA regulations and standards, relating to the Project.

4.2. The Department agrees to use its best efforts to cause the Board to sell and issue the State Bonds, or apply other funds under the Program if legally available therefor, to provide funds to make the Loan to the Borrower on or before the Loan Date or such later date as is permitted under this Section 4. The Borrower acknowledges and agrees that the Board has the right, in its sole and absolute discretion, to fix the terms and conditions of the State Bonds, to issue other State Bonds or apply other funds to fund the Loan, as it may determine is in the best interests of the Program. If the Department is unable to obtain funds to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Borrower hereunder.

If the Department has obtained funds to make the Loan, it shall notify the Borrower in writing of the availability of the Loan. The notice shall state whether the Loan will be funded, in whole or in part, with proceeds of the State Bonds and indicate the series designation thereof, if other than the State Bonds.

4.3. The Borrower hereby agrees to cause its Governing Body to adopt the Bond Resolution and to cause the Bond to be executed and delivered to the Department and the Loan made on or before **November 30, 2005**, a date not more than 90 days after the Loan Date. The Bond Resolution shall contain the provisions outlined in Exhibit C hereto, unless otherwise agreed in writing by the Department. On the date of delivery of the Bond, the Borrower will also deliver to the Department: (i) a certified copy of the Bond Resolution; (ii) an executed counterpart of any document, if any, granting the Department a security interest in collateral, if any, securing the Loan; (iii) an opinion of bond counsel, satisfactory to the Department, addressed to the Department and dated as of the date the Bond is issued, in form and substance acceptable to the Department, to the effect that: the Bond Resolution has been duly and validly adopted by the Governing Body; the Bond has been duly authorized, executed and delivered; the Bond Resolution and the Bond each constitute a valid and binding obligation of the Borrower enforceable in accordance with their terms, subject to customary exceptions as to enforceability; and the interest on the Bond is not includable in gross income for purposes of federal income taxation; (iv) such other documents, certificates, opinions or agreements as are required under the Bond Resolution to be delivered to the Department as of the date of issuance of the Bond, and (v) such other opinions and certificates as the Department may reasonably request to demonstrate compliance with, or the ability of the Borrower to comply with, its representations, covenants and agreements contained in the Bond Resolution.

4.4. In consideration of the covenants of the Department herein, the Borrower agrees that if the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the

Borrower shall pay, whether or not the Loan is made or, if made, from whatever source, the Origination Fee.

The amount described in the immediately preceding paragraph shall be payable by the Borrower upon written demand therefor by the Department and, if not paid within 30 days after demand therefor, shall bear interest from the date of demand at an annual interest rate equal to ten percent (10.00%) per annum until paid in full.

4.5. If the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the Department has no further obligation hereunder and may use the proceeds of State Bonds or other funds designated to fund the Loan for other purposes of the Program, including funding loans to other participants. If, however, (i) the Department consents, in its sole and absolute discretion, in a writing signed by the Director of the Department or, in the event of the Director's absence or disability, the acting Director of the Department, to an extension of the date specified in paragraph 4.3 hereof for the issuance of the Bond and the delivery of the related documents and (ii) the Borrower has paid to the Department an amount equal to the amount payable under paragraph 4.4 hereof, calculated by the Department and has observed any other conditions to such extension imposed by the Department in such consent, then the date in paragraph 4.3 hereof shall be deemed extended until the date specified in the consent, and this Agreement shall continue in full force and effect, except that (a) the Committed Amount shall be deemed reduced by the amount of the payment by the Borrower under clause (ii) and (b) the provisions of paragraph 4.4. hereof shall be deemed no longer effective.

Section 5. Modification of Project; Adjustment of Committed Amount.

5.1. Unless modified or adjusted pursuant to paragraph 5.2 hereof, the Borrower acknowledges and agrees that the Project shall conform substantially to the description thereof in Exhibit A hereto, the estimated Project Costs as of the date of issuance of the Bond shall not exceed the total amount of Project Costs stated on Exhibit B hereto, and the maximum principal amount of the Loan, and the maximum principal amount of the Bond evidencing the Loan, shall be equal to the Committed Amount.

5.2. After the date of this Agreement and before the date specified in paragraph 4.3 hereof, the Borrower may request that the Department consent to a modification of the Project, an increase in the costs thereof or an adjustment in the Committed Amount. If the Department, in its absolute and sole discretion, after consultation with the DEQ, determines to consent to a modification in the Project, an increase in the costs thereof or an increase or decrease in the Committed Amount, such consent shall be evidenced in a written amendment to this Agreement executed by the Department and the Borrower. The Borrower hereby agrees to pay upon demand the reasonable costs and expenses of the Department and the DEQ and their agents and consultants, including the fees and disbursement of counsel and bond counsel, in considering any such modification, whether or not the Department consents thereto.

Section 6. Miscellaneous.

6.1 Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

Department: **Department of Natural Resources and Conservation**
1625 Eleventh Avenue
Helena, Montana 59620
Attention: Anna Miller

Borrower: **City of Billings**
PO Box 1178
Billings, MT 59103
Attention: Alan Towler, Deputy Public Works

Director

6.2. Binding Effect; Assignment. This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the Department and the Borrower and their respective successors. The Borrower may not assign its interest in this Agreement without the prior written consent of the Department.

6.3. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Agreement or the enforceability of that provision at any other time.

6.4. Amendments. This Agreement may be amended only by a writing executed by the Department and the Borrower.

6.5. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of Montana.

**THE STATE OF MONTANA DEPARTMENT OF
NATURAL RESOURCES & CONSERVATION**

Authorized Official

Title

Date Signed

CITY OF BILLINGS

Authorized Official

Title

Date Signed

EXHIBIT A

DESCRIPTION OF PROJECT

Project consists of the construction of a new headworks building including grit removal and automatic screen equipment at the City's wastewater treatment plant. The project is currently under contract with a projected completion date of April 2006.

EXHIBIT B

ESTIMATED AMOUNT OF PROJECT COSTS

Costs of the Project

Construction	\$ 5,196,494
Engineering	\$ 150,789
Contingency	\$ 287,217
Admin., Local COI, & Planning	\$ 15,500
Subtotal	\$ 5,650,000

Other costs

Interest during construction	\$ 0
Reserve Account deposit	\$ 0
State Origination Fee	\$ 0
Administrative Fee	\$ 0
Subtotal	\$ 0

TOTAL

	\$5,650,000
--	-------------

EXHIBIT C

SUMMARY OF THE BOND RESOLUTION

The following is a summary of certain provisions of the Bond Resolution, which outline the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the net revenues of the System, required to secure the Loan. This summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirements hereinafter outlined are available from the Department upon written request.

Terms of Loan

Estimated Principal Amount of Loan	\$5,650,000
Estimated Interest and Carrying Charge on Loan.....	3.75% per annum
Comprising:	
Interest rate.....	2.00% per annum
Administrative Expense Surcharge	0.75% per annum
Loan Loss Reserve Surcharge	1.00% per annum
Maximum Interest Charge (see paragraph 2.3)	4.50% per annum
Other Upfront Program Costs:	
Origination Fee	\$0
Administrative Fee	\$0
Disbursement of Loan	

Proceeds of the Loan are to be disbursed after costs are incurred upon requisition and certification to the DEQ. If the DEQ approves the requisition, it will forward the requisition to the DNRC for approval. The DNRC, upon approving the requisition, will direct the trustee for the State Bonds to make the disbursement. The initial disbursement will include amounts for the Origination Fee and the Administrative Fee, which amounts will be retained by the DNRC. And any necessary deposit to the Reserve Account (see "Security for the Loan-Reserve Account" herein) will be made in part with each disbursement in proportion to the amount thereof.

Repayment of Loan

Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge are payable in semiannual installments on each January 1 and July 1 (a "Payment Date"), commencing on the first Payment Date after the closing date of the Loan, unless such date is less than 30 days after the closing date in which case such payments will commence on the next succeeding Payment Date. Principal is payable, commencing on the second Payment Date after completion of the Project, in semiannual installments in \$1,000 amounts or integral multiples thereof. The amount of a principal installment shall be such that principal and interest at an assumed rate of **three and three quarters percent 3.75%** per annum are amortized, as nearly as practicable (in principal amounts of \$1,000 or integral multiples thereof), in **40** equal semiannual payments.

Attached as Exhibit C-1 is a preliminary schedule of the payment terms of the Loan, based on the Loan Date and estimated construction schedule for the Project, assuming that the Loan is disbursed in an amount equal to the Committed Amount. A similar schedule will be appended to the Bond Resolution and the Bond, which will be adjusted following completion of the Project on the basis of the actual closing date of the Loan, the amount of the Loan disbursed and the completion date.

Term of Loan (from closing date): **20** years

Prepayment Requires Consent

Prepayment is permitted, whether in whole or in part, only with the prior written notice of the DNRC and so long as no default is continuing under the Bond Resolution. Any permitted prepayment would need to include, in addition to the principal amount prepaid plus interest accrued thereon, all Administrative Surcharge and Loan Loss Reserve Surcharge accrued thereon to the date of prepayment.

Security for the Loan

Collateral

The collateral is a pledge of net revenues of the System to be effected in the Bond Resolution on a parity with outstanding wastewater revenue debt, if any, and permitted future wastewater revenue debt issued on a parity. (See "Parity Wastewater Debt" herein.)

Reserve Account

A reserve account must be established to secure the Bond, whether in the Bond Resolution or in an earlier resolution of the Borrower. The amount on deposit herein, on the closing date of the Loan and on any date thereafter while the Bond is outstanding, must equal the maximum amount of principal and interest payable in the current or any future fiscal year of the Borrower on the Bond (assuming that is issued in the Committed Amount and payable in

accordance with the Schedule to be attached to the Bond Resolution) and on any other wastewater debt of the Borrower then outstanding. Proceeds of the Loan in an amount up to ten percent of the Committed Amount may be used to make any necessary deposit or deposits to the Reserve Account, whether at the closing date of the Loan or, as and to the extent, disbursements of the Loan are made.

Rate Covenant

The Bond Resolution will contain a covenant that the Borrower will charge rates, charges and rentals to all recipients of wastewater services and revise and maintain such rates, charges and rentals, subject to any required approval by the Public Service Commission, whenever and as often as necessary, according to schedules such that the revenues of the System for each fiscal year of the Borrower will be at least sufficient to pay the current expenses of operation and maintenance of the System, to maintain an operating reserve and to produce net revenues during each fiscal year, commencing with the fiscal year ending June 30, 2005 not less than 125% of the maximum principal and interest payable on the Bond and on any other wastewater debt of the Borrower then outstanding in the current or any future fiscal year.

Parity Wastewater Debt

The Bond Resolution or an outstanding resolution of the Borrower must provide that additional wastewater debt to finance improvements to the System may be issued or incurred and made payable from the net revenues of the System on a parity with the Bond only if the net revenues of the System for the last complete fiscal year of the Borrower preceding the date such debt is to be issued or incurred equaled at least 125% of the maximum amount of principal and interest payable on the Bond, any then outstanding debt payable from revenues of the System and the proposed debt in any subsequent fiscal year during the term of the Bond. The net revenues of the System from the Borrower's audited financial statements for such previous fiscal year may be adjusted as the Bond Resolution provides for any increase in the rates and charges of the System that have been implemented since the beginning of the previous fiscal year. In addition, the balance in the Reserve Account must be increased, on the date such additional debt is to be incurred, to the required balance assuming that the additional debt is outstanding.

Other Covenants and Representations

Among other provisions in the Bond Resolution, covenants will require the Borrower, among other things, to preserve the exemption from federal income taxation of the interest on the Bond and on the State Bonds, maintain the System and insurance thereon, maintain the corporate existence of the Borrower, observe certain investment restrictions, furnish to the DNRC an annual audited financial report, to establish or authorize competing service to the System, bill customers of the System monthly and, if bills are not paid within **60** days, discontinue water service to the premises, and indemnify the DNRC, the DEQ and the trustee under the Indenture against any claim or loss arising from the Project, the operation of the System or the financing of the Project. The Borrower will also make representations regarding

its ability to adopt the Bond Resolution and to issue the Bond and with respect to the Project and the System.

The borrower agrees to meet the state and federal requirements provided for in the Montana Wastewater Treatment Revolving Fund Act pursuant to Title 75, Chapter 5, Part 11: and Sections 601 through 607 of the Federal Water Pollution Control Act, 33 U.S.C. 1381 through 1387, as amended.

Funds and Accounts

In Bond Resolution or in an outstanding resolution of the Borrower, a wastewater system fund must be established to segregate revenues of the System and various accounts established therein, such as a Construction Account, Operating Account, Revenue Bond Account, Reserve Account, Replacement and Depreciation Account and Surplus Account, so as to ensure that proceeds of the Loan, revenues of the System and other funds are properly applied, all in a manner reasonably satisfactory to the DNRC.

COMMITMENT AGREEMENT

Revenue Bond

Drinking Water State
Revolving Fund Program

between

**DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

and

**CITY OF BILLINGS
Water System Improvement Project**

Estimated Loan Amount**\$12,176,000**

COMMITMENT AGREEMENT
Drinking Water State
Revolving Fund Program

This Commitment Agreement (as amended or supplemented in accordance with the terms hereof, this "Agreement"), is entered into this ___ (day) of _____ (mo), _____ (yr), between the Department of Natural Resources and Conservation of the State of Montana (the "Department") and the **City of Billings** (the "Borrower").

In consideration of the mutual covenants, representations and agreements contained herein, the Department and the Borrower hereby agree as follows:

Section 1. Definitions, Recitals and Other Provisions of General Application.

1.1. Definitions. For purposes of this Agreement, capitalized terms herein shall have the respective meanings assigned them in this paragraph 1.1 and in the initial paragraph hereof, unless the context hereof clearly otherwise requires:

"Act" shall mean, collectively, Montana Code Annotated, Title 17, Chapter 5, Part 8, as amended, and Title 75, Chapter 6, Part 2, as amended.

"Administrative Expense Surcharge" shall mean a surcharge on the Loan charged by the Department to the Borrower equal to **seventy-five** hundredths of one percent **0.75%** per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

"Administrative Fee" shall mean a fee equal to **fifty-seven and one half** hundredths of one percent **0.575%** of the initial Committed Amount, to be paid to the Department by the Borrower on the closing date of the Loan, either, to the extent permitted by the Indenture, from proceeds of the Loan or from other available funds of the Borrower.

"Board" shall mean the Board of Examiners of the State of Montana, or any successor to its function as issuer of the State Bonds.

"Bond" shall mean the **\$12,176,000** Water System Revenue Bond (DNRC Revolving Loan Program), Series **2005**, to be issued by the Borrower to the Department to evidence the Loan.

"Bond Resolution" shall mean the resolution, in form and substance satisfactory to the Department, adopted by the Governing Body, authorizing the issuance and sale of the Bond to the Department, prescribing the terms thereof, and establishing the security therefor.

"Borrower Act" shall mean Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Commitment Agreement Resolution" shall mean a resolution, in form and substance satisfactory to the Department, duly adopted by the Governing Body authorizing the Borrower to execute and deliver this Agreement.

"Committed Amount" shall mean the dollar amount shown on the cover hereof.

"Department" shall mean the Department of Natural Resources and Conservation of the State of Montana, or any successors to its functions under the Program.

"DEQ" shall mean the Department of Environmental Quality of the State of Montana, or any successors to its functions under the Program.

"EPA" shall mean the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Safe Drinking Water Act.

"Governing Body" shall mean the council, board or other body that establishes legislative policy for the Borrower.

"Indenture" shall mean the Indenture of Trust, to be entered into between the Board and U.S. Bank Trust National Association MT, of Billings, Montana, as such may be amended or supplemented from time to time in accordance with the provisions thereof, and pursuant to which the State Bonds are to be issued.

"Loan" shall mean the loan made to the Borrower by the Department pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the Project Costs.

"Loan Date" shall mean **September 1, 2005**.

"Loan Loss Reserve Surcharge" shall mean a fee equal to **one percent 1.00%** per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of principal and interest on the Loan are payable.

"Origination Fee" shall mean a fee equal to **one percent 1.00%** of the initial Committed Amount, to be paid to the Department by the Borrower on the closing date of the Loan, either, to the extent permitted by the Indenture, from proceeds of the Loan or other available funds of the Borrower, or as otherwise payable pursuant to paragraph 4.4 hereof.

"Program" shall mean the Drinking Water State Revolving Fund Program established under the Act, pursuant to which the Department will issue and sell the State Bonds and the Department will use the proceeds thereof and certain other funds to make the Loan to the Borrower.

"Project" shall mean the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the Loan, and which is more fully described on Exhibit A hereto.

"Project Costs" shall mean the costs of the Project and the costs relating to the Loan that may be paid from proceeds of the Bond under the Borrower Act and that qualify as eligible costs under the Program, including, without limitation, costs of design, engineering, construction and equipping the Project, contingencies, interest payable on the Loan during construction, deposits to a reserve or revolving fund to secure the Bond, the Origination Fee, the Administrative Fee, the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge payable under the Program. Exhibit B contains a list of Project Costs known to the Borrower in amounts estimated by the Borrower as of the date of this Agreement.

"Rules" shall mean the rules promulgated by the Department and the DEQ implementing the Program.

"Safe Drinking Water Act" means Title XIV of the federal Public Health Service Act, commonly known as the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended, and all regulations, rules and interpretations issued by the EPA thereunder.

"State" shall mean the State of Montana.

"State Bonds" shall mean the General Obligation Bonds (Drinking Water State Revolving Fund Program) issued or to be issued by the Board from time to time under the Act and the Indenture.

"System" shall mean the existing water system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the Project.

1.2. References and Construction. All references in this instrument to designated "Sections" and other subdivisions are to the designated Sections and other subdivisions of this instrument as originally executed. The words "herein," "hereof," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context clearly indicate otherwise.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A: A description of the Project.

Exhibit B: A listing of all components of Project Costs known to the Borrower and the amounts thereof estimated by the Borrower as of the date of this Agreement.

Exhibit C: A summary of certain provisions of the Bond Resolution, which does not purport to be complete or definitive.

Section 2. Representations by the Department. The Department makes the following representations as the basis for its covenants herein:

2.1. The Board is authorized by the Act to issue and sell the State Bonds and apply the proceeds thereof to make loans or refinance loans to local government units and to purchase bonds or notes issued by local government units. Pursuant to this authorization, the Board, the Department and the DEQ have created and implemented the Program.

2.2. The Department has received an application from the Borrower to participate in the Program for the purpose of obtaining the Loan in the maximum principal amount equal to the Committed Amount to finance all or a portion of the Project Costs.

2.3. The Board will provide funds for the Program by issuing and selling the State Bonds from time to time in amounts sufficient, with other available funds, including EPA capitalization grant funds, to fund loans to the participants in the Program, including the Borrower. Based on the application of the Borrower, the Committed Amount of the Loan is estimated to be sufficient to pay (i) **\$11,299,790** of costs of the Project, (ii) **\$-0-** of interest on the Loan during construction, (iii) a deposit of **\$876,210** to the reserve fund that will secure the Bond, (iv) an Origination Fee of **\$0** and (v) an Administrative Fee of **\$0**. The average annual interest rate on the Loan, inclusive of the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge (but not taking into account the Origination Fee or the Administrative Fee), was based on an estimated interest rate of **three and three quarters percent 3.75%** per annum. This interest rate reflects an estimated interest cost based on market conditions evaluated at the time of preparation of this Agreement. A maximum interest rate of **four and one half percent 4.50%** per annum is established as a ceiling for purposes of this Agreement, not to be exceeded without written authorization of the Borrower and the Department.

2.4. The covenants and collateral, if any, securing the Bond (exclusive of the revenues of the System) shall be contained in the Bond Resolution and such other security instruments, if any, as the Department shall require. Forms of such documents (and the forms of other documents that are required to be delivered by the Borrower to the Department with the Bond under paragraph 4.3. hereof) will be provided the Borrower and its bond counsel by the Department. A summary of certain provisions of the Bond Resolution, which outlines the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the revenues of the System, required to secure the Loan are contained in Exhibit C hereto. The summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirements outlined in Exhibit C are available from the Department upon written request.

Section 3. Representations by the Borrower. The Borrower makes the following representations as the basis for its covenants herein:

3.1. The Borrower is duly organized and validly existing as a political subdivision of the State of Montana, has power to enter into this Agreement and, by proper action of its Governing Body, has authorized the execution and delivery of this Agreement.

3.2. The Governing Body has duly authorized the undertaking of the Project. The Borrower has obtained or made all permits, findings and approvals, required to the date hereof by any governmental agency or authority, including the EPA, for the Project, and for any necessary water rate increase required for the issuance of the Bond or to pay principal thereof or interest thereon. Construction of the Project has complied and will comply with all federal and state regulations, including, without limitation, DEQ and EPA regulations and standards. The Project and the proposed Loan meet the standards of eligibility of the Program, as expressed in the Act and the Rules.

3.3. The undertaking of the Project and the issuance of the Bond in a maximum authorized principal amount equal to the Committed Amount to finance Project Costs and to evidence the Loan is authorized under the Borrower Act and the issuance of the Bond in a principal amount equal to the Committed Amount will not (i) cause the indebtedness of the Borrower to exceed any constitutional or statutory limitation or (ii) violate any term, condition or provision of or constitute a default under any resolution, contract or agreement to which the Borrower is a party or by which the Borrower is bound.

3.4. The execution, delivery and performance of this Agreement have been duly authorized by the Borrower, as evidenced by a certified copy of the Commitment Agreement Resolution, adopted by the Governing Body and delivered to the Department with this Agreement.

3.5. Construction of the Project is currently estimated to begin **August 1, 2005** and to be completed by **October 31, 2007**.

3.6. The application of the Borrower to participate in the Program which has been furnished to the Department is, as of the date hereof, accurate and complete. Any financial information furnished as part of the application is true and complete as of the dates and for the periods indicated, and there has been no material adverse change in the financial position of the Borrower or the System since the last such date or period nor has there been any material change in the character or the number of users of the System, which has not been disclosed to the Department in writing.

Section 4. Covenants of the Borrower and the Department.

4.1. The Borrower agrees to undertake construction of the Project and to comply with all pertinent provisions of applicable federal, state and local law, including DEQ and EPA regulations and standards, relating to the Project.

4.2. The Department agrees to use its best efforts to cause the Board to sell and issue the State Bonds, or apply other funds under the Program if legally available therefor, to provide funds to make the Loan to the Borrower on or before the Loan Date or such later date as is permitted under this Section 4. The Borrower acknowledges and agrees that the Board has the

right, in its sole and absolute discretion, to fix the terms and conditions of the State Bonds, to issue other State Bonds or apply other funds to fund the Loan, as it may determine is in the best interests of the Program. If the Department is unable to obtain funds to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Borrower hereunder.

If the Department has obtained funds to make the Loan, it shall notify the Borrower in writing of the availability of the Loan. The notice shall state whether the Loan will be funded, in whole or in part, with proceeds of the State Bonds and indicate the series designation thereof, if other than the State Bonds.

4.3. The Borrower hereby agrees to cause its Governing Body to adopt the Bond Resolution and to cause the Bond to be executed and delivered to the Department and the Loan made on or before **November 30, 2005**, a date not more than 90 days after the Loan Date. The Bond Resolution shall contain the provisions outlined in Exhibit C hereto, unless otherwise agreed in writing by the Department. On the date of delivery of the Bond, the Borrower will also deliver to the Department: (i) a certified copy of the Bond Resolution; (ii) an executed counterpart of any document, if any, granting the Department a security interest in collateral, if any, securing the Loan; (iii) an opinion of bond counsel, satisfactory to the Department, addressed to the Department and dated as of the date the Bond is issued, in form and substance acceptable to the Department, to the effect that: the Bond Resolution has been duly and validly adopted by the Governing Body; the Bond has been duly authorized, executed and delivered; the Bond Resolution and the Bond each constitute a valid and binding special, limited obligation of the Borrower enforceable in accordance with their terms, subject to customary exceptions as to enforceability; and the interest on the Bond is not includable in gross income for purposes of federal income taxation; (iv) such other documents, certificates, opinions or agreements as are required under the Bond Resolution to be delivered to the Department as of the date of issuance of the Bond, and (v) such other opinions and certificates as the Department may reasonably request to demonstrate compliance with, or the ability of the Borrower to comply with, its representations, covenants and agreements contained in the Bond Resolution.

4.4. In consideration of the covenants of the Department herein, the Borrower agrees that if the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the Borrower shall pay, whether or not the Loan is made or, if made, from whatever source, the Origination Fee.

The amount described in the immediately preceding paragraph shall be payable by the Borrower upon written demand therefor by the Department and, if not paid within 30 days after demand therefor, shall bear interest from the date of demand at an annual interest rate equal to ten percent 10.00% per annum until paid in full.

4.5. If the Borrower fails to adopt the Bond Resolution and issue the Bond and the other documents referred to in paragraph 4.3 hereof by the date specified in said paragraph 4.3, the Department has no further obligation hereunder and may use the proceeds of State Bonds or other funds designated to fund the Loan for other purposes of the Program, including funding loans to other participants. If, however, (i) the Department consents, in its sole and absolute discretion, in a writing signed by the Director of the Department or, in the event of the Director's

absence or disability, the acting Director of the Department, to an extension of the date specified in paragraph 4.3 hereof for the issuance of the Bond and the delivery of the related documents and (ii) the Borrower has paid to the Department an amount equal to the amount payable under paragraph 4.4 hereof, as calculated by the Department, and has observed any other conditions to such extension imposed by the Department in such consent, then the date in paragraph 4.3 hereof shall be deemed extended until the date specified in the consent, and this Agreement shall continue in full force and effect, except that (a) the Committed Amount shall be deemed reduced by the amount of the payment by the Borrower under clause (ii) and (b) the provisions of paragraph 4.4 hereof shall be deemed no longer effective.

Section 5. Modification of Project; Adjustment of Committed Amount.

5.1. Unless modified or adjusted pursuant to paragraph 5.2 hereof, the Borrower acknowledges and agrees that the Project shall conform substantially to the description thereof in Exhibit A hereto, the estimated Project Costs as of the date of issuance of the Bond shall not exceed the total amount of Project Costs stated on Exhibit B hereto, and the maximum principal amount of the Loan, and the maximum principal amount of the Bond evidencing the Loan, shall be equal to the Committed Amount.

5.2. After the date of this Agreement and before the date specified in paragraph 4.3 hereof, the Borrower may request that the Department consent to a modification of the Project, an increase in the costs thereof or an adjustment in the Committed Amount. If the Department, in its absolute and sole discretion, after consultation with the DEQ, determines to consent to a modification in the Project, an increase in the costs thereof or an increase or decrease in the Committed Amount, such consent shall be evidenced in a written amendment to this Agreement executed by the Department and the Borrower. The Borrower hereby agrees to pay upon demand the reasonable costs and expenses of the Department and the DEQ and their agents and consultants, including the fees and disbursement of counsel and bond counsel, in considering any such modification, whether or not the Department consents thereto.

Section 6. Miscellaneous.

6.1. Notices. All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

Department: Department of Natural Resources and Conservation
1625 Eleventh Avenue
P.O. Box 201601
Helena, Montana 59620-1601
Attention: Ms. Anna Miller

Borrower: City of Billings
PO Box 1178
Billings, MT 59103
Attention: Alan Towleron, Deputy Public Works Director

6.2. Binding Effect; Assignment. This Agreement shall inure to the benefit of the parties hereto and shall be binding upon the Department and the Borrower and their respective permitted successors and assigns. The Borrower may not assign its interest in this Agreement without the prior written consent of the Department.

6.3. Severability. If any provision of this Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of this Agreement or the enforceability of that provision at any other time.

6.4. Amendments. This Agreement may be amended only by a writing executed by the Department and the Borrower.

6.5. Governing Law. This Agreement shall be governed by and constructed in accordance with the internal laws of the State of Montana.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE
OF
MONTANA

Authorized Official

Title

Date Signed

CITY OF BILLINGS

Authorized Official

Title

Date Signed

EXHIBIT A

DESCRIPTION OF PROJECT

Construction of the project involves rehabilitation of the filter complex and water treatment plant.

EXHIBIT B

ESTIMATED AMOUNT OF PROJECT COSTS

Costs of the Project

Land & Right of Way	\$ 0
Construction	\$9,806,795
Engineering	\$ 408,565
Equipment	\$ 0
Contingency	\$1,068,930
Admin., Local Costs of Issuance, & Planning.....	\$ 15,500
Subtotal	\$11,299,790

Other costs

Interest during construction	\$ 0
Reserve Account deposit.....	\$ 876,210
Origination Fee	\$ 0
Administrative Fee.....	\$ 0
Subtotal	\$ 876,210
TOTAL.	\$12,176,000

EXHIBIT C

SUMMARY OF THE BOND RESOLUTION

The following is a summary of certain provisions of the Bond Resolution, which outline the terms of the Loan and covenants securing the Loan, and an identification of the collateral, if any, in addition to the net revenues of the System, required to secure the Loan. This summary does not purport to be complete or definitive, and the actual provisions of the Bond Resolution embodying the requirements hereinafter outlined are available from the Department upon written request.

Terms of Loan

Estimated Principal Amount of Loan	\$12,176,000
Estimated Interest and Carrying Charge on Loan	3.75% per annum
Comprising:	
Interest rate	2.00% per annum
Administrative Expense Surcharge	0.75% per annum
Loan Loss Reserve Surcharge	1.00% per annum
Maximum Interest Charge (see paragraph 2.3)	4.50% per annum
Other Upfront Program Costs:	
Origination Fee	\$ 0
Administrative Fee	\$ 0

Disbursement of Loan

Proceeds of the Loan are to be disbursed after costs are incurred upon requisition and certification to the DEQ. If the DEQ approves the requisition, it will forward the requisition to the DNRC for approval. The DNRC, upon approving the requisition, will direct the trustee for the State Bonds to make the disbursement. Any necessary deposit to the Reserve Account (see "Security for the Loan Reserve Account" herein) will be made in part with each disbursement in proportion to the amount thereof.

Repayment of Loan

Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge are payable in semiannual installments on each January 1 and July 1 (a "Payment Date"), commencing on the first Payment Date after the closing date of the Loan, unless such date is less than 30 days after the closing date in which case such payments will commence on the next succeeding Payment Date. Principal is payable, commencing on the second Payment Date after

completion of the Project, in semiannual installments in \$1,000 amounts or integral multiples thereof. The amount of a principal installment shall be such that principal and interest at an assumed rate of **three and three quarters** percent **3.75%** per annum are amortized, as nearly as practicable (in principal amounts of \$1,000 or integral multiples thereof), in **40** equal semiannual payments.

Attached as Exhibit C-1 is a preliminary schedule of the payment terms of the Loan, based on the Loan Date and estimated construction schedule for the Project, assuming that the Loan is disbursed in an amount equal to the Committed Amount. A similar schedule will be appended to the Bond Resolution and the Bond, which will be adjusted following completion of the Project on the basis of the actual closing date of the Loan, the amount of the Loan disbursed and the completion date.

Term of Loan (from closing date): **20 years**

Prepayment Requires Consent

Prepayment is permitted, whether in whole or in part, only with the prior written consent of the DNRC and so long as no default is continuing under the Bond Resolution. Any permitted prepayment would need to include, in addition to the principal amount prepaid plus interest accrued thereon, all Administrative Surcharge and Loan Loss Reserve Surcharge accrued thereon to the date of prepayment.

Security for the Loan

Collateral

The collateral is a pledge of net revenues of the System to be effected in the Bond Resolution on a parity with outstanding water revenue debt, if any, and permitted future water revenue debt issued on a parity. (See "Parity Water Debt" herein.)

Reserve Account

A reserve account must be established to secure the Bond, whether in the Bond Resolution or in an earlier resolution of the Borrower. The amount on deposit herein, on the closing date of the Loan and on any date thereafter while the Bond is outstanding, must equal the maximum amount of principal and interest payable in the current or any future fiscal year of the Borrower on the Bond (assuming that is issued in the Committed Amount and payable in accordance with the Schedule to be attached to the Bond Resolution) and on any other parity water debt of the Borrower then outstanding. Proceeds of the Loan in an amount up to ten percent of the Committed Amount may be used to make any necessary deposit or deposits to the Reserve Account, whether at the closing date of the Loan or, as and to the extent, disbursements of the Loan are made.

Rate Covenant

The Bond Resolution will contain a covenant that the Borrower will charge rates, charges and rentals to all recipients of water services and revise and maintain such rates, charges and

rentals, subject to any required approval by the Public Service Commission, whenever and as often as necessary, according to schedules such that the revenues of the System for each fiscal year of the Borrower will be at least sufficient to pay the current expenses of operation and maintenance of the System, to maintain an operating reserve and to produce net revenues during each fiscal year, commencing with the fiscal year ending **June 30, 2006** not less than 125% of the maximum principal and interest payable on the Bond and on any other water debt of the Borrower then outstanding in the current or any future fiscal year.

Parity Water Debt

The Bond Resolution or an outstanding resolution of the Borrower must provide that additional water debt to finance improvements to the System may be issued or incurred and made payable from the net revenues of the System on a parity with the Bond only if the net revenues of the System for the last complete fiscal year of the Borrower preceding the date such debt is to be issued or incurred equaled at least 125% of the maximum amount of principal and interest payable on the Bond, any then outstanding debt payable from revenues of the System and the proposed debt in any subsequent fiscal year during the term of the Bond. The net revenues of the System from the Borrower's audited financial statements for such previous fiscal year may be adjusted as the Bond Resolution provides for any increase in the rates and charges of the System that have been implemented since the beginning of the previous fiscal year. In addition, the balance in the Reserve Account must be increased, on the date such additional debt is to be incurred, to the required balance assuming that the additional debt is outstanding.

Other Covenants and Representations

Among other provisions in the Bond Resolution, covenants will require the Borrower to preserve the exemption from federal income taxation of the interest on the Bond and on the State Bonds, maintain the System and insurance thereon, maintain the corporate existence of the Borrower, observe certain investment restrictions, furnish to the DNRC an annual audited financial report, not to establish or authorize competing service to the System, bill customers of the System monthly and, if bills are not paid within 60 days, discontinue water service to the premises, and indemnify the DNRC, the DEQ and the trustee under the Indenture against any claim or loss arising from the Project, the operation of the System or the financing of the Project. The Borrower will also make representations regarding its ability to adopt the Bond Resolution and to issue the Bond and with respect to the Project and the System.

The Borrower agrees to meet the state and federal requirements provided for in the Montana Drinking Water State Revolving Fund Act pursuant to Title 75, Chapter 6, Part 2, as amended, and the Safe Drinking Water Act, as amended.

Funds and Accounts

In Bond Resolution or in an outstanding resolution of the Borrower, a water system fund must be established to segregate revenues of the System and various accounts established therein, such as a Construction Account, Operating Account, Bond Account, Reserve Account, Replacement and Depreciation Account and Surplus Account, so as to ensure that proceeds of the Loan, revenues of the System and other funds are properly applied, all in a manner reasonably satisfactory to the DNRC.

EXHIBIT D

RESOLUTION OR AGREEMENT SECURING OUTSTANDING DEBT
PAYABLE FROM REVENUES OF THE SYSTEM

(See paragraph 3.7)

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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: 2nd Reading of 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:

A public hearing and first reading were held at the City Council meeting of June 13, 2005.

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 BUFSA, 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 (BUFSA). 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 adopt 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

A public hearing and first reading were held at the City Council meeting of June 13, 2005.

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

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 H-D, as well as the Uniform Fire Code Appendix Standard A-III-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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Zone Change #758 2nd 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. City Council approved the first reading of the zone change ordinance on June 13, 2005.

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 on 2nd reading and adopt the determinations of the discussed 12 criteria.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Zoning Commission Determination
- B: Ordinance

ATTACHMENT A
Zoning Commission Determinations

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, have 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.

ATTACHMENT B
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/AE, City Clerk

ZC#758

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Zone Change #759 2nd 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. The City Council approved the interim zoning on 1st reading on June 13, 2005.

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 on 2nd reading 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

YARDS AND AUCTION HOUSES	SR												
LIVESTOCK AND FOWL * (County Only) * See BMCC Section 27-607 for Minimum Area Requirements	A*	A*	A*	A*			A*						A*
LUMBER, PLYWOOD AND SHINGLE MILLS	SR												
MANUFACTURED HOME PARKS	SR	SR	SR										A
PARKING, PUBLIC	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
PIPELINES AND DISTRIBUTION LINES (OIL AND GAS) AND ACCESSORY STRUCTURES	A SR	A											
PUBLICLY-OWNED OR GOVERNMENT OPERATED BUILDINGS AND USES	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
RECREATION: – Commercial – Noncommercial	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A	SR A
REHABILITATIVE CENTERS	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Agricultural - Open Space	Agricultural - Suburban	Residential - 15,000	Residential - 9,600	Residential - 8,000	Residential - 7,000 Restricted	Residential - 7,000	Residential - 6,000 Restricted	Residential - 6,000	Residential - 5,000	Residential Multi-Family	Residential Multi-Family - Restricted	Residential Manufactured Home
RODEOS AND INDOOR AND/OR OUTDOOR ROPING ARENAS	SR												
SCHOOLS (PUBLIC OR PRIVATE): – Preschool, elementary, junior or senior high – Colleges and universities – Trade or vocational-technical	SR SR SR	SR SR SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR	SR
STABLES: – Commercial – Private * * See BMCC Section 27-607 for minimum Area Requirements	A A*	SR A*	A*	A*			A*						A*

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/AE, City Clerk

ZC#759 – Interim Zoning Regulation

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

Y1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 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 \$822,028.53 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 27, 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

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

Y2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 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 \$1,967,949.71 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 3, 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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and Council Resolution Approval to File Annual Federal Transit Administration Section 5307 Grant

DEPARTMENT: Aviation/Transit Department

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

PROBLEM/ISSUE STATEMENT: Each year the City of Billings' MET Transit Division applies for a Federal Transit Administration (FTA) Section 5307 formula grant through the U.S. Department of Transportation Federal Transit Act. Through this Act, grant funds are allocated each year to the City of Billings' MET Transit Division, which can be utilized for both operating costs and capital assistance. For FY 05/06, as we have for a number of years, the MET is intending to utilize this grant for assistance with operating costs. This grant is funded on a 50% Federal 50% local basis. The FTA will reimburse the City for 50% of MET's eligible operating expenses up to the apportioned allocation for the year, which will be \$1,172,329 for FY 05/06.

In order to apply for this grant, it is necessary to include with the grant application, a resolution formally authorizing the Mayor to execute the grant agreement with the Department of Transportation (DOT). There is also a requirement for a public hearing for this grant application. Public hearing notices were published in the Billings Times on May 26 and June 9, advertising for a public hearing on June 27, 2005.

FINANCIAL IMPACT: For FY 05/06, the Section 5307 Federal grant application for operating assistance is \$1,172,329, which represents approximately 30% of the MET's O&M revenue. Without this grant revenue to offset operating costs, the MET would need to drastically reduce the service it provides to the community. This amount was budgeted in our proposed FY 05/06 budget.

RECOMMENDATION

Staff recommends that following the public hearing, Council approve a resolution authorizing the filing of a grant application and the execution of a grant agreement with the Department of Transportation, Federal Transit Administration upon receipt of the grant offer provided under the authorization of the Federal Transit Act, TEA-21 Reauthorization.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Authorizing Resolution (2 pages).

AUTHORIZING RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION AUTHORIZING THE FILING OF ALL APPLICATIONS WITH THE DEPARTMENT OF TRANSPORTATION, UNITED STATES OF AMERICA, FOR PLANNING, CAPITAL, TRAINING, DEMONSTRATION, AND/OR OPERATING ASSISTANCE GRANTS UNDER THE FEDERAL TRANSIT ACT, TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21 REAUTHORIZATION).

WHEREAS, the Secretary of Transportation is authorized to make grants for mass transportation projects;

WHEREAS, all contracts for financial assistance will impose certain obligations upon the applicant, including the provision by it of the local share of project costs;

WHEREAS, it is required by the U.S. Department of Transportation in accord with the provisions of Title VI of the Civil Rights Act of 1964 as amended, that in connection with the filing of all applications for financial assistance, under the Federal Transit Act, TEA-21 Reauthorization, the applicant gives an assurance that it will comply with Title VI of the Civil Rights Act, and other pertinent directives, and the U.S. Department of Transportation requirements thereunder; and

WHEREAS, it is the goal of the Applicant that disadvantaged business enterprises (minority business enterprises and women business enterprises) be utilized to the fullest extent possible in connections with all projects, and that definitive procedures shall be established and administered to ensure that minority business enterprises shall have the maximum feasible opportunity to compete for contracts, supplies, equipment contracts, or consultant and other services:

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

1. That the City of Billings Mayor is authorized to execute and file all applications on behalf of the City of Billings with the U.S. Department of Transportation, to aid in the financing of all planning, capital, training, demonstration and/or operating assistance projects.
2. That the City of Billings Mayor is authorized to execute and file with such applications an assurance or any other document required by U.S. Department of Transportation effectuating the purpose of the proposed projects, including the local share.

3. That the Transit Manager is designated to furnish such additional information as the U.S. Department of Transportation may require in connection with all the applications.
4. The City of Billings Mayor is authorized to set forth and execute minority business enterprise (disadvantaged enterprise business and women business enterprise) policies and procedures in connection with the procurement needs of all projects.
5. The City of Billings Mayor is authorized to execute all grant agreements on behalf of the City of Billings with the U.S. Department of Transportation to aid in the financing of all planning, capital, training, demonstration, and/or operating assistance projects.

RES. No. 05 -

APPROVED this 27th day of June 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC CITY CLERK

CERTIFICATE

The undersigned duly qualified and acting City Clerk of the City of Billings certifies that the foregoing is a true and correct copy of a Resolution, adopted at a legally convened meeting of the Billings City Council held on, June 27, 2005.

If applicant has an Official Seal, impress here.

(Seal)

Signature of Recording Officer

Title of Recording Clerk

Date

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing & Site Development Ordinance Variance #CC05-01
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Albertsons, Inc. desires to demolish the existing building and construct a new building at 511 Central Avenue. This property is on lots 1-11, 34-46 and the East 10 feet of Lot 12 Block 26, Yellowstone Addition, Second Filing, being generally located between Central & St. Johns Avenues and between 5th and 6th Streets West. Albertsons, Inc. is requesting variances from the Site Development Ordinance, Section 6-1203(h)(3), Section 6-1203(i)(4) and Section 6-1203(i)(7).

ALTERNATIVES ANALYZED:

1. Approve the variance allowing a curb cut of 77.25 feet.
2. Do not approve the variance allowing a curb cut of 77.25 feet.
3. Approve the variance allowing backing maneuvers within the right-of-way.
4. Do not approve the variance allowing backing maneuvers with the right-of-way.
5. Approve the variance allowing the curb cut to be 4-feet 10-inches from the radius.
6. Do not approve the variance allowing the curb cut to be 4-feet 10-inches from the radius.

FINANCIAL IMPACT: There is no financial impact associated with these variances.

RECOMMENDATION

Staff recommends that Council approve the variance allowing a curb cut of 77.25 feet, the variance allowing the curb cut to be 4-feet 10-inches from the radius and the variance allowing backing maneuvers within the right-of-way.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Proposed Site Plan

INTRODUCTION

Albertsons, Inc. is demolishing the existing store and constructing a new store at 511 Central Avenue. The new store is generally located between 5th and 6th Streets West and Central and St. Johns Avenues. Albertsons, Inc. is requesting variances from the Site Development Ordinance, Section 6-1203(h)(3), Section 6-1203(i)(4) and Section 6-1203(i)(7). Section 6-1203(h)(3) pertains to the maximum driveway widths, Section 1203(i)(4) pertains to the distance at which curb cuts can be located relative to intersections and curb radii, and Section 6-1203(i)(7) pertains to prohibiting backing maneuvers from or into street right-of-way.

BACKGROUND

To allow commercial delivery trucks access to the new building's loading dock area on the southeast side of the building without requiring the truck to maneuver on 5th Street West, Albertsons is requesting a variance allowing a curb cut of 77.25 feet. The proposed curb cut would allow the truck to directly pull-in and back-up to the dock inside of the Albertsons site. For curb cuts the Site Development Ordinance is as follows:

Section 6-1203(h)(3)

In any commercial and industrial zoned districts, the maximum driveway width shall be thirty (30) feet except driveway widths for service stations and trucking businesses may be up to forty (40) feet when approved by the city, and shall be located in accordance with city specifications and drawings. The minimum distance between curb cuts shall be twenty-five (25) feet.

Albertsons, Inc. is also seeking two variances associated with the access to the trash compactor located on the northeast corner of the building. The first variance is to allow the curb cut for the access to the trash compactor to be placed at a distance of 4-feet 10-inches from the point of curvature of the radius. The Site Development Ordinance is as follows:

Section 1203(i)(4)

No curb cut shall be made between the points of curvature of any curb radius at intersections, nor closer than ten (10) feet from the points of curvature.

The second variance associated with this access is to allow commercial trucks to back into the trash compactor from the street. The Site Development Ordinance is as follows:

Section 1203(i)(7)

In any commercial, professional or industrial zone, driveways shall be designed such that vehicles entering or egressing shall not be required to back from or into a street right-of-way.

ALTERNATIVES ANALYSIS

1. Approve the variance allowing a curb cut of 77.25 feet. Approval of this variance will allow the delivery trucks to pull directly into the site with out having to back in to the loading dock area from the right-of-way.
2. Do not approve the variance allowing a curb cut of 77.25 feet. Denying this variance will require substantial redesign of the site.

3. Approve the variance allowing backing maneuvers within the right-of-way. Approving this variance would allow trucks to stop and back-up in the right-of-way for access to the trash compactor. It is anticipated that access to the trash compactor will only be used a couple of times a month.
4. Do not approve the variance allowing backing maneuvers with the right-of-way. An alternative was explored to add an additional approach to allow trucks to pull in without having to use backing maneuvers within the right-of-way, but due to site constraints, the approach could not be added. Denying this variance will require substantial redesign of the site.
5. Approve the variance allowing the curb cut to be 4-feet 10-inches from the radius. Approving curb cuts closer than 10' from the point of curvature of the radius does not give the desirable separation from the intersection.
6. Do not approve the variance allowing the curb cut to be 4-feet 10-inches from the radius. Denying this variance would require substantial redesign of the site.

RECOMMENDATION

Staff recommends that Council approve the variance allowing a curb cut of 77.25 feet, the variance allowing the curb cut to be 4-feet 10-inches from the radius and the variance allowing backing maneuvers within the right-of-way.

ATTACHMENTS

- A. Proposed Site Plan

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing & Site Development Ordinance Variance #OP05-02
DEPARTMENT: Public Works/Engineering
PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Park's Martial Arts has remodeled the building at 1442 Main Street. This property is on Lot 3, Block 2, Arrowhead Subdivision, First Filing, being generally located between Sioux and Crow Lanes and between Main Street and Flathead Lane. Park's Martial Arts is seeking a variance from the Site Development Ordinance, Section 6-1203(r), which reads as follows:

Limited access through the alley. Customer access via an alley to any commercial use on a lot which is adjacent to an alley which abuts an "R" zone shall not be permitted over that alley.

The parking lot is not wide enough to have vehicles circulate thru the parking lot without having to pull into an empty parking stall to turn around. Park's Martial Arts is requesting the access to avoid any problems with the safety of their students by allowing the students to exit the alley during peak Main Street traffic hours.

ALTERNATIVES ANALYZED:

7. Approve the variance allowing a customer access thru the alley.
8. Do not approve the variance allowing a customer access thru the alley.

FINANCIAL IMPACT: There is no financial impact associated with this variance.

RECOMMENDATION

Staff recommends that Council approve the variance allowing access thru the alley.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Proposed Site Plan

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and Resolution Approving Council Contingency Appropriation

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Council is being asked to consider appropriating Council Contingency for joining the Big Sky Economic Development Corporation for \$1,000. This action is in response to a Council initiative that was introduced by Councilmember Ruegamer and approved by the Council on April 11, 2005. In order to expend Council Contingency, the Council must conduct a public hearing and adopt a resolution that appropriates the money for a specific purpose.

ALTERNATIVES ANALYZED: Appropriating Council Contingency is solely within the Council's discretion.

FINANCIAL IMPACT: The FY 2005 Council Contingency budget is \$75,000 and \$46,000 has been used during the year.

RECOMMENDATION

Staff recommends that Council conduct a public hearing and adopt a resolution that appropriates \$1,000 to join the Big Sky Economic Development Corporation.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Resolution

B: 4/11/05 Council meeting minutes

RESOLUTION NO. 05-_____

**A RESOLUTION TO ADJUST APPROPRIATIONS PER 7-6-4236
MCA AS AMENDED, AND PROVIDING AUTHORIZATION FOR
EXPENDITURES AS INDICATED BELOW.**

WHEREAS, the City Council of the City of Billings, upon proper resolution, duly passed at a regular meeting and entered into its Minutes, may authorize expenditure of funds; and

WHEREAS, it is necessary to authorize said expenditures.

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

That the following FY 2005 appropriation be approved as follows:

FROM:	Non-departmental / Council Contingency	\$1,000
TO:	Mayor and City Council	\$1,000

To pay to join the Big Sky Economic Development Corporation

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

CITY OF BILLINGS

By: _____
Charles F. Tooley, Mayor

ATTEST:

By: _____
Marita Herold, CMC, City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Graffiti Ordinance, Public Hearing and 1st reading of ordinance
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: Graffiti vandalism is becoming a significant property crime in the City Of Billings. Graffiti defacement happens to buildings, utility installations, railroad cars and property and on bridge abutments on a regular basis. The current City Of Billings municipal code does not address this type of property crime. The Code Enforcement Division in concert with the Police Department and City Legal Services have proposed a city ordinance to more effectively handle graffiti vandalism.

ALTERNATIVES ANALYZED: The Code Enforcement Division has considered graffiti vandalism codes and ordinances from other communities and adapted one to fit the needs of this community. The City Council may choose to approve the ordinance as proposed, amend the ordinance prior to approval or not approve the ordinance.

FINANCIAL IMPACT: There should not be any negative financial impacts from the adoption of this ordinance.

RECOMMENDATION

Staff recommends that Council hold a public hearing and adopt the Graffiti Ordinance.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A: Ordinance
- B: Examples of graffiti vandalism

INTRODUCTION

Graffiti vandalism is not a new problem in the City Of Billings but has increased significantly in recent years. The city code does not currently address this specific property crime. The Billings Police Department and the Code Enforcement Division do monitor where graffiti vandalism happens. Graffiti sometimes is the work of specific members of an organized group of young adults. "Tags", as they are known, consist of specific words, letters, numerals or symbols that identify specific groups and their claimed neighborhood territory. Regardless of who perpetrates the graffiti, it creates a nuisance condition for property owners and the neighborhood where the graffiti appears. The Code Enforcement Division is proposing the City Council adopt the Graffiti ordinance to better control graffiti vandalism and require the removal of graffiti in an expeditious manner.

BACKGROUND

In 1999, the Code Enforcement Division and City Legal Services began working on the issue of graffiti vandalism and how to best address the problem. The Police Department is also concerned with graffiti vandalism because it can signal a rise in animosity between neighborhood groups or gangs. Graffiti vandalism is a property crime but the city code does not specifically address this type of property crime. In addition, there is no mechanism to require the removal of graffiti by either the person responsible or the property owner. The longer graffiti remains on a building, the more graffiti is attracted to that same location. Prompt removal of graffiti is just one of the tools proposed in the ordinance. Another tool available is the requirement for community service of persons found responsible for graffiti vandalism.

The Code Enforcement Division is also preparing to make educational tools on graffiti available to the local school districts. The tools are geared for elementary age students and can have a positive influence on this younger audience before they reach high school and beyond.

DISCUSSION

The proposed ordinance sets out a policy and procedure for the removal of graffiti as well as penalties for perpetrators of graffiti vandalism. Persons found responsible for graffiti can be convicted of a misdemeanor and receive a fine up to \$500.00 or 6 months in jail. Community service is an alternative to the fines and penalties and restitution for damages to the property owner is required.

The ordinance will allow the city to require property owners to remove graffiti after notice from the Code Enforcement Division. If the graffiti is not removed within ten days the city can use its own resources or contract to have the graffiti removed. The cost of the city-sponsored removal will be assessed to the property owner in the same manner that costs for weed removal are assessed. The alternative to city-sponsored removal is to prosecute the property owner for a violation of the ordinance. The Code Enforcement Division as well as Legal Services do not believe prosecution of the private property owners would achieve compliance with the requirement to remove graffiti. In most cases the property owners are the victims of graffiti vandalism.

The Child & Family Intervention Center (CFIC) has received funding from the Community Development Block Grant program to involve at-risk youth in graffiti removal projects. This program will likely be involved with removal projects on public or city-owned property but could provide removal services on private property as well.

RECOMMENDATION

Staff recommends that Council adopt the Graffiti Ordinance on 1st reading.

ATTACHMENTS

- A: Ordinance
- B: Examples of graffiti vandalism

Attachment A – Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 18-1101 THROUGH 18-1116; PROHIBITING GRAFFITI, DEFINING TERMS, PROVIDING FOR A PROCEDURE WHEREBY GRAFFITI CAN BE REMEDIATED, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING A SEVERABILITY CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

SECTION 1. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1101, to read as follows:

Section 18-1101. Purpose and Intent.

The City Council of Billings, Montana is enacting this Ordinance to help prevent the spread of graffiti vandalism and to establish a program for the removal of graffiti from public and private property. The Council is authorized to enact this Ordinance pursuant to its police powers, as specified in Section 1.01 of the City Charter and Montana Code Annotated Sections 7-1-101, 7-5-4101, and 7-5-4104 that authorize the City to have all power possible for a self-government city as fully and as completely as though they were fully enumerated in the Charter, to exercise any power not prohibited by the Constitution or laws of the State of Montana, to make and pass all laws not repugnant to the Constitution or laws of the State of Montana necessary for the government or management of the affairs of a city or town, and to define and abate nuisances and impose fines on persons guilty of creating, continuing or suffering nuisances to exist on premises they occupy or control.

The Council finds that graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. Unless the City acts to

remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the City.

The City Council intends, through the adoption of this Ordinance, to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. The Council does not intend for this Ordinance to conflict with any existing anti-graffiti state laws.

SECTION 2. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1102, to read as follows:

Section 18-1102. Definitions.

For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(a) *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.

(b) *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.

(c) *Owner* means any entity or entities have a legal or equitable interest in real or personal property including but not limited to the interest of a tenant or lessee.

(d) *Paint stick or graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.

(e) *Person* means any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(f) *Property* means any real or personal property and that which is affixed, incidental or appurtenant to real property including but not limited to any structure, fence, wall, sign or any separate part thereof whether permanent or not.

(g) *Responsible party* means an owner or entity or person acting as an agent for an owner by agreement who has authority over the property or is responsible for the property's maintenance or management. Irrespective of any arrangement to the contrary with any other party, each owner shall always be a responsible party for the purposes of this chapter. There may be more than one responsible party for a particular piece of property.

(h) *Unauthorized* means without the consent of the responsible party.

SECTION 3. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1103, to read as follows:

Section 18-1103. Prohibited Acts.

Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or responsible party, on any non-city-owned property.

SECTION 4. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1104, to read as follows:

Section 18-1104. Penalties.

(a) Fines and Imprisonment. Any person violating this Ordinance shall be punished as provided in Section 1-110 of this Code.

(b) Restitution. In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court.

(c) Community Service. In-lieu of, or as part of, the penalties specified in this Section, an offender may be required to perform community service as described by the court based on the following minimum requirements:

(1) The offender shall perform at least thirty (30) hours of community service.

(2) The entire period of community service shall be performed under the supervision of a community service provider approved by the Municipal Court.

(3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the offender, including community service that involves graffiti removal.

SECTION 5. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1105, to read as follows:

Section 18-1105. Rewards and Reimbursements for Information.

(a) The City may offer a reward in an amount to be established by resolution of the City Council for information leading to the identification and apprehension of any

person who willfully damages or destroys any public or private property by the use of graffiti. In the event of damage to public property, the offender or the parents or legal guardian of any unemancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate.

(b) Claims for rewards under this Section shall be filed with the City in the manner specified by the City Council.

(c) No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this Section have been satisfied.

SECTION 6. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1106, to read as follows:

Section 18-1106. Graffiti as Nuisance.

(a) The existence of graffiti on public or private property in violation of this Ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Ordinance.

(b) It is the duty of both the owner of the property to which the graffiti has been applied and any responsible party to at all times keep the property clear of graffiti.

SECTION 7. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1107, to read as follows:

Section 18-1107. Removal of Graffiti by Perpetrator.

Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the

Chief of Police, the Director of the Department of Public Works, or any additional City department head, as authorized by the City Council. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Ordinance.

SECTION 8. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1108, to read as follows:

Section 18-1108. Removal of Graffiti by Property Owner or City.

If graffiti is not removed by the perpetrator according to [Section 7], graffiti shall be removed pursuant to the following provisions:

(a) Property Owner Responsibility. It is unlawful for any person who is the owner or responsible party of property to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after service by first class mail of notice of the defacement. The notice shall contain the following information:

(1) The street address and legal description of the property sufficient for identification of the property;

(2) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;

(3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance, subject to the abatement procedures in City Code Section [Section 14 of this ordinance].

(4) An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.

SECTION 9. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1109, to read as follows:

Section 18-1109. Failure to comply.

Upon first failure, neglect or refusal to remove the graffiti during the prescribed period, the city shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum:

(1) That the noncomplying owner, or agent thereof, is allowed ten (10) days from the date of notice of noncompliance to remove;

(2) That upon failure to comply the city may by its own work forces or by contract cause the graffiti to be removed and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty-five (25) percent of the cost of removal and a twenty-five dollar (\$25.00) penalty;

(3) If the owner or agent of the property continues to neglect to maintain the property free from graffiti, the city may at its sole discretion remove the graffiti again as needed without additional notice of any kind. Charges as in subsection (2), including penalty, will be assessed for each time the city removes the graffiti;

(4) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property.

(5) Appeal.

The owner or agent may appeal any determination that they have failed to comply with the requirements of any order to the Director of the City-County Planning Department.

(6) Notice.

Notice under this article is sufficient if served upon the Owner or Responsible Person personally or mailed regular mail to the last known address Owner or Responsible Person or the last address of the Owner shown on the tax rolls of the county. Upon mailing, the city clerk shall execute an affidavit of mailing. Notice shall be deemed given when deposited in a United States Postal Service receptacle.

SECTION 10. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1110, to read as follows:

Section 18-1110. Failure to comply misdemeanor.

Any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and upon a signed complaint shall be punished as provided in section 1-110.

SECTION 11. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1111, to read as follows:

Section 18-1111. Exceptions to Property Owner Responsibility.

The removal requirements of subsection (a) above shall not apply if the property owner or responsible party can demonstrate that:

(1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or

(2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that

program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of ten (10) days after service by first class mail of notice of the defacement.

SECTION 12. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1112, to read as follows:

Section 18-1112. Right of City to Remove.

(1) Use of Public Funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City Administrator, or the designee of the City Administrator, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

(2) Right of Entry on Private Property. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Ordinance, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the

terms of this Section, the City shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

SECTION 13. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1113, to read as follows:

Section 18-1113. Abatement and Cost Recovery Proceedings.

Assessment.

(a) Annually the city shall prepare a list of all lots, tracts and parcels of real property within the city from which and adjacent to which graffiti was removed by the city and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following:

- (1) Name as shown by the tax rolls, common address if known;
- (2) Tax code of the property;
- (3) Legal description of the lot, tract or parcel;
- (4) Cost of the graffiti removal for that property;
- (5) Administrative costs;
- (6) Penalty assessed.

(b) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented to the city council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special assessment, as provided in MCA Sections 7-1-101 and 7-5-4123 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the city taxes and assessments.

SECTION 14. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1114, to read as follows:

Section 18-1114. Ease of Removal Provisions.

(a) Common Utility Colors and Paint-type. Any gas, electric, telephone, water, sewer, cable, telephone and other utility operating in the City shall paint its above-surface metal fixtures with a uniform paint type and color that meets with the approval of the City Administrator.

(b) Condition Encroachment Permits. All encroachment permits issued by the City shall, among such other things, be conditioned on:

(1) The permittee's application of an anti-graffiti material to the encroaching object of a type and nature that is acceptable to the City Administrator, or the City Administrator's designee;

(2) The permittee's immediate removal of any graffiti;

(3) The City's right to remove graffiti or to paint the encroaching object;

or

(4) The permittee's providing the City with sufficient matching paint and/or anti-graffiti material on demand for use in the painting of the encroaching object containing graffiti.

SECTION 15. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1115, to read as follows:

Section 18-1115. Prevention Provisions.

(a) Retro-Fit Existing Graffiti-Attracting Surfaces; Non-Residential Structures.

The following provisions may be incorporated in a graffiti eradication order:

(1) At Owner's Expense. Any surface of a structure on a parcel of land used for non-residential purposes that has been defaced with graffiti more than five (5) times in twelve (12) months shall be declared a public nuisance and required to be retrofitted, at the cost of the property owner, with features or qualities as may be established by the City as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti. In exercising the authority hereunder, the City may not impose a cost on the property owner of greater than THREE THOUSAND AND NO/100 DOLLARS (\$3000.00).

(2) At City's Cost. If the property owner or responsible party of property used for non-residential purposes on which is located a surface of a structure that has been defaced with graffiti more than five (5) times in twelve (12) months lacks the financial ability to make modifications, the owner or responsible party shall permit the City to enter the property and, at the City's cost, make modifications as necessary to reduce the attractiveness of the surface for graffiti, or as necessary to permit more convenient or efficient removal of graffiti.

(3) Appeal. The owner or agent may appeal any determination that they are required to retrofit the property with features or qualities necessary to reduce the attractiveness of the surface for graffiti or to permit more convenient or efficient removal of graffiti to the Director of the City-County Planning Department.

SECTION 16. That the Billings, Montana City Code be amended by adding a section to be numbered 18-1116, to read as follows:

Section 18-1116. Anti-Graffiti Fund.

The City Council hereby creates the City of Billings Anti-Graffiti Fund. Costs recovered for graffiti removal and penalties assessed in Billings Municipal Court against

violators of this Ordinance shall be placed in the fund, along with any monetary donations received from persons wishing to contribute to the fund. The Council shall direct the expenditures of monies in the fund. Such expenditures shall be limited to the payment of the cost of graffiti removal, the payment, at the discretion of the City Council, of rewards for information leading to the conviction of violation of the Ordinance, the costs of administering the Ordinance, and such other public purposes as may be approved by the Council by resolution.

SECTION 17. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

SECTION 18. 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:

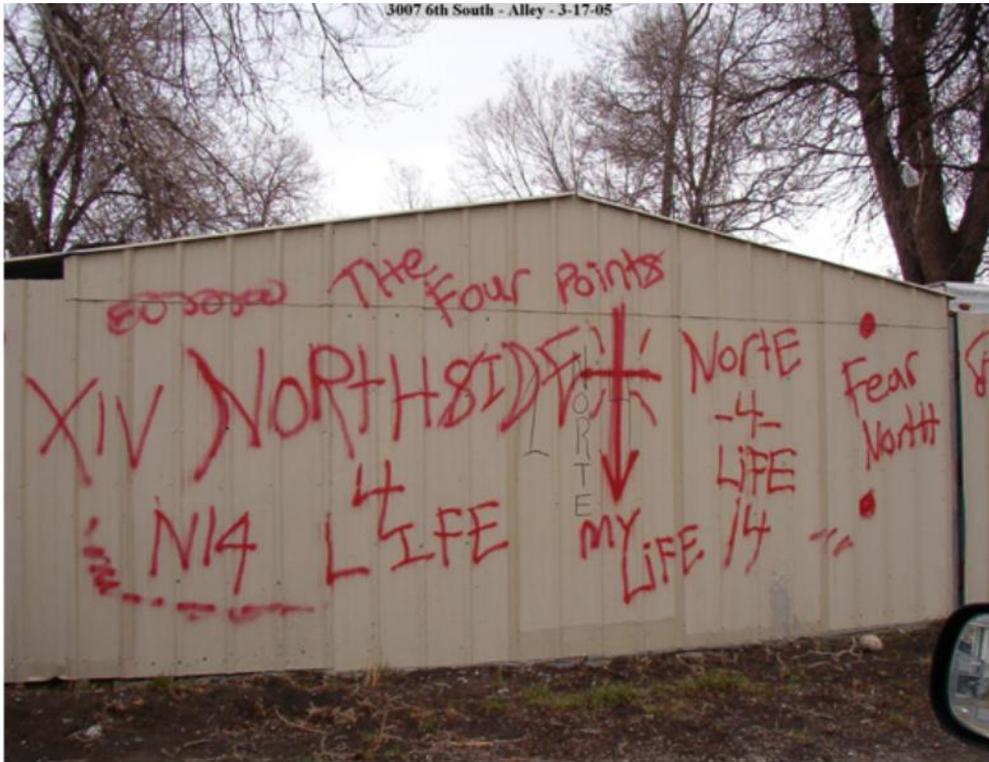
By _____
City Clerk

Attachment B
Examples of Graffiti Vandalism Billings MT



Attachment B
Examples of Graffiti Vandalism in Billings MT

3007 6th South - Alley - 3-17-05



44 Jefferson 4-1-05 in alley



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and Resolution to Approve the Frank Property Urban Planning Study and Expand the Urban Planning Area

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Douglas and Ronald Frank are requesting expansion of the Billings Urban Planning Area to include Tracts 1 and 2, Certificate of Survey No. 3139, Tract 1, Certificate of Survey No. 2379, and two unplatted tracts containing 50 acres. The property is located near the southwest corner of Grand Avenue and 58th Street West intersection. This request precedes a request for annexation, zone change and subdivision of this parcel. The expansion of the Urban Planning Area is required prior to annexation and provision of City services. The Yellowstone County Board of Planning is required to determine whether the Urban Planning Area should be expanded or not based on whether the City can safely and effectively serve this property within a ten-year period. Upon determination by the Planning Board, the City Council will hold a public hearing to receive comments and make the final determination as to the inclusion of this property in the Urban Planning Area.

ALTERNATIVES ANALYZED: The City Council may approve or deny the request to accept the Frank Property Urban Planning Study and expand the Urban Planning Area pursuant to Article 20-305, BMCC.

FINANCIAL IMPACT: The approval or denial of the proposed Frank Property Urban Planning Study and the expansion of the Urban Planning Area does not commit the City to any expenditure of public funds.

RECOMMENDATION

The Planning Board recommends that Council hold a public hearing and deny the request to accept the Frank Property Urban Planning Study to expand the Urban Planning Area to include the 50 acres located at the southwest corner of the intersection of Grand Avenue and 56th Street West.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Vicinity Map
- B. Map of the Frank Property
- C. Photographs of Site
- D. Resolution

INTRODUCTION

The Urban Planning Area is defined as “that area established by the City of Billings for the purpose of planning for future growth of the City of Billings within approximately a ten-year period. No City services will be provided outside the Urban Planning Area.” Developments seeking the provision of City services, including water, sewer, street maintenance, police and fire protection, must lie within the Urban Planning Area. If the property is located outside of this area, the applicant is responsible for preparing an Urban Planning Study to demonstrate that the City can safely and efficiently provide services to the property. The County Planning Board reviews and makes a recommendation on whether to approve or deny the request to expand the Planning Area. City Council is responsible for holding a public hearing and acting on the request by resolution.

PROCEDURAL HISTORY

- April 22, 2002 - Expansion of the Urban Planning Area to encompass a small portion of the Frank property.
- June 14, 2005 – Recommendation by County Planning Board to deny expansion of the Urban Planning Area to include the Frank property.
- June 27, 2005 – City Council holds public hearing and acts on the request to expand Urban Planning Area.

BACKGROUND

The Urban Planning Study for the Frank property was submitted to the Planning Department for review and approval as a prerequisite to expanding the Urban Planning Area boundary and subsequent annexation. An Urban Planning Area is the area established by the City for the purpose of planning for future growth of the City within approximately a ten-year period. The study identifies the impacts to City services and the natural environment, and the feasibility of extending services within the area. Article 20-305, BMCC gives City Council authority to expand the boundaries of the Urban Planning Area after receiving a recommendation from the Planning Board and holding a public hearing. The owners, Douglas and Ronald Frank, requested the expansion of the Urban Planning Area. The study area includes a 50 acres parcel located at the southwest corner of the intersection of Grand Avenue and 56th Street West. The area is contiguous with the City limits for approximately 350 feet along Grand Avenue. It is surrounded by County property to the east, west and south.

Population and Land Use

The study area is currently used for agricultural purposes. A development conceptual plan for the Frank property was not submitted, but the Study indicates future development would include a combination of Residential Multi-Family, Residential-9,600 and Residential 7,000. The development is expected to contain approximately 598 people upon full buildout.

Streets, Transportation, Traffic Circulation and Generation

The study area adjoins Grand Avenue, a principal arterial, to the north, 56th Street West, also a principal arterial, to the east, and Broadwater Avenue, a collector, to the south. Each street is expected to be affected by future development as are 58th Street West, a collector and 54th Street West, a minor arterial. It is estimated that the development would produce approximately 1,063 trips on an average weekday. The Urban Planning Study indicates that the connecting street system has sufficient capacity for the additional residential units.

Because there is no conceptual plan for this development, the location of approaches to the principal arterials is unknown. There are no existing rights-of-way that intersect the property frontage, therefore future approaches would be offset from existing intersections.

Storm Water Management, Sewer, and Water

The Birely Drain runs through the west portion of the property from north to south before existing the property at the south edge. There are no City storm water facilities in the vicinity. Nearby subdivision developments have discharged storm water into the Birely Drain.

Water and sanitary sewer exists at the corner of 58th Street West and Grand Avenue. Main trunk lines would have to be extended west from that intersection to the Frank property, at least 300 feet. The existing mains include a 27" sanitary sewer and a 20" water main. The Study indicates that a 12" water line would be extended from the existing main. Twelve inch mains would not provide capacity for future development, so it is most likely that the City would need to upsize the proposed mains. The cost difference between the upsized main and the 12" main would have to be borne by the City. Because of drainage requirements, the sewer would need to flow from the southern end of the property, where it would be either pumped to Grand Avenue by a lift station or would gravity flow to a proposed lift station located ½ mile west. If sewage is pumped to Grand, the same problem exists with upsizing lines to accommodate future growth as is the case with the water main. If flow was diverted to a lift station west of this property, the line would need to be located on private property, through a private utility easement for a substantial distance. Neither of these strategies is cost effective for the City or the developer.

Solid Waste, Public Safety, Parks, and Recreation

There is a single residence on the property, although it is unknown if they receive solid waste collection services. If the residents haul their own waste, the City would provide solid waste service upon annexation and development. Regardless, the City would provide solid waste service to the remainder of the property now used for agricultural purposes.

The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 46 incidents per year at full buildout.

Emergency medical services is provided by Deaconess Hospital, approximately 8.0 miles from the area at 2813 9th Avenue North, and St. Vincent's Hospital, approximately 7.6 miles from the area at 1233 North 30th Street. There are also emergency outpatient and walk-in treatment facilities on 24th Street West.

Ambulance service is contracted with American Medical Response (AMR). AMR is required to provide to respond to emergency calls to all locations within the corporate limits of the City within eight minutes or less on at least ninety percent of such calls. As the City limits stretch further westward, the ability of AMR to meet this requirement becomes increasingly difficult. Currently, AMR has no difficulty in meeting this requirement as it applies to this area.

Police protection will be provided by the City of Billings Police Department. While the Police Department has previously indicated that expansion of City limits negatively affects staffing and budget, they do not have specific concerns with the annexation of this property.

The study area lies within the influence area of the future Cottonwood Park, located approximately 1 mile to the northeast. The future subdivision would contribute cash-in-lieu of parkland for the development of Cottonwood Park and participate in a Park Maintenance District for the continued maintenance.

Schools

Elementary students would attend Central Heights Elementary School with a current enrollment of 339 students. Middle school students would attend Will James Middle School with an enrollment of 561 students and an ideal capacity of 690 students. High school students would attend Billings West High. West High has an enrollment of 2,101 but has an ideal capacity of only 1,400 students. School District #2 was notified of this application but has submitted no comment regarding the impacts to local schools or school transportation.

Effects of Urbanization on Existing Environment and Agriculture

The study area contains a single residence and the remainder is currently being used for agricultural purposes. Future development would convert roughly 45 acres of agricultural property to moderate to high density residential land use.

The property immediately north of the study area is currently being developed for single family and duplex residential lots. However, before that development was constructed, the typical pattern of development was large lot, ranchette-style residential. With the extension of City sewer and water along Grand and 58th Street West, the west Billings area is becoming increasingly higher density and urbanized. The City Annexation Policy and accompanying Limits of Annexation map provides some guidance to the Planning Board and City Council when reviewing requests for annexation in this area. The overriding intent of the policy was to limit annexation to areas that can be immediately served by existing services without added costs to the City. In the absence of a development plan, it can only be presumed that the request to expand the Urban Planning Area is consistent with this policy in the following ways:

1. The proposed improvements meet City standards.
2. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
3. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
4. Residential densities will be at least 4 dwelling units per acre.
5. With the exception of being partially contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

The request conflicts with the Annexation Policy in that:

1. Only ¼ of the property is located within the Limits of Annexation.
2. The City cannot provide adequate services without additional expenditures and reprogramming the Capital Improvements Plan.

The recently adopted Northwest Shiloh Land Use Plan also provides guidance as to the preferred future development patterns of this area. The study area falls within an area suitable for urban densities of 1 dwelling unit per 9,600 square feet as identified in the plan.

There are two other land use plans that guide development in the vicinity of the study area; The West Billings Plan and the 2003 Growth Policy.

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

- Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6)

The Urban Planning area expansion partially meets these goals:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, page 6). *The study area is partially adjacent to a similar land use pattern, although is higher density than the older, County development.*
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is only slightly contiguous to noncontiguous City territory.*

The annexation is generally consistent with the West Billings Plan's policies in that it falls in an area identified for residential land use.

If subdivided, the property could contribute to implementing the 2005 Transportation Plan by extending Broadwater Avenue by approximately 1/3 mile. In any event, Grand Avenue and 56th Street West would remain as arterial streets, as shown in the plan.

Soil, Geology and Topography

The soils in the study area are known to be problematic based the 1973 Yellowstone County Soil Survey. These studies found the area soil consists of sandy loam and loam and are described as having low to moderate stability. The area is generally flat but slope slightly towards the southeast.

A recently prepared Flood Hazard Area Map shows the study area to lie within the potential 100-year floodplain. This map is based on approximate data only and cannot be considered a final delineation of the floodplain. The exact location of the floodplain may change if more precise data were available. Widening the Birely Drain for stormwater retention and possible flood storage could alleviate the potential for flooding in this area.

Historic Sites and Wildlife

The Urban Planning Study did not identify any existing historic assets in the vicinity other than an unnamed trail indicated on an 1883 general land office map. The trail could not be verified in the field.

Development Timetables

The timetable for the development of the study area began with the submission of the Urban Planning Study and concurrent petition for annexation. The Planning Board will make a recommendation on the Urban Planning Area expansion on June 14 and the City Council will hold a public hearing and make a final determination on June 26. The applicants have requested that acknowledgement of the petition for annexation be postponed until the zone change application has been submitted. This is anticipated to be submitted in July.

Method of Funding Public Improvements and Sources

On-site improvements will be constructed and paid for by the developer. The developer is also responsible for paying all applicable water and wastewater connection fees and charges. The actual mechanism for payment and financial guarantee of offsite public improvements associated with the Frank property will be determined during subdivision review. Prior to any development, the Subdivision Improvements Agreement shall be approved and recorded with the subdivision plat. The SIA will stipulate specific infrastructure improvements and provide for financial security for such infrastructure improvements.

Extending water, and possibly sewer service to this property would require the City to participate in the cost of upsizing the mains.

Taxes generated by the proposed and future development of this property will go towards support of all local government functions such as schools, police and fire protection, street maintenance, City and County administration and parks. Studies have demonstrated that tax revenue generated from residential subdivisions generally do not pay for the cost of providing services.

ALTERNATIVES ANALYSIS

Pursuant to Sec. 26-203, BMCC, areas to be annexed must be located within the Urban Planning Area prior to annexation and the provision of water and sewer service. Council may approve or deny the application to expand the Urban Planning Area after determining whether City services may be safely and efficiently extended to this area.

STAKEHOLDERS

The County Planning Board considered the application for expansion of the Urban Planning Area on June 14. The Board discussed the advantages and disadvantages of this application and recommended denial.

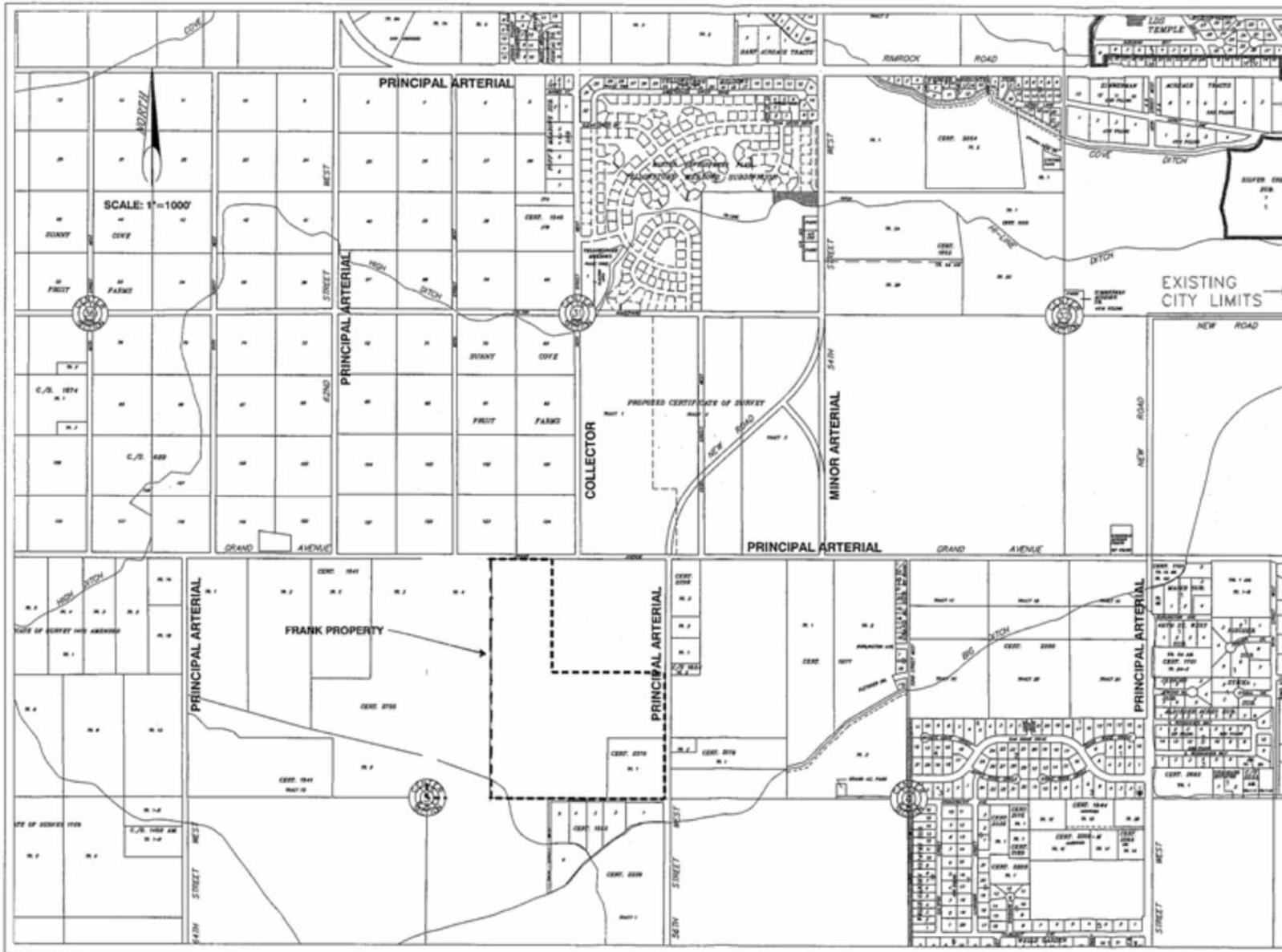
RECOMMENDATION

The County Planning Board recommends that Council hold a public hearing and deny the request to accept the Frank Property Urban Planning Study to expand the Urban Planning Area to include the 50 acres located at the southwest corner of the intersection of Grand Avenue and 56th Street West.

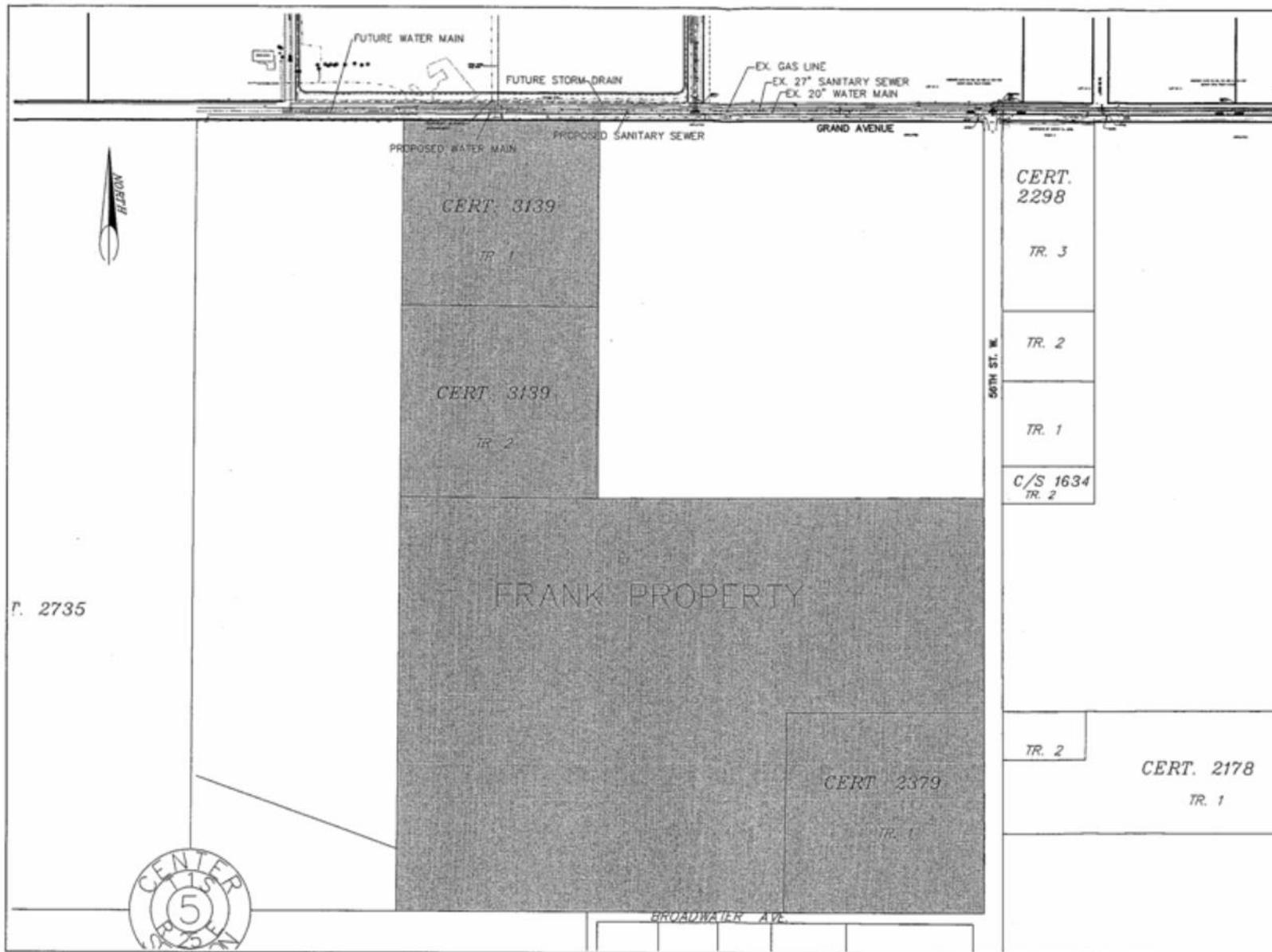
ATTACHMENTS

- A. Vicinity Map
- B. Map of Frank Property
- C. Photographs of Site
- D. Resolution

ATTACHMENT A
Vicinity Map



ATTACHMENT B
Map of the Frank Property



**ATTACHMENT C
Site Photographs**



Frank property looking northwest from Broadwater Avenue.



Frank property looking south from Grand Avenue, Birely Drain shown to right, existing residence on left.

RESOLUTION NO. 04-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, APPROVING THE URBAN PLANNING STUDY AND EXPANDING THE BOUNDARIES OF THE BILLINGS URBAN PLANNING AREA TO INCLUDE TRACTS OF LAND SITUATED IN THE NE1/4 OF SECTION 4, T.1S., R.25E., P.M.M., YELLOWSTONE COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS: TRACTS 1 AND 2, CERTIFICATE OF SURVEY NO. 3139, TRACT 1, CERTIFICATE OF SURVEY NO. 2379, AND TWO UNPLATTED TRACTS, ALSO KNOWN AS THE FRANK PROPERTY.

WHEREAS, an Urban Planning Study was conducted on the Frank property, herein described, and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City, for the purpose of planning for future growth of the City, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the study area encompasses the property generally located at the southwest corner of Grand Avenue and 58th Street West intersection. More particularly described as:

Tracts of land situated in the NE1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Tracts 1 and 2, Certificate of Survey No. 3139, Tract 1, Certificate of Survey No. 2379, and two unplatted tracts containing 50 acres, more or less.

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study on this property, also known as the Frank Property Urban Planning Study at its regular meeting on June 14, 2005, and

WHEREAS, the Yellowstone County Board of Planning has recommended approval of inclusion of the following areas:

Tracts of land situated in the NE1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Tracts 1 and 2, Certificate of Survey

Bid Tabulation Summary
Castle Rock Park 2005 ADA Walk Improvements
June 14, 2005

Company	Addendum	Bid Security	Liquidated Damages	Bid
CMG Const. Inc.	YES	BID BOND	YES	79,616.00
Empire Sand & Gravel		BID BOND	YES	97,200.00
JEM	YES	BID BOND		141,001.00
H.L. Ostermiller	YES	BID BOND	YES	109,613.00

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and Resolution to Approve the Staley/Westward Ho Property Urban Planning Study and Expand the Urban Planning Area

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Larry Staley, representing himself and the Westward Ho Company, is requesting expansion of the Billings Urban Planning Area to include Tract 1 of Certificate of Survey 1871 and Tract 2A of Certificate of Survey 2465 containing approximately 115 acres. The property is located on the north side of Rimrock Road at the intersection of 70th Street West and extends to the railroad property on the north and west. This request precedes a request for annexation, zone change and subdivision of this parcel. The expansion of the Urban Planning Area is required prior to annexation and provision of City services. The Yellowstone County Board of Planning is required to determine whether the Urban Planning Area should be expanded or not based on whether the City can safely and effectively serve this property within a ten-year period. Upon determination by the Planning Board, the City Council will hold a public hearing to receive comments and make the final determination as to the inclusion of this property in the Urban Planning Area.

ALTERNATIVES ANALYZED: The City Council may approve or deny the request to accept the Staley/Westward Ho Property Urban Planning Study and expand the Urban Planning Area pursuant to Article 20-305, BMCC.

FINANCIAL IMPACT: The approval or denial of the proposed Staley/Westward Ho Property Urban Planning Study and the expansion of the Urban Planning Area does not commit the City to any expenditure of public funds.

RECOMMENDATION

The Planning Board recommends that Council hold a public hearing and deny the request to accept the Staley/Westward Ho Property Urban Planning Study to expand the Urban Planning Area to include the 115 acres located at the intersection of Rimrock Road and 70th Street West.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- E. Vicinity Map
- F. Map of the Staley/Westward Ho Property
- G. Photographs of Site
- H. Resolution

INTRODUCTION

The Urban Planning Area is defined as “that area established by the City of Billings for the purpose of planning for future growth of the City of Billings within approximately a ten-year period. No City services will be provided outside the Urban Planning Area.” Developments seeking the provision of City services, including water, sewer, street maintenance, police and fire protection, must lie within the Urban Planning Area. If the property is located outside of this area, the applicant is responsible for preparing an Urban Planning Study to demonstrate that the City can safely and efficiently provide services to the property. The County Planning Board reviews and makes a recommendation on whether to approve or deny the request to expand the Planning Area. City Council is responsible for holding a public hearing and acting on the request by resolution.

The Urban Planning Study was submitted on May 18, 2005 along with a petition for annexation. Subsequent applications for a zone change and subdivision are expected.

PROCEDURAL HISTORY

- June 14, 2005 – Recommendation by County Planning Board to deny expansion of the Urban Planning Area to include the Staley/Westward Ho property.
- June 27, 2005 – City Council holds public hearing and acts on the request to expand Urban Planning Area.

BACKGROUND

The Urban Planning Study for the Staley/Westward Ho property was submitted to the Planning Department for review and approval as a prerequisite to expanding the Urban Planning Area boundary and subsequent annexation. An Urban Planning Area is the area established by the City for the purpose of planning for future growth of the City within approximately a ten-year period. The study identifies the impacts to City services and the natural environment, and the feasibility of extending services within the area. Article 20-305, BMCC gives City Council authority to expand the boundaries of the Urban Planning Area after receiving a recommendation from the Planning Board and holding a public hearing. Larry Staley, owner and representative for the Staley/Westward Ho property, requested the expansion of the Urban Planning Area. The study area includes a 115 acres parcel located at the intersection of Rimrock Road and 70th Street West. The area is contiguous with the City limits along the east boundary. It is surrounded by County property to the north, west and south.

Population and Land Use

The study area is currently used for agricultural purposes. A development conceptual plan for the Staley/Westward Ho property was not submitted, but the Study indicates future development would be zoned Residential 7,000 for single family residential development. The development is expected to contain approximately 938 people upon full buildout.

Streets, Transportation, Traffic Circulation and Generation

The study area adjoins Rimrock Road at 70th Street West. West of 70th Street, Rimrock Road does not exist and is not classified because it lies outside the Transportation Urban Planning Area. East of 70th, Rimrock Road is classified as a collector to 62nd Street West and as a principal arterial east to North 27th Street. The proposed loading onto the westward extension of Rimrock Road may require the expansion of the Urban Planning Area and a reclassification of Rimrock Road in this vicinity.

Because there is no conceptual plan for this development, the location of approaches to the principal arterials is unknown, although 70th Street West would be one logical location. The development would be required to construct Rimrock Road to local street standards at a minimum. The City may be responsible for upgrading the road in the future to collector standards if traffic volumes warrant. The developer will also be responsible for contributing their proportionate share to any offsite improvements identified through a Traffic Accessibility Study.

Storm Water Management, Sewer, and Water

There are no City storm water facilities in the vicinity. Nearby subdivision developments have retained stormwater drainage onsite.

Water and sewer service will be extended to Copper Ridge from main lines in Rimrock Road through internal lines. The proposed development of the Staley/Westward Ho property would extend those utility lines from where they serve Copper Ridge Subdivision to a point in Rimrock Road where the future internal lines would connect. The Study indicates that a 12" water line would be extended, but doesn't mention the size of the sewer line. This proposal has not been reviewed yet by Public Works, so the City has yet to agree with the utility design.

Solid Waste, Public Safety, Parks, and Recreation

The property currently receives no solid waste service. The City would provide solid waste service upon annexation and development.

The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 72 incidents per year at full buildout.

Emergency medical services are provided by Deaconess Hospital, approximately 9.8 miles from the area at 2813 9th Avenue North, and St. Vincent's Hospital, approximately 9.6 miles from the area at 1233 North 30th Street. There are also emergency outpatient and walk-in treatment facilities on 24th Street West.

Ambulance service is contracted with American Medical Response (AMR). AMR is required to provide to respond to emergency calls to all locations within the corporate limits of the City within eight minutes or less on at least ninety percent of such calls. As the City limits stretch further westward, the ability of AMR to meet this requirement becomes increasingly difficult. Currently, AMR has no difficulty in meeting this requirement as it applies to this area.

Police protection will be provided by the City of Billings Police Department. While the Police Department has previously indicated that expansion of City limits negatively affects staffing and budget, they do not have specific concerns with the annexation of this property.

No detailed plans were provided on the future provision for parks and recreation. The study mentions that Phipps Ranch Park is located northeast of the property, but there is no direct access. The railroad separates the property from the park. The study also mentions that Robert Trent Jones Park is located approximately 1.5 miles east of the subdivision. This park is located in the Yellowstone Country Club Subdivision and is undeveloped. Future development of this property will be required to dedicate either parkland or cash in lieu of parkland.

Schools

Elementary students would attend Arrowhead Elementary School with a current enrollment of 416 students. Middle school students would attend Will James Middle School with an enrollment of 561 students and an ideal capacity of 690 students. High school students would attend Billings West High. West High has an enrollment of 2,101 but has an ideal capacity of only 1,400 students. School District #2 was notified of this application but has submitted no comment regarding the impacts to local schools or school transportation.

Effects of Urbanization on Existing Environment and Agriculture

The study area contains a single residence and the remainder is currently being used for agricultural purposes. Future development would convert roughly 115 acres of agricultural property to moderate density residential land use.

Copper Ridge Subdivision, east of the study area, is currently being developed for single family residential lots and is zoned Residential 7,000 Restricted. This development pattern is the norm for the area north of Rimrock Road east. Because this property is outside the Zoning Jurisdiction, the applicant will be required to rezone this property, if annexed. The addition to the Zoning Jurisdiction will be approximately 115 acres. This will increase the workload of the Planning and Code Enforcement Divisions as well as other Departments throughout the City.

The City Annexation Policy and accompanying Limits of Annexation map provides some guidance to the Planning Board and City Council when reviewing requests for annexation in this area. The overriding intent of the policy was to limit annexation to areas that can be immediately served by existing services without added costs to the City. In the absence of a development plan, it can only be presumed that the request to expand the Urban Planning Area is consistent with this policy in the following ways:

6. The proposed improvements meet City standards.
7. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
8. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
9. Residential densities will be at least 4 dwelling units per acre.
10. With the exception of being partially contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

The request conflicts with the Annexation Policy in that:

3. None of the property is located within the Limits of Annexation.
4. The City cannot provide adequate services without additional expenditures for the Planning and Code Enforcement Divisions and possibly require reprogramming the Capital Improvements Plan to extend sewer and water and construct Rimrock to collector standards.

The property is also outside the area covered by the West Billings Plan and the recently adopted Northwest Shiloh Land Use Plan so there is no guidance as to the preferred future development patterns of this area.

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

- Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6)

The Urban Planning area expansion partially meets these goals:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, page 6). *The study area is partially adjacent to a similar land use pattern, although is higher density than the older, County development.*
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is only slightly contiguous to noncontiguous City territory.*

The property is also outside of the Urban Area as defined by the 2005 Transportation Plan so there is no recommendation as to the classification of Rimrock Road.

Soil, Geology and Topography

The soils in the study area are known to be problematic based the 1973 Yellowstone County Soil Survey. These studies found the area soil consists of fine sandy loam, sandy clay loam and loam. Fine sandy clay loam has been identified as being susceptible to erosion, the loam soil exhibits low stability and the sandy clay loam exhibits high shear strength. The area is generally flat but slope slightly towards the southeast.

Historic Sites and Wildlife

The Urban Planning Study did not identify any existing historic assets in the vicinity.

Development Timetables

The timetable for the development of the study area began with the submission of the Urban Planning Study and concurrent petition for annexation. The Planning Board will make a recommendation on the Urban Planning Area expansion on June 14 and the City Council will hold a public hearing and make a final determination on June 26. It is unknown when the subdivision and rezoning request will be submitted.

Method of Funding Public Improvements and Sources

Future on-site improvements will be constructed and paid for by the developer. The developer is also responsible for paying all applicable water and wastewater connection fees and charges. The actual mechanism for payment and financial guarantee of offsite public improvements associated with the Staley/Westward Ho property will be determined during subdivision review. Prior to any development, the Subdivision Improvements Agreement shall be approved and recorded

with the subdivision plat. The SIA will stipulate specific infrastructure improvements and provide for financial security for such infrastructure improvements.

Extending water, and possibly sewer service to this property may require the City to participate in the cost of upsizing the mains.

Taxes generated by the proposed and future development of this property will go towards support of all local government functions such as schools, police and fire protection, street maintenance, City and County administration and parks. Studies have demonstrated that tax revenue generated from residential subdivisions generally do not pay for the cost of providing services.

ALTERNATIVES ANALYSIS

Pursuant to Sec. 26-203, BMCC, areas to be annexed must be located within the Urban Planning Area prior to annexation and the provision of water and sewer service. Council may approve or deny the application to expand the Urban Planning Area after determining whether City services may be safely and efficiently extended to this area.

STAKEHOLDERS

The County Planning Board considered the application for expansion of the Urban Planning Area on June 14. The Board discussed the advantages and disadvantages of this application and recommended denial.

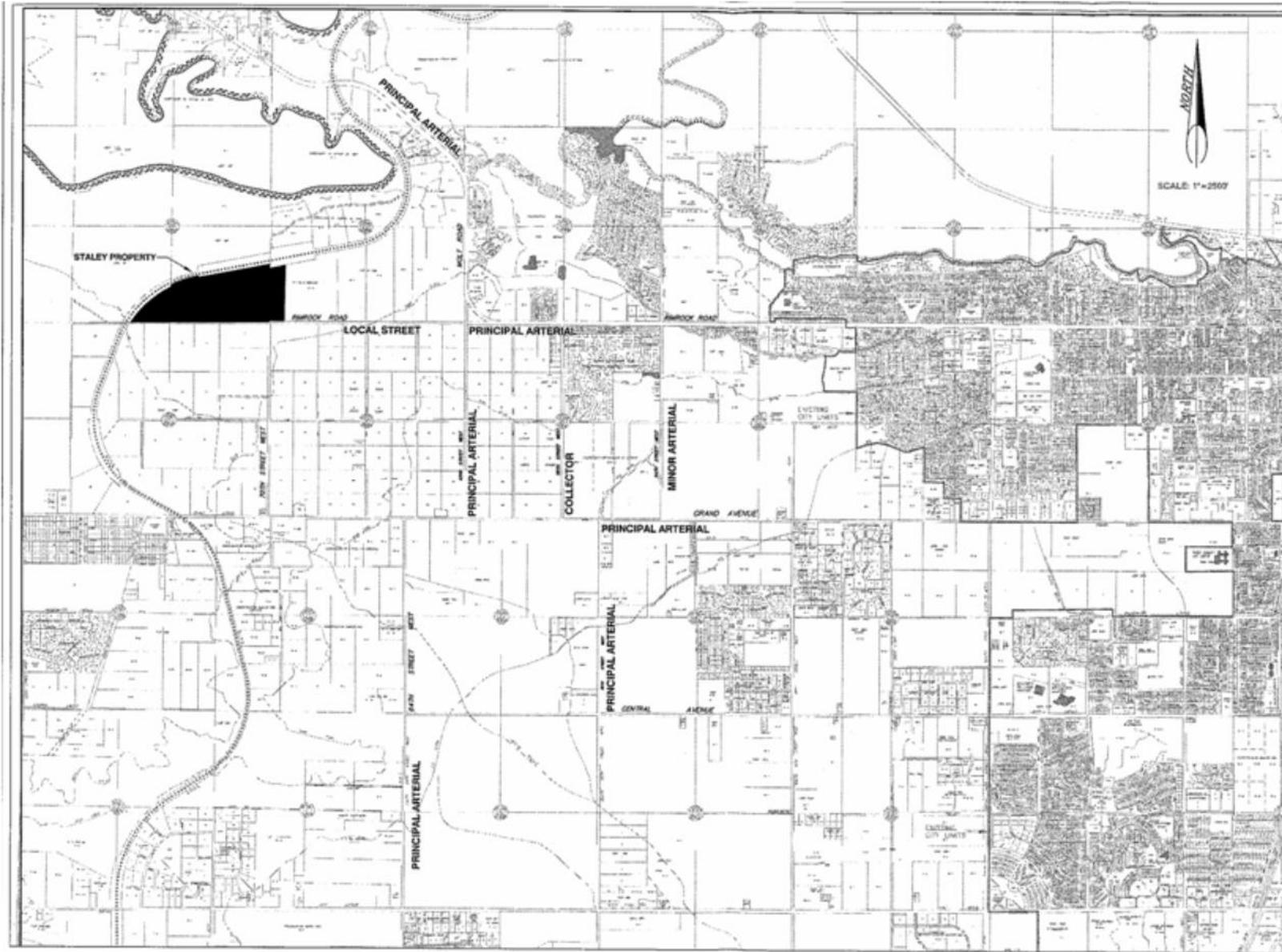
RECOMMENDATION

The County Planning Board recommends that Council hold a public hearing and deny the request to accept the Staley/Westward Ho Property Urban Planning Study to expand the Urban Planning Area to include the 115 acres located at the intersection of Rimrock Road and 70th Street West.

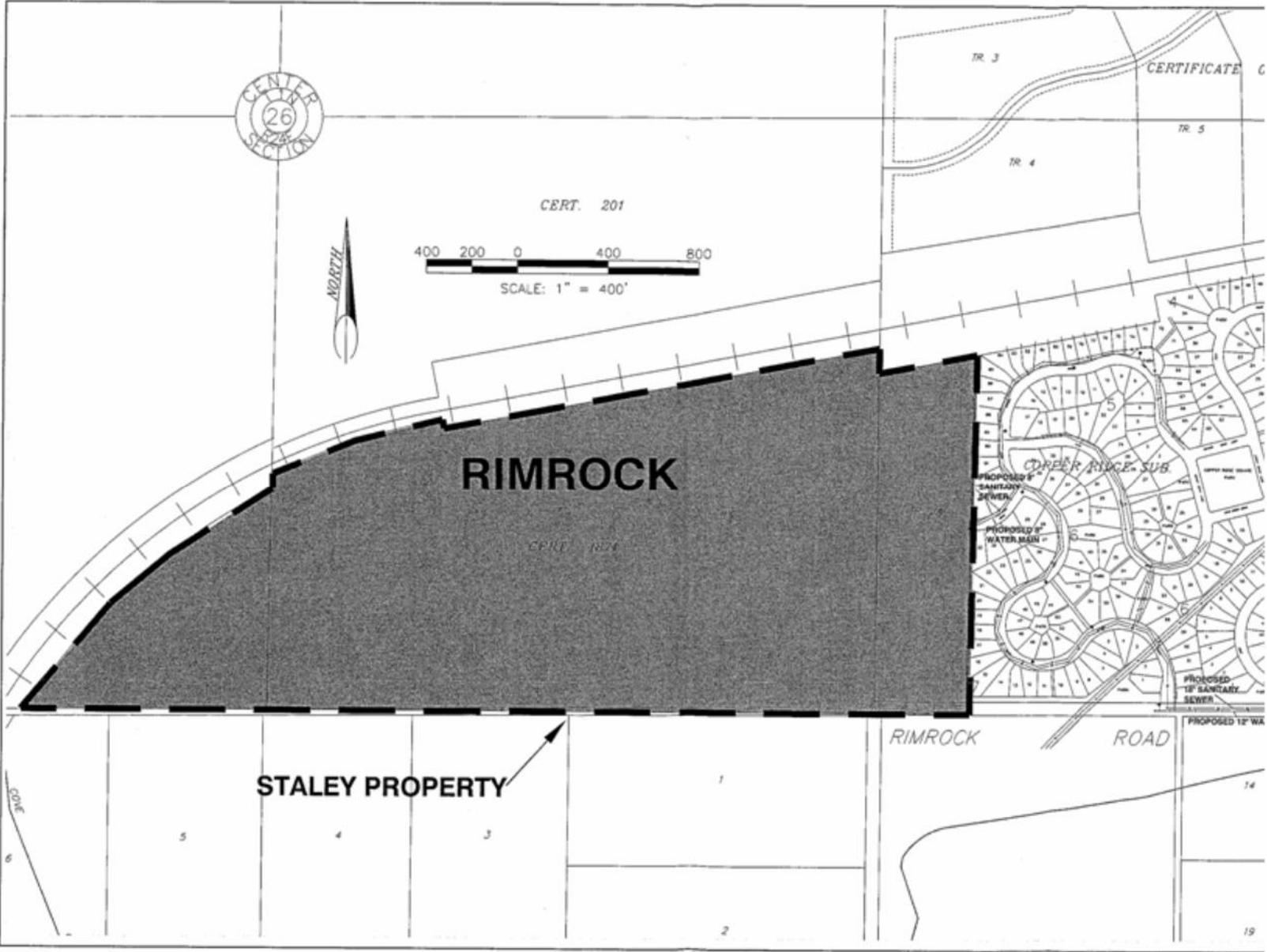
ATTACHMENTS

- E. Vicinity Map
- F. Map of Staley/Westward Ho Property
- G. Photographs of Site
- H. Resolution

ATTACHMENT A
Vicinity Map



ATTACHMENT B
Map of the Staley/Westward Ho Property



**ATTACHMENT C
Site Photographs**



Staley/Westward Ho property looking west from the intersection of Rimrock Road and 70th Street West.



Staley/Westward Ho property looking north towards Phipps Ranch Park across railroad property.

RESOLUTION NO. 04-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, APPROVING THE URBAN PLANNING STUDY AND EXPANDING THE BOUNDARIES OF THE BILLINGS URBAN PLANNING AREA TO INCLUDE TRACTS OF LAND SITUATED IN THE SW1/4 OF SECTION 26, SE1/4 OF SECTION 26, AND THE SW1/4 OF SECTION 25, T.1N., R.24E., P.M.M., YELLOWSTONE COUNTY, MONTANA, MORE PARTICULARLY DESCRIBED AS: TRACT 1, CERTIFICATE OF SURVEY NO. 1871, TRACT 2A, CERTIFICATE OF SURVEY NO. 2465, ALSO KNOWN AS THE STALEY/WESTWARD HO PROPERTY.

WHEREAS, an Urban Planning Study was conducted on the Staley/Westward Ho property, herein described, and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City, for the purpose of planning for future growth of the City, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the study area encompasses the property generally located at the intersection of Rimrock Road and 70th Street West. More particularly described as:

Tracts of land situated in the SW1/4 of Section 26, SE1/4 of Section 26, and the SW1/4 of Section 25, T.1n., R.24E., P.M.M., Yellowstone County, Montana, more particularly described as: Tract 1, Certificate of Survey No. 1871, Tract 2A, Certificate of Survey No. 2465, containing 115 acres more or less.

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study on this property, also known as the Staley/Westward Ho Property Urban Planning Study at its regular meeting on June 14, 2005, and

WHEREAS, the Yellowstone County Board of Planning has recommended approval of inclusion of the following areas:

Tracts of land situated in the SW1/4 of Section 26, SE1/4 of Section 26, and the SW1/4 of Section 25, T.1n., R.24E., P.M.M., Yellowstone County, Montana, more particularly described as: Tract 1, Certificate of Survey No. 1871, Tract 2A, Certificate of Survey No. 2465, containing 115 acres more or less.

in the Billings Urban Planning Area, finding that municipal services can safely and efficiently be extended to this area and the projected growth is consistent with existing and proposed land use and transportation plans, and

WHEREAS, a public hearing was properly noticed and held by the Billings City Council as required by law.

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

3. URBAN PLANNING STUDY. The Urban Planning Study for the Staley/Westward Ho property is hereby approved by the Billings City Council.
4. URBAN PLANNING AREA. The boundaries of the Billings Urban Planning Area are hereby extended to include the Staley/Westward Ho property herein described.

PASSED AND APPROVED by the City Council this 27th 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 27, 2005

TITLE: Annexation petition #05-06: Acknowledge receipt of petition and set a public hearing date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Larry Staley and Don Forbes, for Westward Ho, Inc. are petitioning to annex land to the City of Billings under 7-2-4600, MCA. The 115-acre property is located at the intersection of Rimrock Road and 70th Street West. The property is contiguous with Copper Ridge Subdivision, a recently annexed property. The owner intends to rezone and subdivide this property if annexed. The petitioner is requesting annexation in order to obtain city water and sewer services. City Council will consider this annexation at two separate Council meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date for July 11, 2005. At the second meeting, the Council conducts the hearing and acts on the petition to annex.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The proposed subdivision lies outside the acceptable limits of annexation.

FINANCIAL IMPACT: A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for July 11, 2005, to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A. Property data
- B. Annexation petition
- C. Map

ATTACHMENT A
Annexation #05-04 Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Larry Staley and Westward Ho, Inc.
Purpose of annexation:	Obtain City services
Property included:	Tract 1, Certificate of Survey 1871 and Tract 2A, Certificate of Survey 2465
Location:	Rimrock Road and 70 th Street West
Total area:	115 acres
Current zoning:	None
Current land use:	Cultivated cropland
Future zoning:	R-7,000 Restricted
Future land use:	Single Family

ATTACHMENT B
Annexation Petition #05-04

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER



This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

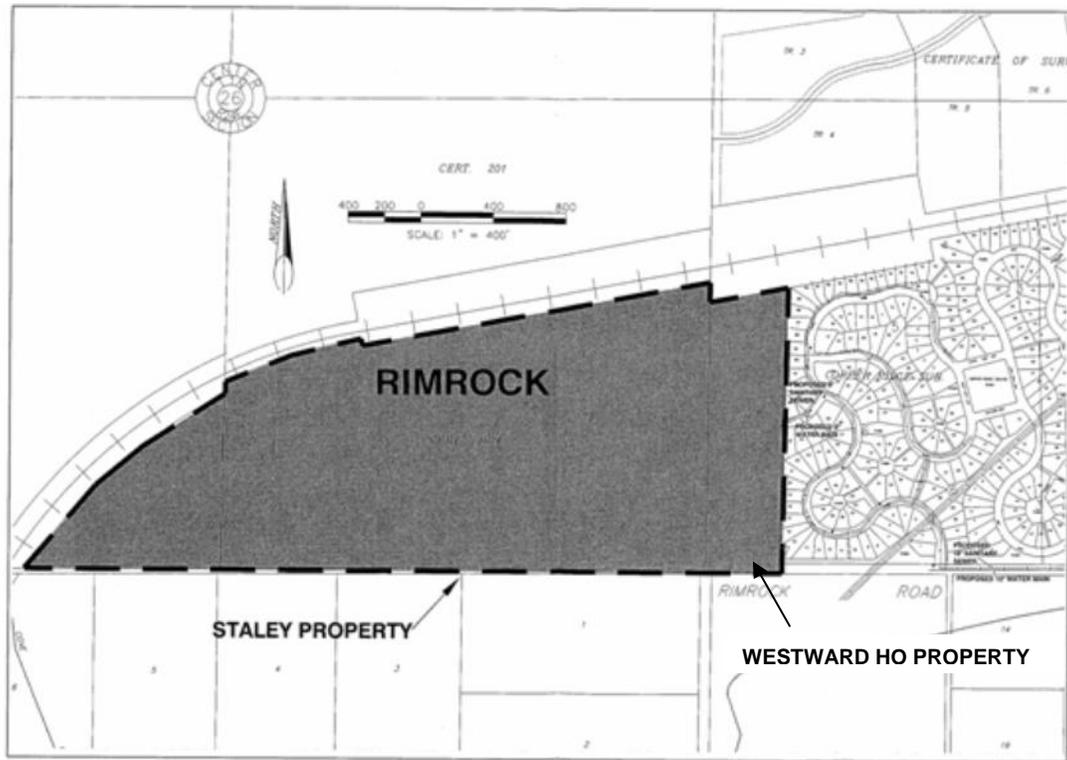
1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

- a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmlly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
 4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
 5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>5/12/05</u>	<u>Larry Staley</u>	<u>Larry Staley</u>	<u>7001 Hesper Road</u>



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and Resolution to Approve the Foxtail Village Subdivision, 2nd Filing Urban Planning Study and Expand the Urban Planning Area

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Mark Kennedy, for Kenmark Corporation, is requesting expansion of the Billings Urban Planning Area to include Tract 123 of the Sunny Cove Fruit Farms property, also known as the proposed Foxtail Village Subdivision, 2nd Filing. The 9.32-acre property is located near the northeast corner of Grand Avenue and 60th Street West intersection. This request precedes a request for annexation, zone change and subdivision of this parcel. The expansion of the Urban Planning Area is required prior to annexation and provision of City services. The Yellowstone County Board of Planning is required to determine whether the Urban Planning Area should be expanded or not based on whether the City can safely and effectively serve this property within a ten year period. Upon recommendation by the Planning Board, the City Council will hold a public hearing to receive comments and make the final determination as to the inclusion of this property in the Urban Planning Area.

ALTERNATIVES ANALYZED: The City Council may approve or deny the request to accept the proposed Foxtail Village Subdivision, 2nd Filing Urban Planning Study and expand the Urban Planning Area pursuant to Article 20-305, BMCC.

FINANCIAL IMPACT: The approval of the proposed Foxtail Village Subdivision, 2nd Filing Urban Planning Study and the expansion of the Urban Planning Area do not commit the City to any expenditure of public funds.

RECOMMENDATION

The Planning Board recommends that Council hold a public hearing and adopt the resolution to accept the proposed Foxtail Village Subdivision, 2nd Filing Urban Planning Study expand the Urban Planning Area to include the 9.32-acre parcel located at the northeast corner of the intersection of Grand Avenue and 60th Street West. Staff determined that municipal services can be safely and efficiently extended to this area and the proposed development is consistent with existing and proposed land use and transportation plans.

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

ATTACHMENTS

- A. Vicinity Map
- B. Map of proposed Foxtail Village Subdivision, 2nd Filing
- C. Photographs of Site
- D. Resolution

INTRODUCTION

The Urban Planning Area is defined as “that area established by the City of Billings for the purpose of planning for future growth of the City of Billings within approximately a ten-year period. No City services will be provided outside the Urban Planning Area.” Developments seeking the provision of City services, including water, sewer, street maintenance, police and fire protection, must lie within the Urban Planning Area. If the property is located outside of this area, the applicant is responsible for preparing an Urban Planning Study to demonstrate that the City can safely and efficiently provide services to the property. The County Planning Board reviews and makes a recommendation on whether to approve or deny the request to expand the Planning Area. City Council is responsible for holding a public hearing and acting on the request by resolution.

PROCEDURAL HISTORY

- April 22, 2002 - Expansion of the Urban Planning Area to encompass Foxtail Village Subdivision, 1st Filing.
- April 12, 2004 - Annexation of proposed Foxtail Village Subdivision, 1st Filing.
- June 14, 2005 – Recommendation by County Planning Board to expand the Urban Planning Area to include proposed Foxtail Village Subdivision, 2nd Filing.
- June 27, 2005 – City Council holds public hearing and acts on the request to expand Urban Planning Area.
- June 27, 2005 – City Council acknowledges petition to annex proposed Foxtail Village Subdivision, 2nd Filing.

BACKGROUND

The Urban Planning Study for the proposed Foxtail Village Subdivision, 2nd Filing was submitted to the Planning Department for review and approval as a prerequisite to expanding the Urban Planning Area boundary and subsequent annexation. An Urban Planning Area is the area established by the City for the purpose of planning for future growth of the City within approximately a ten-year period. The study identifies the impacts to City services and the natural environment, and the feasibility of extending services within the area. Article 20-305, BMCC gives City Council authority to expand the boundaries of the Urban Planning Area after receiving a recommendation from the Planning Board and holding a public hearing. The owner, Mark Kennedy for Kenmark Corporation, requested the expansion of the Urban Planning Area. The study area includes a 9.34-acre parcel located at the northwest corner of the intersection of Grand Avenue and 60th Street West. The area adjoins the Foxtail Village Subdivision, 1st Filing to the east which was annexed to the City in 2004. It is surrounded by County property to the north, west and south.

The Urban Planning Study was submitted on May 19, 2005 along with a petition for annexation. Subsequent applications for a zone change and subdivision are expected.

Population and Land Use

The study area is currently vacant, although it was previously used for agricultural purposes. The proposed Foxtail Village Subdivision, 2nd Filing would create 23 single-family residences and 16 duplex units. Based on a typical household size of 2.3 persons per household, the development is expected to contain approximately 90 people upon full buildout.

Streets, Transportation, Traffic Circulation and Generation

The study area adjoins Grand Avenue, a principal arterial, to the south and is 1/8th of a mile west of 58th Street West, a collector. Both streets are expected to be affected by the future development of Foxtail Village Subdivision, 2nd Filing as are 56th Street West, a principal arterial and 54th Street West, a minor arterial. It is estimated that the development would produce approximately 400 trips on an average weekday. The Urban Planning Study indicates that the connecting street system has sufficient capacity for the additional residential units.

The conceptual plan for the proposed subdivision shows two accesses onto Grand Avenue and access through Foxtail Village Subdivision, 1st Filing onto 58th Street West. There would be no cost to the City for constructing these approaches or the interconnecting internal streets.

Storm Water Management, Sewer, and Water

The Birely Drain runs through the southwest portion of the property from west to east before angling south under Grand Avenue. The conceptual plan for stormwater management is to widen this part of the Drain to allow surface runoff from the subdivision to be retained onsite. The Birely Drain Company has given tentative approval to this concept. This concept is also consistent with preliminary flood storage and groundwater recharge strategies for the west Billings area.

Water and sanitary sewer would be extended from Foxtail Village Subdivision, 1st Filing. There would be not cost to the City for extension of these services.

Solid Waste, Public Safety, Parks, and Recreation

The property is currently vacant and receives no solid waste collection services. Upon annexation and development, the City would provide solid waste service.

The study area is within the Billings Urban Fire Service Area and currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 3 at Parkhill and 17th Street West and Fire Station No. 5 at 24th Street and Rosebud prior to the construction of a new station. Land has been purchased for a new fire station at the intersection of Grand and 54th Street West. The station is scheduled for construction in 2008 and will service this area at that time. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 6 incidents per year at full buildout.

Emergency medical services are provided by Deaconess Hospital, approximately 8.0 miles from the area at 2813 9th Avenue North, and St. Vincent's Hospital, approximately 7.6 miles from the area at 1233 North 30th Street. There are also emergency outpatient and walk-in treatment facilities on 24th Street West.

Ambulance service is contracted with American Medical Response (AMR). AMR is required to provide to respond to emergency calls to all locations within the corporate limits of the City within eight minutes or less on at least ninety percent of such calls. As the City limits stretch further westward, the ability of AMR to meet this requirement becomes increasingly difficult. Currently, AMR has no difficulty in meeting this requirement as it applies to this area.

Police protection will be provided by the City of Billings Police Department. While the Police Department has previously indicated that expansion of City limits negatively affects staffing and budget, they do not have specific concerns with the annexation of this property.

The study area lies within the influence area of the future Cottonwood Park, located approximately $\frac{3}{4}$ of a mile to the northeast. The future subdivision would contribute cash-in-lieu of parkland for the development of Cottonwood Park and participate in a Park Maintenance District for the continued maintenance. The conceptual plan presented to the Planning staff showed an open area to be maintained for stormwater retention along the Birely Drain. While this area is not conducive to active recreation, it would provide some measure of open space for the development. It would be maintained through a Park Maintenance District.

Schools

Elementary students would attend Central Heights Elementary School with a current enrollment of 339 students. Middle school students would attend Will James Middle School with an enrollment of 561 students and an ideal capacity of 690 students. High school students would attend Billings West High. West High has an enrollment of 2,101 but has an ideal capacity of only 1,400 students. School District #2 was notified of this application but has submitted no comment regarding the impacts to local schools or school transportation.

Effects of Urbanization on Existing Environment and Agriculture

The study area is vacant and has not been used for agricultural purposes in several years.

The property immediately east of the study area is currently being developed in a similar manner as to what is proposed for this site. However, prior to that development, the typical pattern of development was large lot, ranchette-style residential. With the extension of City sewer and water along Grand and 58th Street West, the west Billings area is becoming increasingly higher density and urbanized. The City Annexation Policy and accompanying Limits of Annexation map provides some guidance to the Planning Board and City Council when reviewing requests for annexation in this area. The overriding intent of the policy was to limit annexation to areas that can be immediately served by existing services without added costs to the City. This request to expand the Urban Planning Area is consistent with this policy in the following ways:

11. The area is located within the Limits of Annexation and within the Urban Planning Area.
12. The City is able to provide adequate services.
13. The proposed improvements meet City standards.
14. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
15. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
16. Residential densities will be at least 4 dwelling units per acre.
17. With the exception of being partially contiguous to existing City limits, the proposed annexation meets the goals of the City-County Growth Policy.

The recently adopted Northwest Shiloh Land Use Plan also provides guidance as to the preferred future development patterns of this area. The study area falls within an area suitable for urban densities of 1 dwelling unit per 9,600 square feet as identified in the plan.

There are two other land use plans that guide development in the vicinity of the study area; The West Billings Plan and the 2003 Growth Policy.

The Urban Planning Area expansion is consistent with the following Growth Policy goals:

- Affordable housing for all income levels dispersed throughout the City and County (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood (Land Use Element Goal, page 6)
- Safe traffic speeds consistent with the surrounding uses (Transportation Element Goal, page 9).

The Urban Planning area expansion partially meets these goals:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, page 6). *The study area is adjacent to a similar land use pattern, although is higher density to the older, County development.*
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6). *The study area is contiguous to noncontiguous City territory.*

The annexation is generally consistent with the West Billings Plan's policies.

Soil, Geology and Topography

The soils in the study area are known to be problematic based on the geotechnical study performed for Foxtail Village Subdivision, 1st Filing and the 1973 Yellowstone County Soil Survey. These studies found the area soil consists of clay loam and loam exhibiting low bearing strength. The area is generally flat but slope slightly towards the southeast.

A recently prepared Flood Hazard Area Map shows a small portion of the study area to lie within the potential 100-year floodplain. This map is based on approximate data only and cannot be considered a final delineation of the floodplain. The exact location of the floodplain may change if more precise data were available. Widening the Birely Drain for stormwater retention and possible flood storage could alleviate the potential for flooding in this area.

Historic Sites and Wildlife

The Urban Planning Study did not identify any existing historic assets in the vicinity other than an unnamed trail indicated on an 1883 general land office map. The trail could not be verified in the field.

Development Timetables

The timetable for the development of the study area began with the submission of the Urban Planning Study and concurrent petition for annexation. The Planning Board will make a recommendation on the Urban Planning Area expansion on June 14 and the City Council will hold a public hearing and make a final determination on June 26. At that same meeting, the Council will acknowledge the petition to annex and set a public hearing date for July 11. The

Planning Department has not received a subdivision or zone change application yet, but anticipates these documents to be submitted by July 5.

Method of Funding Public Improvements and Sources

On-site improvements will be constructed and paid for by the developer. The developer is also responsible for paying all applicable water and wastewater connection fees and charges. The actual mechanism for payment and financial guarantee of offsite public improvements associated with the Foxtail Village Subdivision, 2nd Filing will be determined during subdivision review. Prior to any development, the Subdivision Improvements Agreement shall be approved and recorded with the subdivision plat. The SIA will stipulate specific infrastructure improvements and provide for financial security for such infrastructure improvements.

Taxes generated by the proposed and future development of this property will go towards support of all local government functions such as schools, police and fire protection, street maintenance, City and County administration and parks. Studies have demonstrated that tax revenue generated from residential subdivisions generally do not pay for the cost of providing services.

ALTERNATIVES ANALYSIS

Pursuant to Sec. 26-203, BMCC, areas to be annexed must be located within the Urban Planning Area prior to annexation and the provision of water and sewer service. Council may approve or deny the application to expand the Urban Planning Area after determining whether City services may be safely and efficiently extended to this area.

STAKEHOLDERS

The County Planning Board considered the application for expansion of the Urban Planning Area on June 14. The Board discussed the advantages and disadvantages of this application and recommended approval.

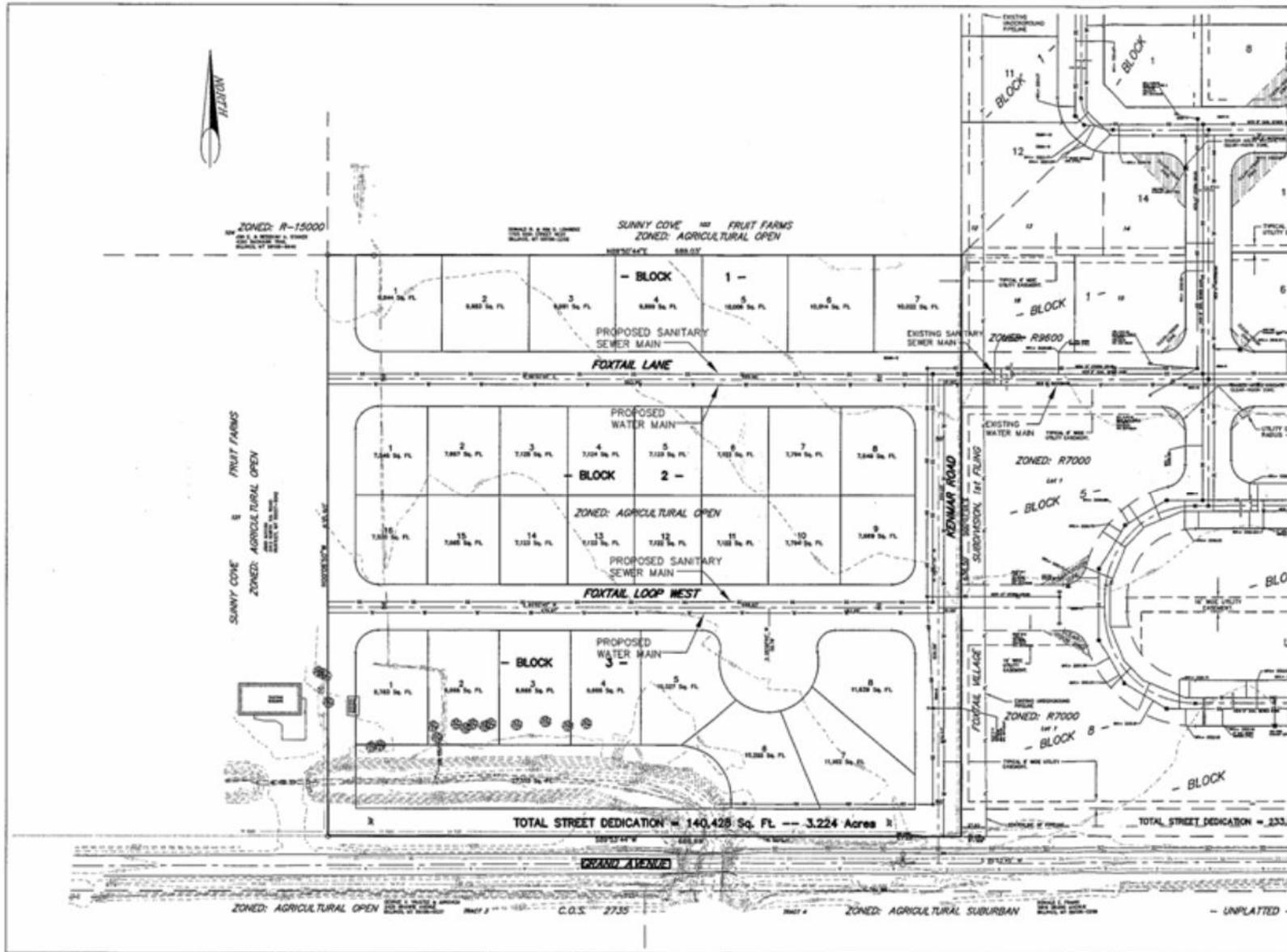
RECOMMENDATION

The City/County Planning Board recommends that Council hold a public hearing and adopt the resolution to accept the proposed Foxtail Village Subdivision, 2nd Filing Urban Planning Study expand the Urban Planning Area to include the 9.32-acre parcel located at the northeast corner of the intersection of Grand Avenue and 60th Street West. Staff determined that municipal services can be safely and efficiently extended to this area and the proposed development is consistent with existing and proposed land use and transportation plans.

ATTACHMENTS

- A. Vicinity Map
- B. Map of proposed Foxtail Village Subdivision, 2nd Filing
- C. Photographs of Site
- D. Resolution

ATTACHMENT B
Map of Foxtail Village Subdivision, 2nd Filing



ATTACHMENT C
Site Photographs



Birely Drain culvert at Grand Avenue looking northwest.



View of Foxtail Village Subdivision, 2nd Filing looking southwest from Foxtail Lane.



View looking northwest across Foxtail Village Subdivision, 2nd Filing from Foxtail Lane...

RESOLUTION NO. 04-_____

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, APPROVING THE URBAN PLANNING STUDY AND EXPANDING THE BOUNDARIES OF THE BILLINGS URBAN PLANNING AREA TO INCLUDE TRACT 123, SUNNY COVE FRUIT FARMS.

WHEREAS, an Urban Planning Study was conducted on the Tract 123, Sunny Cove Fruit Farms also known as the Foxtail Village Subdivision, 2nd Filing and was submitted to the City for review and approval, and

WHEREAS, the Billings Urban Planning Area is the area established by the City, for the purpose of planning for future growth of the City, and

WHEREAS, the purpose of the study is to determine impacts on city services, the natural environment, and the feasibility of extending City services within the proposed area, and

WHEREAS, the study area encompasses the property generally located at the northeast corner of Grand Avenue and 60th Street West intersection. More particularly described as:

A tract of land situated in the SW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Sunny Cove Fruit Farms, Lot 123, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; including all adjacent right-of-way of 60th Street West and Grand Avenue.

Containing 10.532 gross and 9.328 net acres, more or less.

WHEREAS, the Yellowstone County Board of Planning reviewed the Urban Planning Study on this property, also known as the proposed Foxtail Village Subdivision, 2nd Filing Urban Planning Study at its regular meeting on June 14, 2005, and

WHEREAS, the Yellowstone County Board of Planning has recommended approval of inclusion of the following areas:

A tract of land situated in the SW1/4 of Section 31, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Sunny Cove Fruit Farms, Lot 123, Recorded April 27, 1910, Under Document No. 21540, Records of Yellowstone County, Montana; including all adjacent right-of-way of 60th Street West and Grand Avenue.

Containing 10.532 gross and 9.328 net acres, more or less.

in the Billings Urban Planning Area, finding that municipal services can safely and efficiently be extended to this area and the projected growth is consistent with existing and proposed land use and transportation plans, and

WHEREAS, a public hearing was properly noticed and held by the Billings City Council as required by law.

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

5. URBAN PLANNING STUDY. The Urban Planning Study for the Foxtail Village Subdivision, 2nd Filing is hereby approved by the Billings City Council.
6. URBAN PLANNING AREA. The boundaries of the Billings Urban Planning Area are hereby extended to include Tract 123, Sunny Cove Fruit Farms, also known as the proposed Foxtail Village Subdivision, 2nd Filing.

PASSED AND APPROVED by the City Council this 27th 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 27, 2005

TITLE: Annexation petition #05-04: Acknowledge receipt of petition and set a public hearing date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Kenmark Corporation is petitioning to annex land to the City of Billings under 7-2-4600, MCA. The 9.32-acre undeveloped parcel is located at the northeast corner of the intersection of Grand Avenue and 60th Street West. The property is contiguous with Foxtail Village Subdivision, 1st Filing, a recently annexed and subdivided property. The owner intends to subdivide this property as a second filing of Foxtail Village Subdivision. The petitioner is requesting annexation in order to obtain city water and sewer services. City Council will consider this annexation at two separate Council meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date for July 11, 2005. At the second meeting, the Council conducts the hearing and acts on the petition to annex.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The proposed subdivision lies within the acceptable limits of annexation.

FINANCIAL IMPACT: A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for July 11, 2005, to consider annexing this property.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- D. Property data
- E. Annexation petition
- F. Map

ATTACHMENT A
Annexation #05-04 Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	Kenmark Corporation
Purpose of annexation:	Obtain City services
Property included:	Tract 123, Sunny Cove Fruit Farms
Location:	Grand Avenue near 60 th Street West
Total area:	9.32 acres
Current zoning:	Agriculture - Open Space
Current land use:	Vacant
Future zoning:	R-7,000 and R-9,600
Future land use:	Single Family and Duplex Residential

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

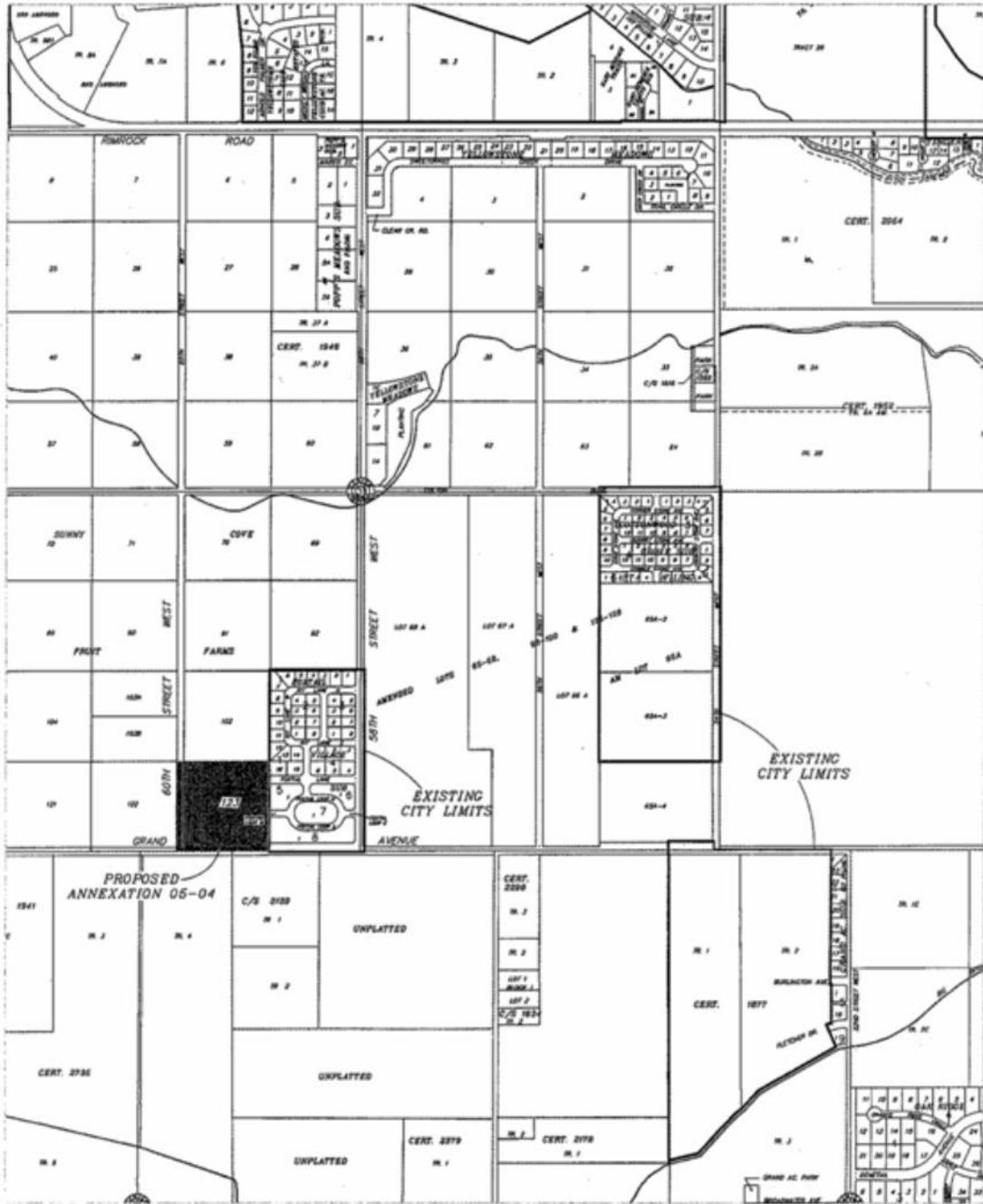
1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:
 - a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parnly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
<u>4-7-05</u>	<u>Mark Kennedy</u>		<u>3936 Avenue B, Ste. A</u> <u>Billings, MT 59102</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

TITLE: Public Hearing for Special Review #784
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to permit an all-beverage liquor license with gaming at a proposed new Town Pump gas station/convenience store/casino. The subject property is located on the southeast corner of King Ave. and 32nd St. West and is zoned Controlled Industrial. Town Pump and Affiliates, LLC is the owner and Engineering, Inc. is the agent. 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:

Before 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 take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- 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 grant conditional approval for Special Review #784.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plans

INTRODUCTION

The applicant is requesting a Special Review to permit on premise consumption of all beverages and gaming at a proposed new Town Pump gas station/convenience store/casino. The subject property is at 3150 King Avenue and is zoned Controlled Industrial. There are no properties within 600 feet that are used as a church, school or public park. The Zoning Commission voted 4-0 to recommend conditional approval of this application.

PROCEDURAL HISTORY

- The application was received on April 5, 2005.
- The City Zoning Commission voted 4-0 at its public hearing on May 17, 2005 for conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on June 27, 2005.

BACKGROUND

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. The subject property is described as Tracts 1C-2 and 1D, Certificate of Survey 1479 Amended and is located on the southeast corner of King Ave. and 32nd St. West. The existing used car sales lot and accessory structures will be removed and replaced with a new Town Pump fueling center, convenient store and casino. The liquor license with gaming would be limited to the new store/casino building.

The City Zoning Commission is recommending conditional approval. The first condition limits the special review approval to the proposed store/casino as shown on the proposed site plan. Condition #2 requires all outdoor lighting for the gas station and casino to be full cut-off lighting. This is requested to minimize the visual impact of this development on the manufactured home park directly adjacent to the west across S. 32nd St. West and the existing greenhouse business directly to the south of this property. The third condition is requested by City Engineering in order to establish permitted access to the proposed development. The two accesses onto King Ave. W. as proposed will not be permitted, but an additional approach may be granted if shared with the property adjacent to the east. This shared access currently exists, and City Engineering is willing to allow its continued use if the applicant can work out a deal with the adjacent property owner. The last recommended condition clarifies that any expansion of the alcohol service area be in compliance with the regulations established in the zoning code.

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 proposed use is compatible with the adjoining land uses to the north and east. In an effort to mitigate visual impacts on the manufactured home park across 32nd Street and on the greenhouse and landscaping business to the south it is recommended that all lighting on the site be of full cut-off style.

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 approval with the following conditions:

1. The special review approval shall be limited to the proposed convenient store/casino building located on Tracts 1C-2 and 1-D, Certificate of Survey 1479 Amended as shown on the site plan submitted with the application.
2. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
3. Access onto King Avenue West and 32nd Street West shall be restricted as follows:
 - Access to King Ave. W. shall be limited to a single driveway, not to exceed 40 feet in width, except that an additional shared access with the property to the east would be allowed.
 - The King Ave. W. driveway closest to the intersection with 32nd St. West shall be located a minimum of 50 feet from the end of radius (future curb) at the intersection.
 - If an additional shared driveway is used, spacing between driveways must meet the minimum City requirements of 25 feet of full height curb.
 - King Ave. W. driveway(s) (including any joint use driveway) will become right-in/right-out when King Avenue is reconstructed and median is installed.
 - A single driveway onto 32nd St. West is permitted as shown. The driveway shall not be located any closer to King Avenue.
4. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.

****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

Two adjacent property owners have expressed concerns with this Special Review proposal: Greg McDonald, who owns and manages the Golden Meadows manufactured home park adjacent to the west of the subject property, and Jim Kimmery, who owns Continental Horticultural Supply directly south of the subject property. Both adjacent property owners attended the public hearing held on May 17, 2005 before the City Zoning Commission. Mr. McDonald requested three conditions of approval be added to the recommendation. Those conditions related to lighting, signage and landscaping. The Zoning Commission considered the request but did not believe the requested conditions were appropriate in this case. Mr. Kimmery requested the Zoning Commission add a recommendation that would compensate his business if light spill over into his greenhouse during poinsettia growing season damaged the plants. Mr. Kimmery explained that even a slight increase in light during a critical growth cycle would damage the poinsettia flowers, an integral part of his greenhouse business. The Zoning Commission considered Mr. Kimmery's request but determined this type of condition was outside the purview of the special review request. Chair Angela Cimmino requested the applicant and agent meet with the adjacent property owners and see if an agreement between the parties could be worked out the issues of concern. That meeting has been held and Town Pump, Inc. through their agent Engineering, Inc. has reached an agreement with Mr. MacDonald and Mr. Kimmery.

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 development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

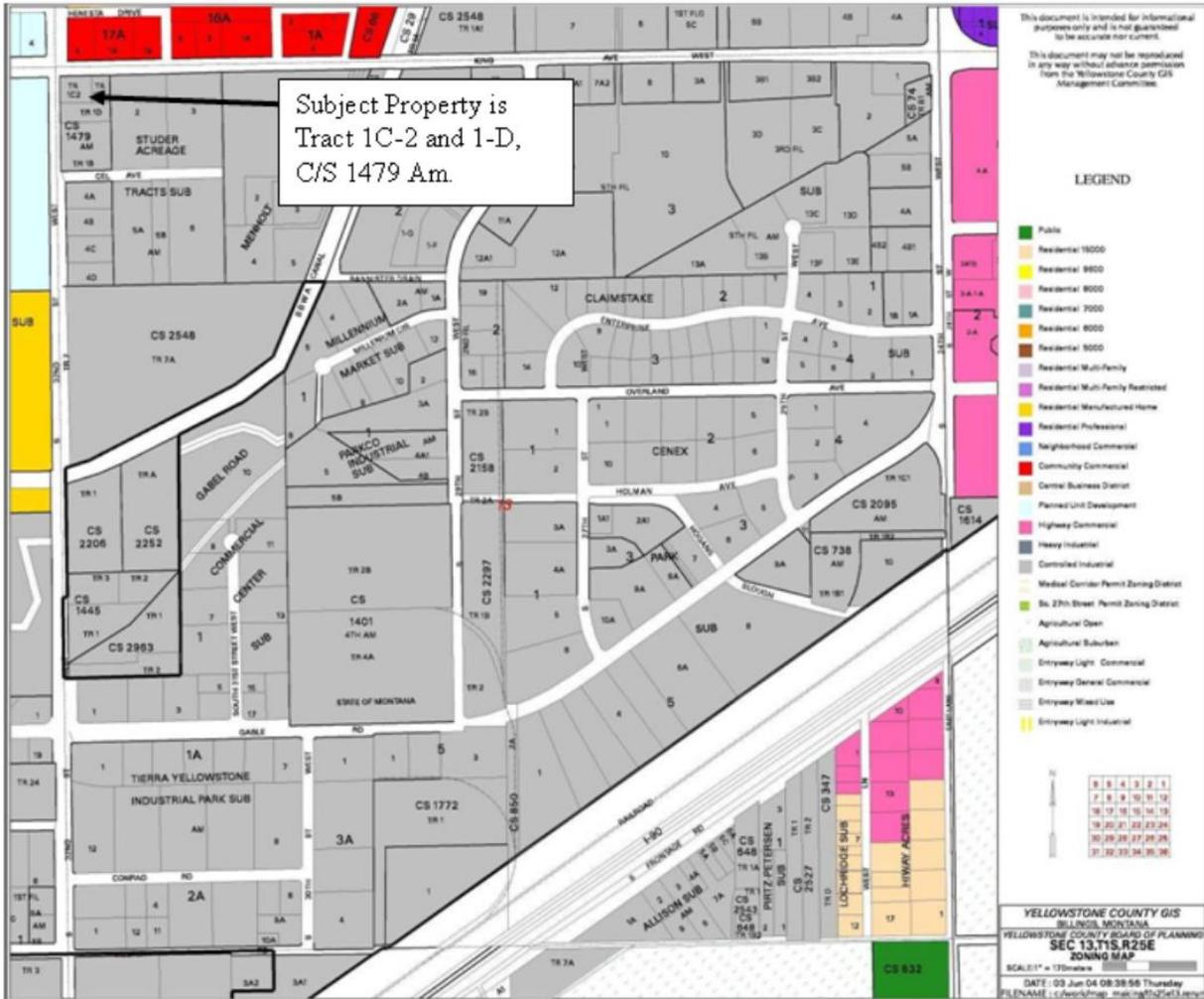
RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #784.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plans

ATTACHMENT A Zoning Map



ATTACHMENT B
Site Photographs



Photo 1: Looking east from corner of King Ave. W. and S. 32nd St. W. Subject property (exists as a car lot) is on the right.



Figure 2: From King Ave. W. and S. 32nd St. W. intersection looking south down 32nd St. W.



Figure 3: Looking north from intersection of King Ave. W. and S. 32nd St. W.



Figure 4: Looking west across S. 32nd St. W. down King Ave. W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

TITLE: Public Hearing for Special Review #785
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to permit an all-beverage liquor license with gaming at the existing Beck's Bourbon Street Casino. The subject property is located at 3324 1st Avenue North and is zoned Community Commercial. Greg and Becky Pekovich are the owners. The Zoning Commission conducted a public hearing on June 7, 2005, and is forwarding a recommendation of conditional approval and waiver the 600' separation requirement to the City Council.

ALTERNATIVES ANALYZED:

Before 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 take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- 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 grant conditional approval and waiver of the 600' separation requirement for Special Review #785.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- D. Zoning Map
- E. Site Photographs
- F. Site Plans

INTRODUCTION

The applicant is requesting a Special Review to permit on premise consumption of all beverages and gaming at the existing Beck's Bourbon Street Casino, 3324 1st Avenue North. The property is zoned Community Commercial. There are three properties within 600 feet that are used as churches and a waiver of the separation requirement is necessary. The Zoning Commission voted 4-0 to recommend conditional approval and a waiver of the 600 foot separation requirement.

PROCEDURAL HISTORY

- Special Review #733 for a beer and wine license with gaming for Beck's Bourbon Street Casino was conditionally approved and the 600 foot separation requirement was waived by the City Council on January 27, 2003.
- A special review application to add an all beverage liquor license with gaming was received on May 2, 2005.
- The City Zoning Commission voted 4-0 at its public hearing on June 7, 2005 for conditional approval of the special review and a waiver of the 600 foot separation requirement.
- The City Council will conduct a public hearing and consider this application on June 27, 2005.

BACKGROUND

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. This is a special review to allow on-premise all beverage liquor license with gaming. The property is located at 3324 1st Avenue North and is known as the Esquire Hotel and Beck's Bourbon Street Casino. The property was granted a special review for a beer & wine license with gaming in January 2003 and has operated since that time. The owners wish to change the liquor license to an all beverage license with gaming. The building that houses the casino is separate from the hotel. A Special Review is required to change the liquor license from a beer and wine license to an all beverage license.

A waiver from the 600 foot separation requirement is necessary. Section 27-612 of the BMCC requires a 600 foot separation between a liquor license and a church, school or public park with playground equipment unless a physical barrier exists between the uses. The Zoe Bible Church is located at Montana Ave. and 35th Street, about 300 feet from the subject site. Several buildings shield direct sight between the casino and church. St. Luke's Episcopal Church is located at the intersection of 33rd and 2nd Avenue North. Several buildings, including the Holliday Furniture Store, block vision between the church and the subject site. First Baptist Church is located at 34th Street and 3rd Avenue North. The subject property is directly observable from the church property, however, 1st Avenue North, which is an arterial street without a traffic signal at this intersection, lies between the subject property and the church. The casino building isn't visible from the east because the hotel blocks its view.

The City Zoning Commission is recommending conditional approval and waiving the 600 foot separation requirement. The proposed use is appropriate for the area if the recommended conditions are adopted. The hotel, several retail businesses, three churches and multi-family

residences are located near the business. Operating within the specified space will help to keep the liquor service and casino operations from negatively affecting these surrounding uses.

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 proposed use is compatible with the adjoining land uses.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

4. Street and road capacity;
5. Ingress and egress to adjoining streets;
6. Off-street parking;
7. Fencing, screening and landscaping;
8. Building bulk and location;
9. Usable open space;
10. Signs and lighting; and/or
11. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions including a waiver of the 600 foot separation requirement:

1. The special review is limited to the building as shown on the submitted site plan and includes a basement area. An increase in the size or location of the building is limited by Section 27-613 BMCC.
2. All limitations in Section 27-613 BMCC shall apply.

****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 public hearing held on June 7, 2005 before the City Zoning Commission was attended by Mr. Greg Pekovich who offered testimony to the Zoning Commission. No surrounding property owners attended to public hearing or submitted objections to the proposed special review use.

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 development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval and waiver of the 600' separation requirement for Special Review #785.

ATTACHMENTS

- D. Zoning Map
- E. Site Photographs
- F. Site Plans

ATTACHMENT A

Zoning Map



ATTACHMENT B

Site Photographs for Special Review #785



View of subject site from 1st Avenue North



View north and west across 1st Avenue North – multifamily apartments



View east along 1st Avenue North



View north across 1st Avenue North to Becker's Glass

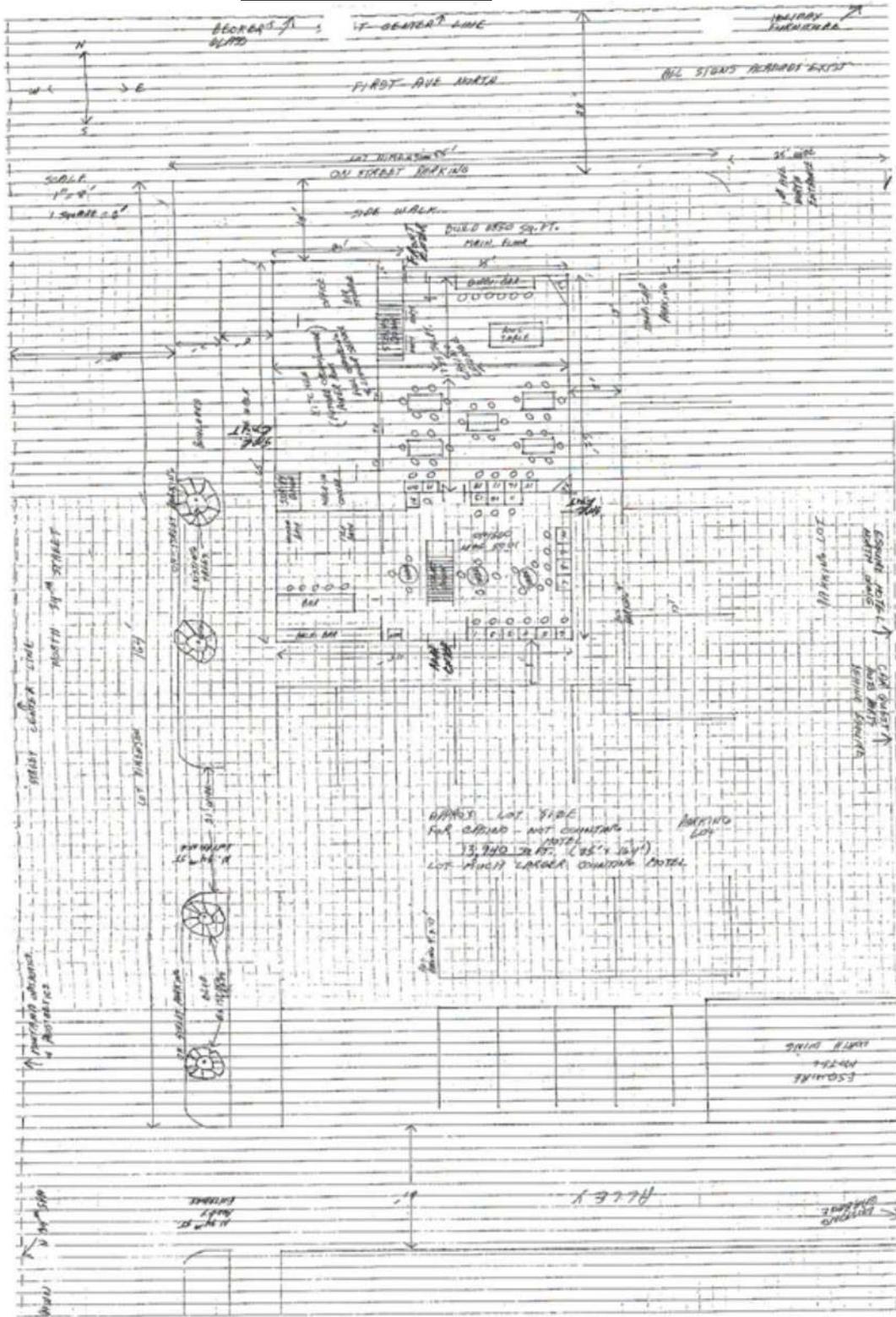


ATTACHMENT C - Site Plan

CORNER OF N 34TH ST. 1ST AVE. E.

BECK'S (MARRIOTT, INC.)
 2400 N. 34TH ST. C.F. NO.

03-101-94156-001



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

TITLE: Public Hearing for Special Review #786
DEPARTMENT: Planning & Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a special review to permit a fenced area for the storage of construction materials on a Highway Commercial (HC) zoned property described as Lot 2, Block 2, Holiday Business Park Subdivision and addressed as 1348 Holiday Circle. Optima Venture, LP is the owner/agent. The Zoning Commission conducted a public hearing on June 7, 2005, and is forwarding a recommendation of conditional approval 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 conditionally approve Special Review #786.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

The applicant, Optima Venture, LP, is requesting a special review to permit a fenced area for the storage of construction materials on a Highway Commercial (HC) zoned property located at 1348 Holiday Circle. The subject property is described as Lot 2, Block 2, Holiday Business Park Subdivision, is generally located north of Holiday Avenue midway between Mullooney Lane and Cordovia Street, and contains approximately 22,000 square feet. Pursuant to Section 27-306, BMCC, a Special Review is required for the storage of construction equipment and supplies within the Highway Commercial (HC) zoning district.

As depicted on the proposed site plan, the fenced area would encompass approximately 15,000 square feet of the subject property due to the required setbacks. Condition #3, specifies that the proposed fence shall not encroach into the clear vision triangle required by Section 27-618, BMCC. The proposed fence material is to be 8-foot chain-link with three (3) strands of barbed wire at the top. Condition #2 specifies that a site obscuring fence is required, therefore the applicant may place slats within the chain-link to obscure the storage area from view to the adjacent properties or shall provide an alternative fence on the site. Since the proposed fence is to be greater than 6-feet in height, the applicant is required to obtain a building permit.

On June 7, 2005, the Zoning Commission conducted a public hearing and voted 4-0 to forward a recommendation of conditional approval to the City Council. Discussion regarding the proposed use focused on the height of the proposed fence. At this time, it was clarified that if the fence is to be constructed with strands of barbed wire at the top, the chain link portion of the fence would need to be at least 8-feet in height, per Section 27-600(f)(5), BMCC. The applicant's representative was present at the meeting and stated that the chain link portion of the fence would be increased from 6-feet to 8-feet in height to comply with the regulations.

PROCEDURAL HISTORY

- The Special Review application was received on May 2, 2005.
- On June 7, 2005, the City Zoning Commission conducted a public hearing and forwarded a recommendation of conditional approval to the City Council.
- The City Council will conduct a public hearing and consider this application on June 27, 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 proposed use is compatible with the surrounding commercial land 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 **conditional approval** of this application to the City Council, subject to the following conditions:

1. The special review approval shall be limited to the Lot 2, Block 2, Holiday Business Park Subdivision.
2. A site obscuring fence, constructed of permitted materials as specified in Section 27-604(e), shall be placed around the perimeter of the storage area.
3. The fence shall comply with the clear vision standards set forth by Figure 3 of Section 27-618, BMCC.
4. A building permit shall be obtained for the proposed fence, as it is greater than 6-feet in height. A site plan clearly depicting the clear vision triangle and setbacks shall be reviewed by the Planning Department prior to submittal for a building permit.
5. The site shall comply with Section 6-1200. Site Development and Section 27-1100. Landscaping, BMCC.

****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 was no public comment received prior to or during the Zoning Commission 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:

- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

The Zoning Commission is recommending that the City Council **conditionally approve** Special Review #786.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT B
Site Photographs



Figure 1: View east along Holiday Drive.



Figure 2: View north toward the subject property.



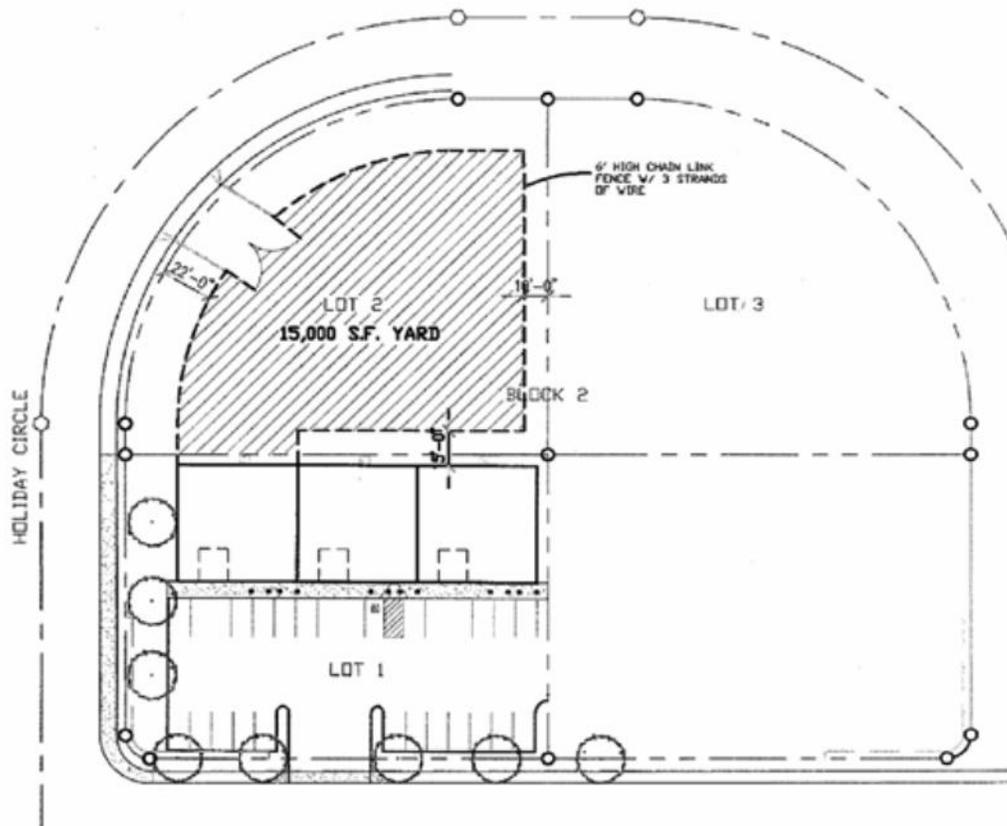
Figure 3: View west toward adjacent commercial land uses.



Figure 4: Existing structure on the adjacent property to the south, which houses the office for the construction company.

ATTACHMENT C

Site Plan



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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

TITLE: Public Hearing for Special Review #787
DEPARTMENT: Planning & Community Services
PRESENTED BY: Lora Mattox, Planner II

PROBLEM/ISSUE STATEMENT: A special review request to allow the location of an all beverage liquor license for on-premise consumption with gaming in Midland Subdivision, Third Filing, Block 3, Lot 5-B, zoned Controlled Industrial. The subject property is located at 920 South 24th Street West. The owner is Cape France Enterprises and Joann L. Cape; the agent is Engineering Inc. The Zoning Commission conducted a public hearing on June 7, 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 create additional tax revenue for the City.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation per a 4-0 vote that the City Council grant conditional approval for Special Review #787.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- D. Site Photographs
- E. Site Plan

INTRODUCTION

The applicant is requesting a Special Review to permit on premise consumption of beer, wine and liquor with gaming at a proposed Old Chicago Restaurant located at 920 South 24th Street West. The subject property is described as Lot 5-B of Block 3, Midland Subdivision and is zoned Controlled Industrial.

Old Chicago Restaurant offers lunch or dinner with pizza, calzones, pasta and sandwiches. They also serve an extensive beer menu which includes up to 110 varieties from around the world. This Old Chicago Restaurant would be similar to the Old Chicago recently opened in Bozeman. The owners of the proposed Old Chicago site in Billings are the owners of the one in Bozeman.

The entire lot is 75,145 square feet in size with the subject business representing 7,900 square feet. The business is also proposing an outdoor patio which will be 756 square feet for a total square footage of 8,656. As shown on the site plan, the owner is proposing to enclose the 42-foot wide by 18-foot deep patio area with a fence constructed to meet the City Fire and Building Codes. The material of the fence is proposed to be iron. The patio will not be covered.

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.

The Zoning Commission conducted a public hearing on June 7, 2005. The applicants' agent, Marshall Phil and the applicant's developer Mike Gallant were both in attendance at 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.

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that the proposed use is compatible with the surrounding land uses, which are similar in nature.

Section 27-612.A.1. Supplemental Commercial Development Standards specified that a distance of six hundred (600) feet between property lines, measured in a straight line, is maintained from any building that is predominantly used as a church or school or from a public park that contains a children's playground or playfield. Staff finds that this criterion is met through this application.

PROCEDURAL HISTORY

- The application was received on May 2, 2005.
- The City Zoning Commission voted 4-0 at its hearing on June 7, 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 27, 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 chapter.
This application complies with the requirements of the zoning.
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.
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:

1. The special review approval shall be limited to the Lot 5-B of Lot 3, Midland Subdivision, as shown on the submitted site plan.
2. There shall be no amplified or live music on the proposed outdoor patio. Only background music from stereo speakers shall be allowed.
3. The patio area shall remain 'open air' and shall not be enclosed. Additionally, the approval of this patio is for a sidewalk level outdoor patio only.
4. Operation of the patio shall be allowed only during normal business hours.
5. No signage shall be allowed to be placed on or hung from the fence or railing that encloses the patio.
6. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code.

7. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.
8. The site must comply with BMCC 27-1100 for landscaping requirements.
9. The site must comply with BMCC 6-1200 for site development requirements.

****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 June 7, 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 request and stated the applicant had no objections to the conditions for approval. There was no other public comment during the public hearing.
- There was a question from a Zoning Commission Member concerning the outdoor patio and the condition for not allowing entrance to the patio from the outside. It was determined that since the patio does not open to a public right-of-way, securing of the entrance to the patio was not required.

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

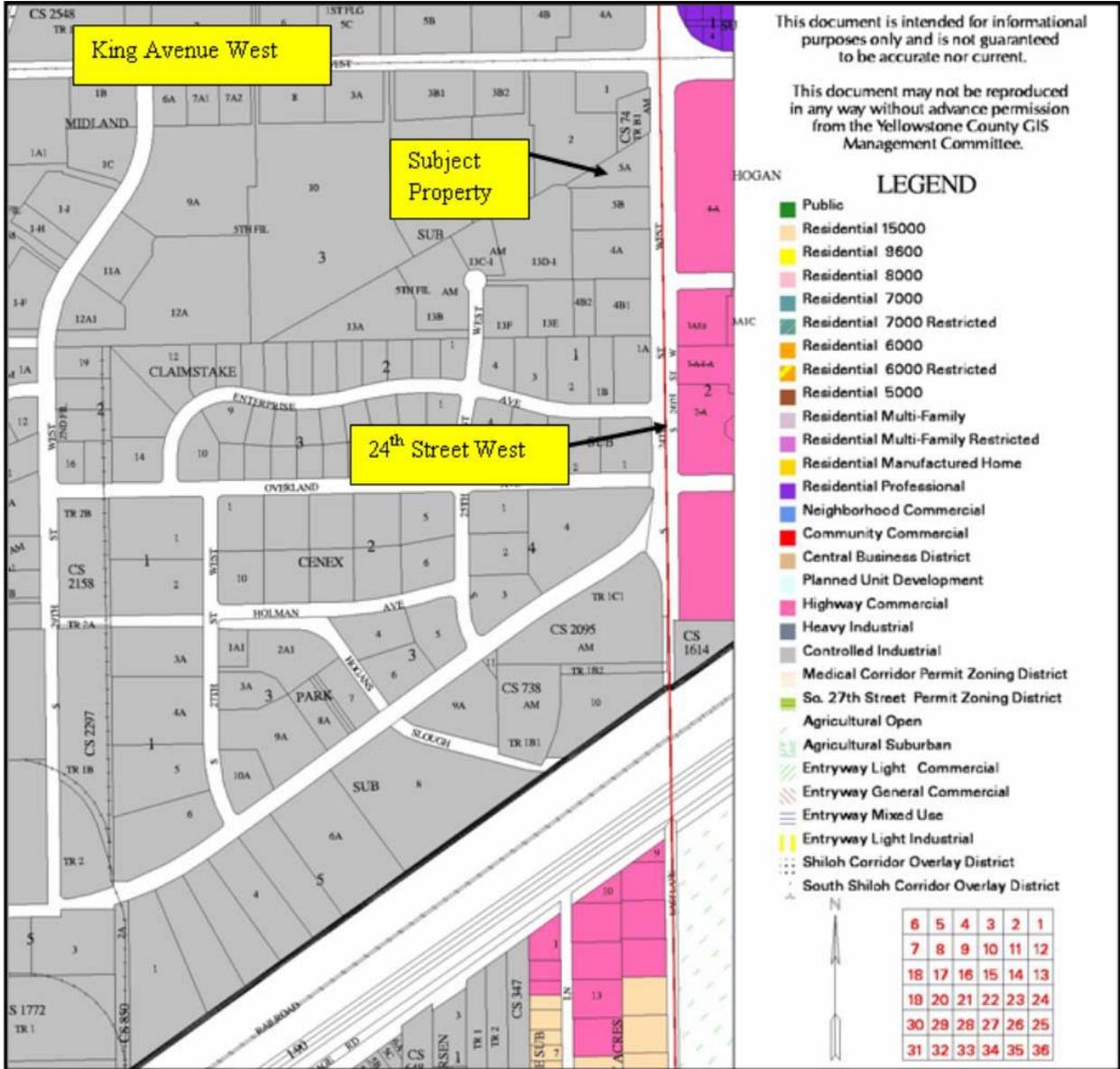
The Zoning Commission is forwarding a recommendation of conditional approval for Special Review #783.

ATTACHMENTS

- A. Zoning Map
- D. Site Photographs
- E. Site Plan

ATTACHMENT A

Zoning Map



ATTACHMENT B
Site Photographs



**View Looking North
towards King Avenue**



**View Looking West towards Best
Buy and PetSmart**

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 2005

TITLE: Public Hearing for Special Review #788
DEPARTMENT: Planning & Community Services
PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to permit a beer and wine license with gaming in a new building on Tract 4D of Studer Acreage Tracts. The subject property is currently vacant and located at 1251 South 32nd Street West and is zoned Controlled Industrial. Doc & Eddy's, George Frank is the owner and Charles B Goldy, Jr. of cbg architects is the agent. The Zoning Commission conducted a public hearing on June 7, 2005, and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED:

Before 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 take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- 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 grant conditional approval for Special Review #788.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. te Photographs
- C. Site Plans

INTRODUCTION

The applicant is requesting a Special Review to permit on premise consumption of beer and wine with gaming at a new five-tenant building to be constructed at 1251 South 32nd Street West. The property is zoned Controlled Industrial and is just north of the new Food Services of America warehouse. There are no properties within 600 feet that are used as a church, school or park with playground equipment. The Zoning Commission voted 4-0 to recommend conditional approval to the City Council.

PROCEDURAL HISTORY

- A special review application to add a beer and wine license with gaming was received on May 2, 2005.
- The City Zoning Commission voted 4-0 at its public hearing on June 7, 2005 for conditional approval of the special review.
- The City Council will conduct a public hearing and consider this application on June 27, 2005.

BACKGROUND

Section 27-612.A. Supplemental Commercial Development Standards specifies that a Special Review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. The applicant is requesting a Special Review to permit on a beer and wine license with gaming in a Controlled Industrial zone in a new building to be constructed at 1251 South 32nd Street West. The subject property is generally located south of the intersection of South 32nd Street West and King Avenue West and north of the BBWA Canal. South 32nd Street West is designated as a principal arterial and has the capacity to handle additional traffic. The property is now vacant and is approximately one acre in area. Doc & Eddy's must move a beer and wine license from its current location at 1425 Broadwater Avenue. The owner intends to construct a new multi-tenant building. One of the tenant spaces is intended for this beer and wine license with gaming. The tenant space for this license will be 2,500 square feet in area. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

The City Zoning Commission has considered the application and is recommending conditional approval. The applicant has submitted two options for the site plan. Both are acceptable layouts for the proposed building. Final configuration, site development and landscaping will be submitted at the time of building permit review.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

4. Complies with all requirements of this Article (27-1500).
This application complies with the requirements of the zoning regulations.
5. 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.

6. 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 proposed use is compatible with the adjoining land uses.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

9. Street and road capacity;
10. Ingress and egress to adjoining streets;
11. Off-street parking;
12. Fencing, screening and landscaping;
13. Building bulk and location;
14. Usable open space;
15. Signs and lighting; and/or
16. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

5. The special review approval shall be limited to Tract 4D of Studer Acreage Tracts.
6. No outdoor seating, outdoor music or outdoor public announcement systems will be allowed with this application.
7. Any lighting on the building or within the parking lot shall have full cut-off shields so light is directed to the ground and not onto adjacent property. Lighting of signs shall be as allowed within the City Sign Code (Section 27-701 BMCC).
8. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

****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 public hearing held on June 7, 2005 before the City Zoning Commission was attended by Mr. Tom Williams from Doc & Eddy's, Inc. and Charles B. Goldy, agent. Mr. Williams and Mr. Goldy offered testimony to the Zoning Commission. No surrounding property owners attended the public hearing or submitted objections to the proposed special review use.

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 development within an existing commercial corridor.
- The proposal provides contiguous development focused in and around an existing population center.

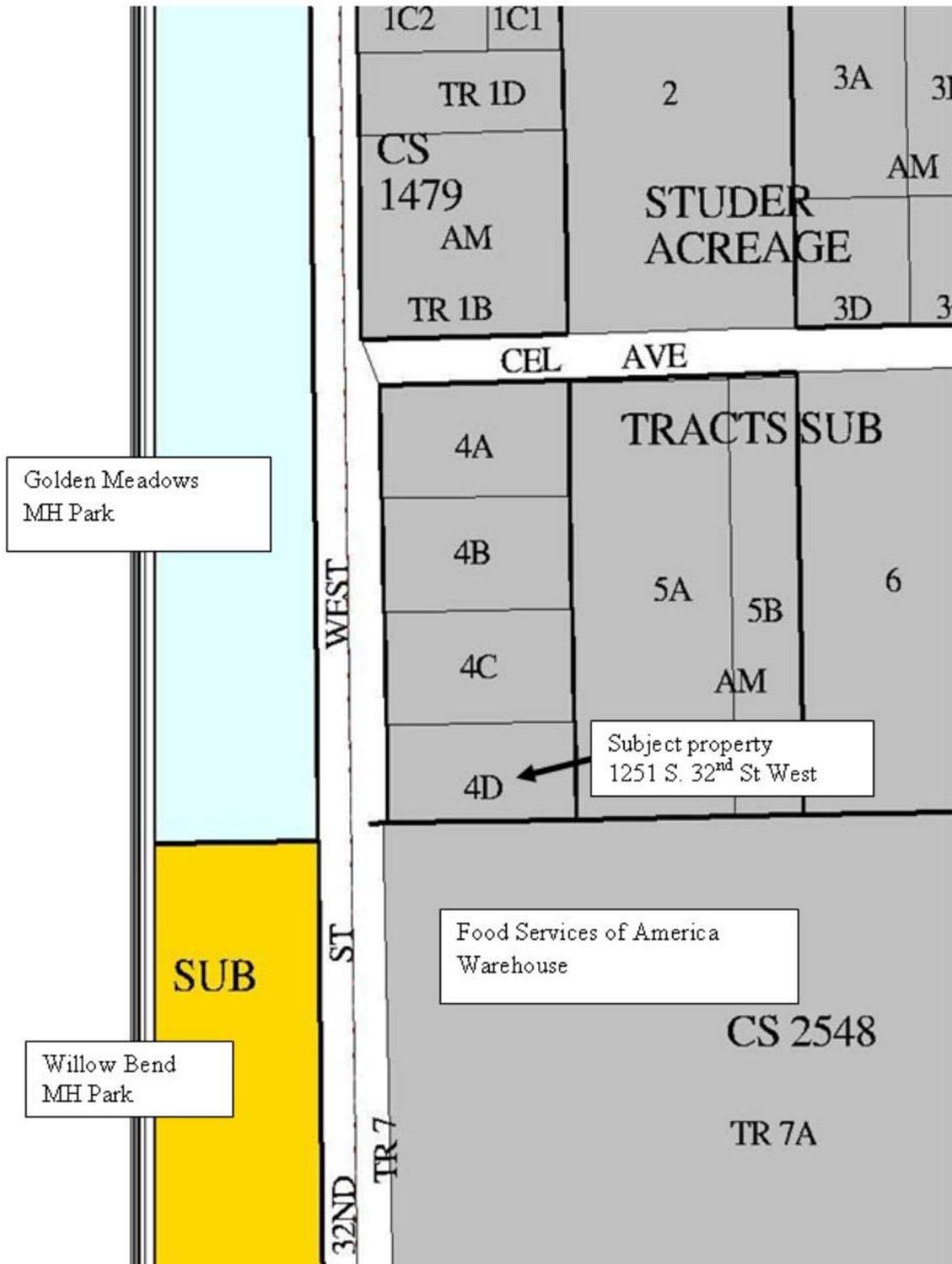
RECOMMENDATION

The Zoning Commission is recommending that the City Council grant conditional approval for Special Review #788.

ATTACHMENTS

- G. Zoning Map
- H. Site Photographs
- I. Site Plans

ATTACHMENT A Zoning Map



ATTACHMENT B

Site Photographs for Special Review #788



Existing property at 1251 32nd Street West



South of Subject Property – FSA warehouse

ATTACHMENT D, continued
Site photographs

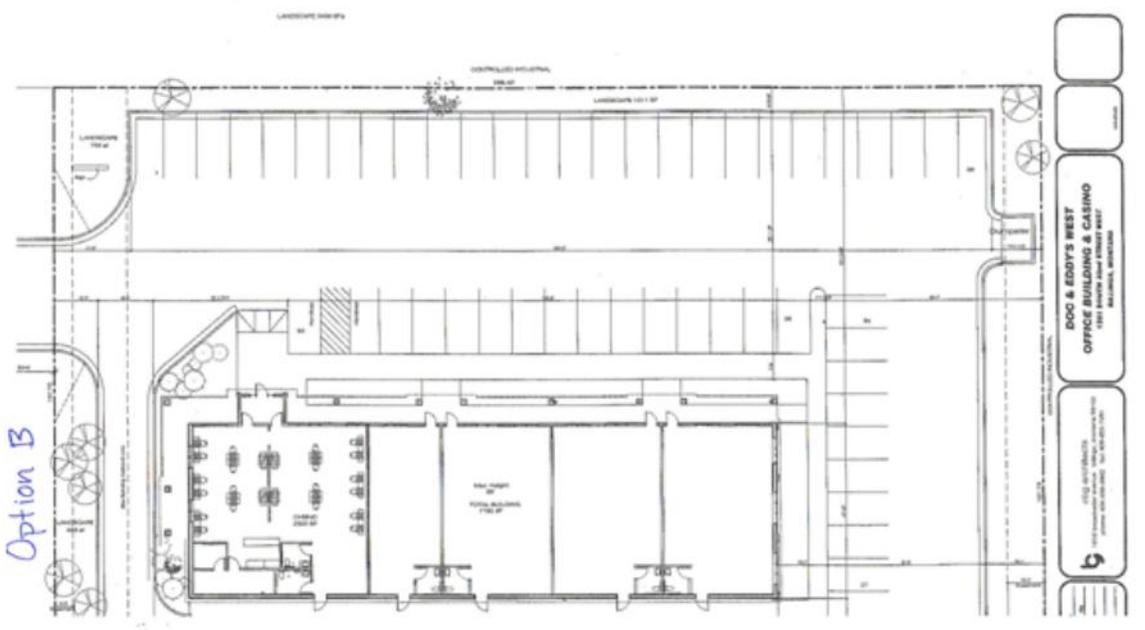
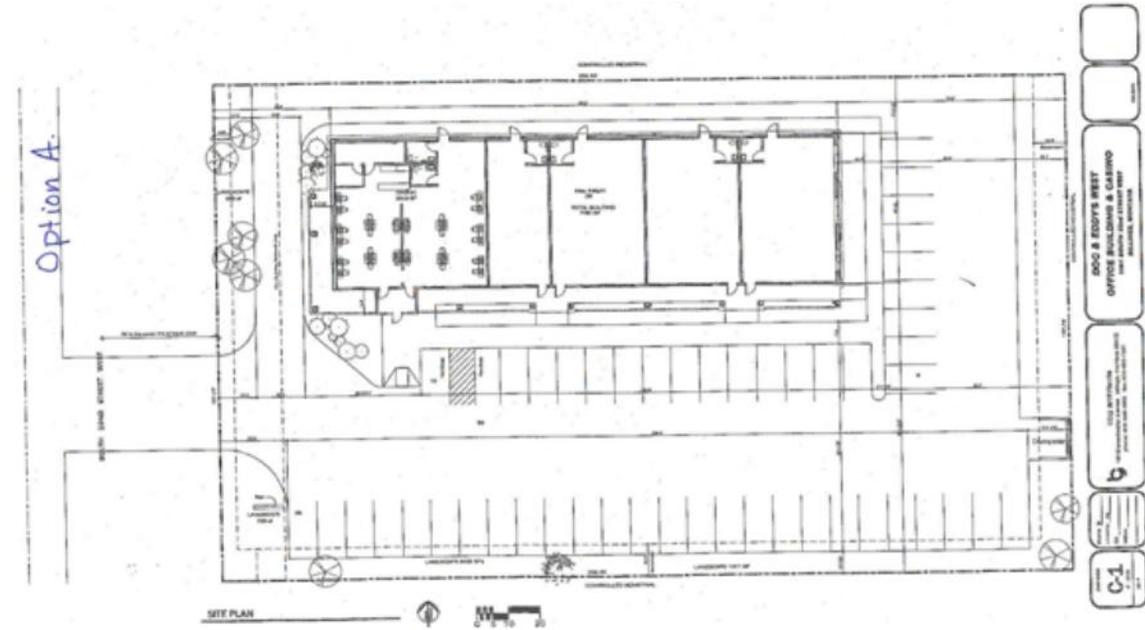


West of subject property Golden Meadows and Willow Bend manufactured home parks



North of subject property - Truck repair parking area

ATTACHMENT C
Site Plan



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Zone Change #755 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 Public to R-7,000 on 14,673 square foot tract of land formerly known as Holfeld Park. The subject property is generally located in the S/W ¼ of Section 27, T1N, R26E, north of Swords Lane and south of Alkali Creek and the Billings Bench Water Association Canal. The property owner is Blake Laughlin and PRPL and the agent is Engineering, Inc. 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 increase the City's tax base when the property is transferred to the ownership of Blake Laughlin and the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #755 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 from Public to R-7,000 on the 14,673 square foot Holfeld Park property just north of Swords Lane at the intersection of Airport Road and Alkali Creek Road in Billings Heights. The Parks, Recreation and Cemetery Board met on April 13, 2005 to formally consider a land swap proposed by Blake Laughlin, the applicant, to trade 56,082 square feet of property Mr. Laughlin owns in Tract A1 of C/S 1883 that includes Alkali Creek and its 100-year flood plain for the existing 14,673 square foot Holfeld Park property. The Parks Board voted to recommend approval to the City Council and the Council will consider the land swap on June 13, 2005. If the land swap and this re-zoning are approved the applicant plans to develop a condominium style housing development that will consist of one and two family dwellings with amenities that will complement the proposed Alkali Creek multi-use trail and conservation area.

PROCEDURAL HISTORY

- On February 7, 2005 the Planning Department received the application for a zone change.
- In March and April 2005 the applicant requested a delay of process for the zone change to allow time for the Parks Board to consider his request for a land swap.
- 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

Mr. Laughlin started the process of the land swap with the Parks, Recreation and Public Lands Department in 2002. Mr. Laughlin was delayed in the process due to the requirements for appraisals, obtaining a flood plain permit and resolving other issues with the proposed land swap and developing a plan for the Brookside residential community. All pertinent issues have been resolved and the re-zoning of the former Holfeld Park may proceed at this time. 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 allow a variety of housing types. The residential zones will be located away from this arterial street intersection of Airport Road and Alkali Creek Road and will help preserve the water quality of Alkali Creek. The 2003 Growth Policy and the Heritage Trail Plan (2004) supports the development of a variety of housing types, the protection of water quality and developing access to parkland areas.
2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning will increase the traffic generated from this site. Currently the parcel is vacant. This property is bordered on the south by Swords Lane (Alkali Creek Road) and the main access will be Holfeld Lane. The adjacent streets should be able to accommodate the increase in traffic from this development.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

These lots have or will have public street frontage and are served by the City Fire Department. Additionally, in the master plan and site plan review process, the Fire Department will review the layout of the proposed access roads to ensure that fire protection can be provided to all new structures.

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 all districts, has limits on the maximum percentage of lot that can be covered with structures. The maximum number of dwelling units would be 11 two-family units or a mixture of single-family and two-family units. These features should prevent overcrowding of the land. The new park land is nearly four times what currently exists and will protect the creek bed and flood plain from encroachment.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning of Residential-7,000 allows single-family detached dwellings and duplexes, based on minimum lot areas. The new zoning should avoid 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 increase the traffic generated from this site. Traffic mitigation will be reviewed at the time of site plan review.

Water and Sewerage: The City has adequate facilities to serve this property.

Schools and Parks: The tax records state that children from this development would attend Bench Elementary, Castle Rock Middle and Skyview High Schools. The parkland swap will increase the existing dedicated parkland from 14, 673 square feet to 56,082 square feet. Additional dedication of parkland is not required for this development.

Fire and Police: The subject property will be served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of site plan review for the condominium development.

9. *Does the new zoning give reasonable consideration to the character of the district?*
The area north of this property across Alkali Creek has been developed as single family homes. The area south and east of the property has been developed for commercial sites and multifamily housing. Given the proximity to arterial streets and the Alkali Creek trail and parkland the proposed zoning is not out of character with the 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.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will allow for more dense development on lots that are currently served with City water and sanitary sewer.

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 #755 and adopt the determinations of the discussed 12 criteria.

ATTACHMENTS:

- A: Site photographs
- B: Map
- C: Ordinance

ATTACHMENT A - Site Photographs – Zone Change #755



View north and east from southwest property corner (behind office building)

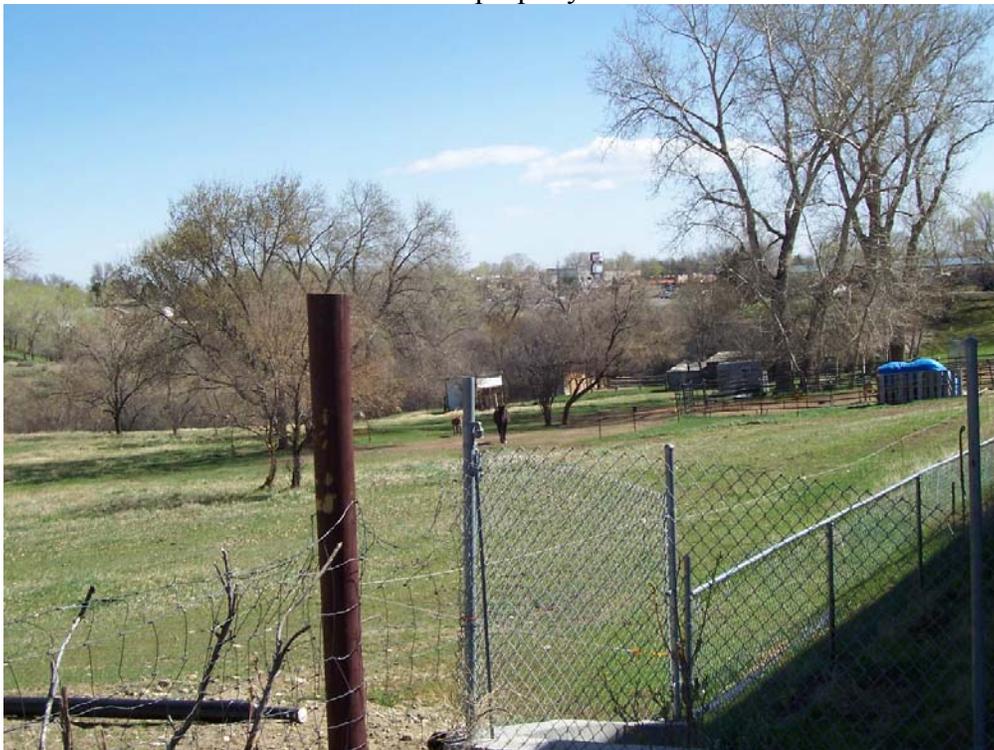


View north along west property boundary
(Water storage reservoir and homes on Antelope Trail in background)

Attachment D
Site photographs continued

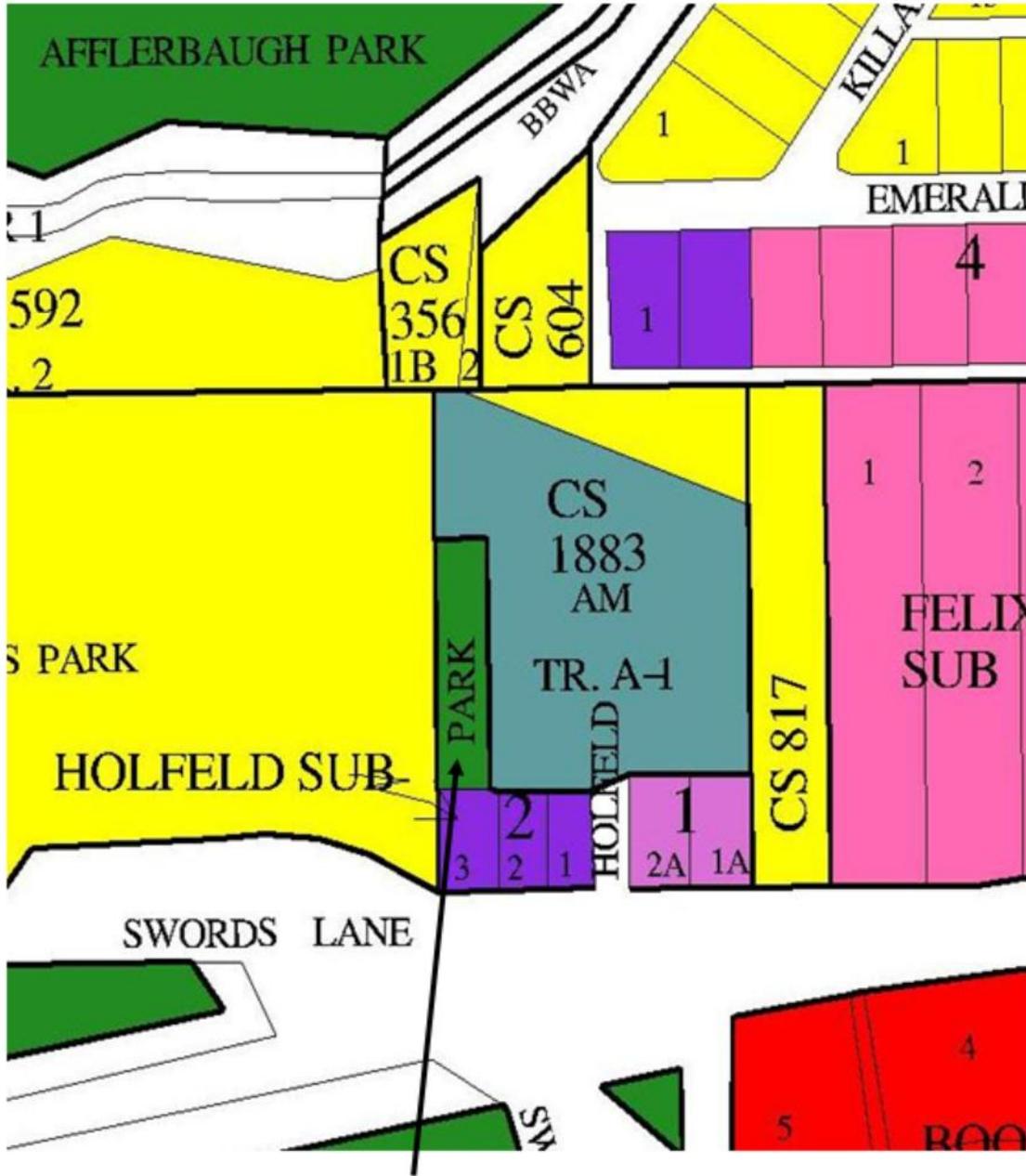


View east from Swords Lane – property entrance on left at mailbox



View north and east from behind office building south of subject property

ATTACHMENT B
Zoning Map



Subject Property

**ATTACHMENT C
ORDINANCE NO. 05-**

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION ON HOLFELD PARK in the Southwest 1/4, Section 27, of Township 1 North, Range 26 East, a 14,673 square foot parcel of land. **THE SUBJECT PROPERTY IS LOCATED NORTH OF SWORDS LANE, WEST OF HOLFELD LANE AND SOUTH OF ALKALI CREEK.**

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 Holfeld Park, Lto 3 Holfeld Subdivision containing 14,673 square feet of land, more or less and is presently zoned Public 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 **Public** to **Residential-7,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential-7,000** 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 27, 2005.

PASSED, ADOPTED AND APPROVED on second reading July 11, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#755

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



CITY COUNCIL
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Public Hearing and First Reading Ordinance for a new 27th Street Tax Increment Finance District, establishing a Boundary, and revising the boundary of the original 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 (TIF) 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. On June 13th, the Council adopted a Resolution finding the area blighted. The next step is to create the District by Ordinance, establish the boundary for the new district and revising the boundary of the original district.

ALTERNATIVES ANALYZED: The City Council may create a new district since it adopted the Resolution of Bight. The 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 adopt the Ordinance creating a new Tax Increment Finance District.

Approved by: City Administrator _____ **City Attorney** _____

ATTACHMENTS

- A. Ordinance
- B. Urban Renewal Plan

INTRODUCTION

A Downtown Tax Increment Finance (TIF) 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. This Ordinance would revise the boundaries of that District and create a new, stand- alone TIF.

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.
- City Council adopted the Resolution of Blight on June 13, 2005.
- June 14, 2005 the Planning Board reviewed the proposed Urban Renewal Plan and recommended adoption to the City Council.

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

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.

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.

RECOMMENDATION

Staff recommends that City Council adopt the Ordinance creating a new Tax Increment Finance District.

ORDINANCE NO. 05 _____

ORDINANCE RELATING TO THE DOWNTOWN REDEVELOPMENT DISTRICT AND THE CREATION OF A NEW URBAN RENEWAL AREA; AUTHORIZING THE REMOVAL OF CERTAIN PROPERTY FROM THE DOWNTOWN REDEVELOPMENT DISTRICT, ESTABLISHING SUCH PROPERTY AS A NEW 27th STREET URBAN RENEWAL AREA, ADOPTING AN URBAN RENEWAL PLAN THEREIN INCLUDING A TAX INCREMENT PROVISION, APPROVING AN URBAN RENEWAL PROJECT THEREIN AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS OF THE CITY TO FINANCE COSTS THEREOF

Recitals:

WHEREAS, this Council on _____, 2005, conducted a public hearing on a proposal to remove certain property (as hereinafter defined, the "Property") from the Downtown Redevelopment District, an existing urban renewal area of the City (the "Redevelopment Area"), and to establish such removed property as a new urban renewal area to be designated as The 27th Street District Urban Renewal Area (the "District") and to adopt an urban renewal plan therefor and undertake an urban renewal project therein, as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act").

WHEREAS, the Property is depicted on the attached Schedule 1-A and legally described on the attached Schedule 1-B (each of which is hereby incorporated herein and made a part hereof). Pursuant to this Ordinance, the boundaries of the Redevelopment Area are being modified to reflect the removal of the Property from the Redevelopment Area. The Redevelopment Area, as modified, is depicted on the attached Schedule 2-A and legally described on the attached Schedule 2-B (the "Resulting Redevelopment Area") (each of which is hereby incorporated herein and made a part hereof). The Resulting Redevelopment Area is contiguous.

WHEREAS, opportunities have been presented to the City that make it desirable for the City to consider an urban renewal project within the District consisting of the acquisition of certain vacant or blighted properties, demolishing the blighted structures thereon, improving such properties with, landscaping, utilities, and other similar improvements, assembling such properties, and making the properties so improved available for private redevelopment in accordance with the Act, including the public solicitation of redevelopment proposals (the "Project"). The project to consist of a public parking garage, a private parking garage combined into one facility and a Commercial/Condominium Apartment complex. The parking structure is estimated to cost \$2,914,189 and the Commercial/Condominium Apartment complex is estimated to cost \$14,519,346. The private portion of this facility to be financed from the proceeds of Tax Increment Urban Renewal Bonds in a principal amount not to exceed \$2,000,000 (the "Bonds").

WHEREAS, an urban renewal plan entitled the Urban Renewal Plan of the 27th Street District is attached hereto as Exhibit C (which is hereby incorporated herein and made a part hereof) (the "Plan"). The Plan contains a tax increment provision and will govern the operation and administration of the District.

WHEREAS, the Plan has been reviewed and approved by the Yellowstone County Planning Board, as evidenced by the copy of the letter attached hereto as Exhibit D (which is hereby incorporated herein and made a part hereof). The Plan contains a description of the Project and its estimated costs.

Ordinance:

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the

public hearing and other studies and information available to this Council, that:

- a. The Property presently contains a structure and property that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses, the present condition of the Property substantially impairs the sound functioning of the downtown area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council finds that the Property is a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary in the interest of the public, health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant downtown.
- b. No housing element or structure is disturbed by this District making no relocation necessary;
- c. The Plan conforms to the Growth Policy and Framework plan or parts thereof of the City for the municipality as a whole;
- d. The Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise;
- e. A sound and adequate financial program exists for the financing of the Project, which program includes the sale and issuance by the City of the Bonds in an amount not to exceed the costs of the Project and other projects hereafter approved by this Council, including administration costs, reserve fund deposits, capitalized interest and costs of issuance of the Bonds, in proportions yet to be determined, for the purpose of financing all or a portion of the costs of the Project as set forth above; and
- f. The Project constitutes an urban renewal project within the meaning of the Act and is authorized to be undertaken by the City.

2. Plan Adoption. The Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein.

3. Project Approval. The Project is hereby approved.

4. Bonds. This Council approves financing the costs of the Project, or a portion thereof, with proceeds of the Bonds. The City is hereby authorized and directed to undertake activities and analysis ordinarily prerequisite to the issuance of tax increment urban renewal revenue bonds in a principal amount not to exceed \$2,000,000 for financing of the costs of the Project or portion thereof

5. Resulting Redevelopment Area. The City is in receipt of a report from an Independent Financial Consultant that satisfies the requirements of Sections 7.8 and 7.10 of Resolution No. 12937, adopted February 26, 1979 (the "Bond Resolution"). From and after the effective date-set forth below, the Property is removed from the Redevelopment Area and the Redevelopment Area shall consist of that area and those improvements situated on, in, and under the Resulting Redevelopment Area. Accordingly, all references to "Renewal Area" or "Downtown Redevelopment District" or "District" in the Bond Resolution or related resolutions made prior to this Ordinance (such as, without limitation, Resolution Nos. 12107 and 12303), or in the Downtown Redevelopment District Plan, or in all documents referencing the Redevelopment Area (such as, without limitation, documents relating to Tax Increment Urban Renewal Bonds Refunding Series 1993A and 1993B), shall mean the Resulting Redevelopment Area, as such area may be modified from time to time. The amendment to the Renewal Area evidenced by this

Section shall be achieved by this Ordinance without any further undertaking; however, the City is hereby authorized to amend separately any of the documents referenced in the preceding sentence, including, without limitation, the Downtown Redevelopment District Plan, by a separate written amendment reflecting the detraction of the District or by republication of the entire relevant document, with the definition of the redevelopment area limited to the property described on the attached Schedules B-1 and B-2.

6. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake the Project. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or the Project is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

7. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

ADOPTED by the City Council of the City of Billings, Montana, on second reading this _____ day of 2005.

Mayor

ATTEST:

City Clerk

SCHEDULE 1-B

Legal Description of the Existing District

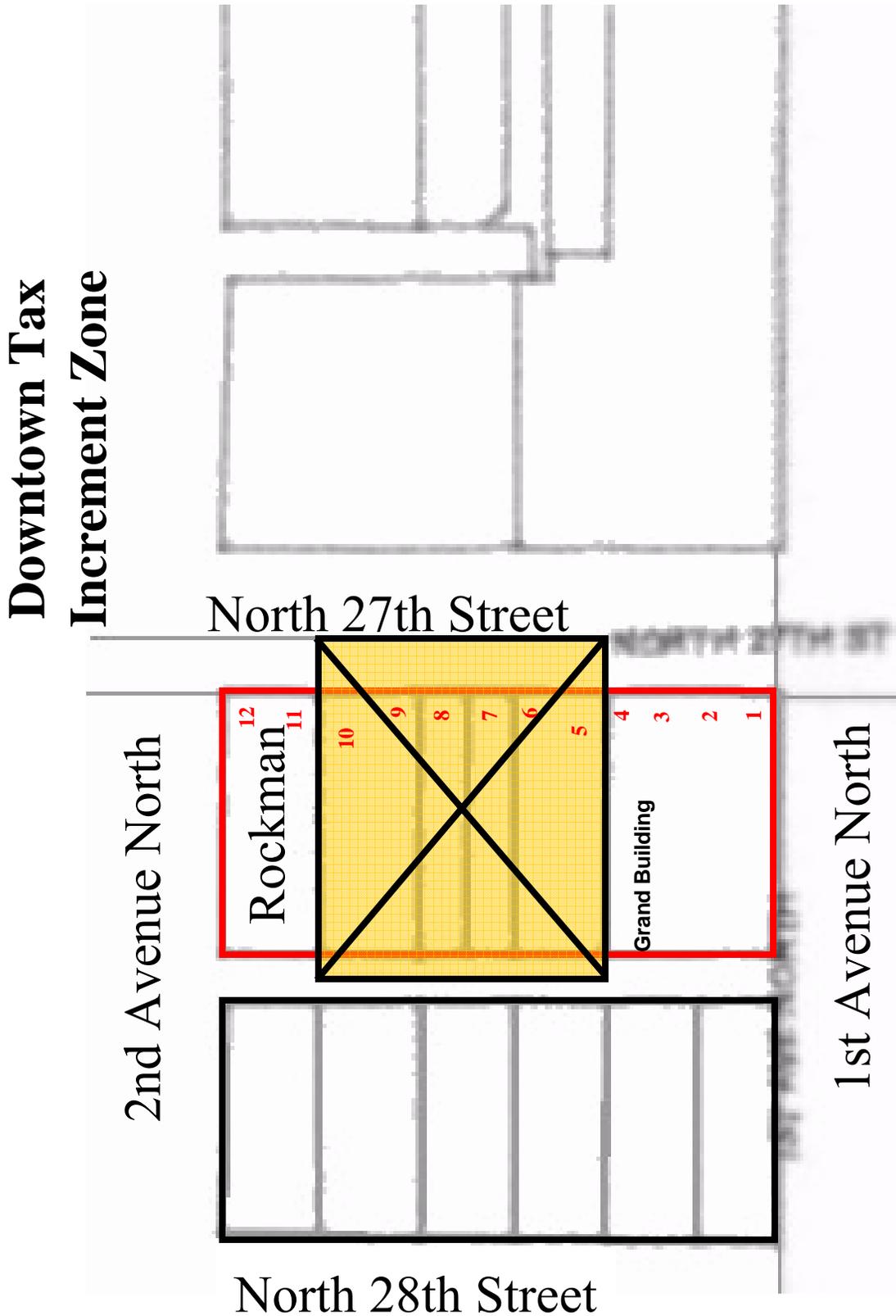
Beginning at the street centerline intersection of 6th Avenue North and North 22nd Street of Original Town of Billings, Recorded September 1, 1884, Under Document No. 16312, Records of Yellowstone County, Montana; thence Southeasterly along the street centerline of North 22nd Street, across the Montana Northern Railroad Inc. Right-Of-Way to the street centerline intersection of South 22nd Street and Minnesota Avenue; thence Southwesterly along the street centerline of Minnesota Avenue to the street centerline intersection of South 23rd Street and Minnesota Avenue; thence Southeasterly along the street centerline of South 23rd Street to the street centerline intersection of South 23rd Street and 2nd Avenue South; thence Southwesterly along the street centerline of 2nd Avenue South to the street centerline intersection of 2nd Avenue South and the projected east alley Right-Of-Way line of Block 162 Billings Original Town; thence Southeasterly along the East alley Right-Of-Way line of Blocks 162, 171 and 181 of Billings Original Town to the north Right-Of-Way line of 5th Avenue South; thence Northeasterly along the north Right-Of-Way line of 5th Avenue South to the southwest corner of Block 180 of Billings Original Town; thence southeasterly along the east Right-Of-Way line of South 25th Street to a point on the west boundary of Lot 1, Post Office Addition, Recorded June 26, 1973, Under Document No. 937654 Records of Yellowstone County, Montana; thence southerly along the west boundary line of said Post Office Addition where it intersects the street centerline of 9th Avenue South; thence southwesterly along the street centerline of 9th Avenue South to the street centerline intersection of 9th Avenue South and the projected east alley Right-Of-Way line of Block 230 of Billings Original Town; thence southeasterly along the east alley Right-Of-Way line of Block 244, of Sugar Factory Addition, Recorded November 20, 1906, Under Document No. 2000011, Records of Yellowstone County, Montana, to the northwest corner of Tract D of Corrected Tracts C & D of The Amended Certificate of Survey No. 152, Recorded April 30, 1979, Under Document No. 1126883, Records of Yellowstone County, Montana now being with in Lot 2, Block 1 of Vernwood Subdivision, Recorded May 30, 1996, Under Document No. 1830655, Records of Yellowstone County, Montana; thence Southeasterly to the northeast corner of Lot 1, Block 1 of said Vernwood Subdivision; thence southeasterly to the southeast corner of said Lot 1, Block 1 of Vernwood Subdivision; thence Southwesterly to the northwest corner of said Tract C of said Certificate of Survey No. 152; thence southeasterly to the south corner of Tract C of said Certificate of Survey No. 152; thence south to a point common to Certificate of Survey 1405, Recorded April 30, 1974, Under Document No. 961631, Records of Yellowstone County and Lot 24, Block 29 of said Sugar Factory Addition; thence Southwesterly along boundary line common to said Certificate of Survey 1405 and said Sugar Factory Addition to a point on the east Right-Of-Way line of South 27th Street; thence Southeasterly along the east Right-Of-Way line of South 27th Street to the northwest corner of Tract 1 of Certificate of Survey 1404, Recorded April 30, 1974, Under Document No. 961630, Records of Yellowstone County, Montana; thence Southeasterly along the east Right-Of-Way line of South 27th Street to a corner common to the south corner of said Tract 1 of Certificate of Survey 1404 and Lot 4A, Amended Plat of Lot 4 Clark Subdivision, Recorded August 7, 1972, Under Document No. 913310, Records of Yellowstone County, Montana; thence north to the northwest corner of said Lot 4A, Clark Subdivision; thence east to the northeast corner of said Lot 4A, Clark Subdivision; thence south to the southeast corner of said Lot 4A, Clark Subdivision; thence west along the south lot line of Lot 4A, Clark Subdivision to the intersection of the east Right-Of-Way line of South 27th Street; thence along the northeasterly Right-Of-Way line of South 27th Street to the street intersection of Nall Avenue; thence south to the southwesterly Right-Of-Way line of South 27th Street at the intersection of Nall Avenue; thence northwesterly along the southwesterly Right-Of-Way line of South 27th Street to the north corner of Tract 2A of Amended plat of Tract 2, of Certificate of Survey No. 1404, Recorded November 27, 1974, Under Document No. 976470, Records of Yellowstone County, Montana; thence south to the southeast corner of southerly 65 feet of the N1/2 of Lot 2 of Clark Subdivision, Record of Survey, Recorded November 24, 1975, Under Document No. 1003804, Records of Yellowstone County, Montana; thence westerly along the south line of the said Record of Survey of Clark Subdivision to the east Right-Of-Way line of Sugar Avenue; thence north along the east Right-Of-Way line of Sugar Avenue to the northwest corner of Lot 1, of said Record of Survey of Clark Subdivision; thence northwesterly to the intersection of the north Right-Of-Way line of State Avenue and the west alley Right-Of-Way of Block 250, of Billings Original Town; thence northwesterly along the west alley Right-Of-Way line of Blocks 250 and 246, of Billings Original Town to the intersection of the north Right-Of-Way line of 10th Avenue South and the west alley Right-Of-Way line of Block 242, of Billings Original Town; thence northeasterly along the north Right-Of-Way line of 10th Avenue South to the southeast corner of Block 242, of Billings Original Town; thence northwesterly along the west Right-Of-Way line of South 28th Street to the intersection of the west Right-Of-Way line of South 28th Street and the street centerline of 2nd Avenue

South; thence southwesterly along the street centerline of 2nd Avenue South to the street centerline intersection of 2nd Avenue South and South 33rd Street; thence northwesterly along the street centerline of South 33rd Street across the Montana Northern Railroad Inc. Right-Of-Way, continuing northwesterly along the street centerline of North 33rd Street to the street centerline intersection of North 33rd Street and Division Street; thence north along the street centerline of Division Street to the street centerline intersection of Division Street and 6th Avenue North; thence northeasterly along the street centerline of 6th Avenue North to the street centerline intersection of 6th Avenue North and North 22nd Street to the Point Of Beginning, all inclusive; excluding Lots 5 through 10, Block 92, along with the east half of adjacent alley Right-Of-Way and the west half of the adjacent North 27th Street Right-Of-Way, of Original Town of Billings, Recorded September 1, 1884, Under Document No. 16312, Records of Yellowstone County, Montana.

SCHEDULE 2-A

Map of the Resulting Redevelopment Area

- a. Drawing of the area showing an enlarged drawing of the area to be removed from the overall district and reformed as the new Tax Increment District.



SCHEDULE 2-B

Legal Description of the Resulting Redevelopment Area

The entire tax increment district lies within Block 92, City of Billings, County of Yellowstone, State of Montana. It consists of Lots 5 through 10, and the portion of North 27th Street, the length of the property to a 40' depth consistent of the center line of North 27th Street and a portion of the alley dividing Block 92 consisting of a strip of land the length of the property to a 10' depth to the center line of the alley.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, June 27, 2005

TITLE: Sandstone Redevelopment Project Development Agreement
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Council will consider approving a resolution and development agreement for the proposed Sandstone redevelopment project. The development agreement is not required but is advised in order to clearly identify the City's and developer's responsibilities for the project.

ALTERNATIVES ANALYZED: The City could choose to not participate in the project, to participate in ways that offer partial support or to participate fully, as is outlined in the development agreement. Since the City owns five out of the six lots on the site, its non-participation would terminate the development proposal. The proposal includes various forms of support including land, tax increment financing, public parking funds and a Fannie Mae housing loan. The City could assist the project by agreeing to transfer the land to the developer, combined with any, but not all, of the other forms of assistance. The proposed development agreement obligates the City to use all of these incentives.

FINANCIAL IMPACT: The financial impact is typical for downtown redevelopment projects: it requires significant public subsidy to offset costs that are higher than outside the city's core, but the long term benefits of jobs, downtown residents and eventually increasing the tax base difficult to estimate but are believed to be substantial. The subsidy is estimated to be about \$450,000 for land, \$2,000,000 in tax increment funds and \$1,722,500 in parking funds. There should be no un-reimbursed costs for a \$2,000,000 Fannie Mae loan but the City will be required to set aside \$500,000 of General Fund money to secure the loan.

RECOMMENDATION

Staff recommends that Council approve the resolution and development agreement with Downtown Billings Investors, LLC for the Sandstone downtown redevelopment project.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A: Development Agreement

B: Resolution

INTRODUCTION

The Council will consider approving a development agreement with the developer of the proposed Sandstone downtown redevelopment project. The agreement outlines each party's obligations for the project.

PROCEDURAL HISTORY

- City Council work session discussions were held on November 1 and December 6, 2004 and on May 2, 2005
- A Resolution of Intent to create a new tax increment district, a Resolution Declaring Blight and a Resolution of Intent to dispose of City land were approved by Council on June 13, 2005.
- The City/County Planning Board considered and recommended approval of an Urban Renewal Plan for a new tax increment district at its June 14, 2005 meeting.
- The development agreement and an Ordinance creating a new tax increment district will be considered by Council on June 27, 2005
- A Resolution disposing of land and second reading of the TID Ordinance are scheduled for July 11, 2005
- The Fannie Mae loan approval and a bond resolution are scheduled for August, 2005
- Architect selection is scheduled for August or September, 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 on the west side of the 100 block of N. 27th Street except the Grand Hotel. Gene Rockman, who owns the property at 2nd Ave. North, 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 is complex because it involves at least six (6) separate actions by the Council: creating a tax increment district and issuing bonds, purchasing public parking spaces, borrowing Fannie Mae funds to assist the housing component of the project, consolidating the land, selecting the architect and awarding a construction contract for its portion of the project. The developer has a role in each of these items. A development agreement is the preferred method to clearly identify each party's obligations.

The development agreement covers the issues in the following way:

- The developer will construct a 10+ story building that contains residential and commercial condominium units, plus parking, using private and public financing
- The City will transfer the property to the developer for no cost
- The City will create a new tax increment district containing the consolidated property, it will issue bonds of at least \$2,008,493 and these proceeds will be released to the developer to cover documented construction costs
- The City will borrow \$2 million from Fannie Mae and re-lend it to the developer, who will pay all issuance and interest costs. The loan will have a two year term and then will be replaced by permanent financing or paid when condo units are purchased

- The City will be required to commit \$500,000 to secure the loan
- The City will purchase approximately 106 parking spaces for \$16,250 each, or a total of \$1,722,500
- The developer will comply with all state and local laws, including competitively bidding the public parking and paying prevailing wages on the entire project
- The developer will prepare unit ownership (condo) and owner association incorporation and bylaw documents and file them after the City reviews and approves them

There are multiple contingencies and conditions that must be satisfied in order to finally and irrevocably commit both the developer and the City.

ALTERNATIVES ANALYSIS

- The City Council may reject the agreement and withdraw from the project. The project will not proceed since the City's land is critical to the project
- The Council may modify the agreement and change either the amount or types of support for the project or any of the conditions. The developer may not be able to proceed with less support because developing a downtown high-rise is more expensive than developing outside of the city's core
- The Council may approve the agreement. If all conditions are satisfied, the City will provide approximately \$6.2 million in subsidy (including a \$2 million loan) for the \$17 million project. The project will put City property on the tax roll, generate temporary and permanent employment, create 30-40 downtown single family residential units and improve the appearance of N. 27th Street.

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 project 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.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The project is identified in the N. 27th Street Urban Renewal Plan that was adopted by the City/County Planning Board and is recommended to the City Council. The urban renewal plan is consistent with the 2003 Growth Policy and the 1997 Downtown Framework Plan.

RECOMMENDATION

Staff recommends that Council approve the resolution and development agreement with Downtown Billings Investors, LLC for the Sandstone downtown redevelopment project.

ATTACHMENTS

- A: Development Agreement
- B: Resolution

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into as of _____, 2005 by and between the CITY OF BILLINGS, a municipality of the State of Montana (“City”), and DOWNTOWN BILLINGS INVESTORS, LLC, a Montana limited liability company, with its principal place of business in Billings, Montana (“Developer”).

RECITALS

WHEREAS, Developer desires to construct a multi-story building in Downtown Billings that would include street-level retail space and above-ground parking, office, and residential units (“Building”); and

WHEREAS, the Building shall be known as “The Sandstone” and the entire development project is hereafter referred to as the “Project”; and

WHEREAS, the location contemplated for construction of the Project is currently blighted and in need of redevelopment that would promote the continuing revitalization of Downtown Billings; and

WHEREAS, the City is committed to the revitalization of Downtown Billings and wishes to obtain centrally-located public parking facilities that are essential to the economic health of Downtown Billings; and

WHEREAS, the City has memorialized its support for downtown redevelopment in the Yellowstone County and City of Billings 2003 Growth Policy Plan (“2003 Growth Policy”) and in the 1997 Downtown Billings Framework Plan and those documents support the use of tax increment finance districts, cooperation between private and public entities, and expansion of public and private parking facilities to encourage downtown redevelopment; and

WHEREAS, the City will acquire a number of public-owned parking stalls located in the core of Downtown Billings when the Building is completed; and

WHEREAS, the City is authorized to levy property taxes and administer Tax Increment Financing (“TIF”) funds in accordance with Montana’s Urban Renewal Law, Montana Code Annotated §§ 7-15-4201 through 7-15-4324 (2003), and such funds are needed to successfully complete the Project; and

WHEREAS, the City and Developer wish to create a site-specific tax increment district corresponding to the location of the subject property and use proceeds from the sale of tax increment urban renewal revenue bonds to help finance the Project; and

WHEREAS, the City and Developer wish to enter into this Agreement to establish the terms and conditions under which, among other things, the City will provide TIF funds to Developer and the City will acquire public parking facilities in the Project,

NOW, THEREFORE, the City and Developer agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions pursuant to which the City will make a grant of TIF funds to Developer; Developer will complete the Project and effectuate the rehabilitation and redevelopment of the real property described below; the City will acquire public parking facilities in the Building; and the parties will take other steps to achieve these and other related goals. The Project has the potential to become a feature retail and residential property that will eliminate blight, complement the Montana Avenue Historic District, further the objectives of the 1997 Downtown Billings Framework Plan, attract a stable population within the urban renewal area, promote downtown housing, and generate additional tax revenues within the urban renewal area. The existing property consists of a deteriorated building and adjacent grounds. The City and Developer anticipate that the Project will transform this property into a substantial catalyst for additional downtown redevelopment.

2. THE REAL PROPERTY

2.1. Description. The City currently owns two small parking lots on the west side of 27th Street North between First Avenue North and Second Avenue North (hereafter “City Property”). Fagg Family Properties, LLC owns a building and real property located at 114 North 27th Street that is situated between the two City parking lots (hereafter “FFP Property”). Some of the members of Fagg Family Properties, LLC are also members of Downtown Billings Investors, LLC. The legal descriptions of the City Property and the FFP Property are attached as Exhibit A. A diagram showing the approximate boundaries and location of the City Property and the FFP Property is attached as Exhibit B. Together the City Property and the FFP Property constitute a parcel that measures approximately 21,000 square feet and that is hereafter referred to as the “Combined Parcel.” The Combined Parcel and the improvements that are to be built upon it in accordance with this Agreement are hereafter referred to collectively as the “Property.”

2.2. Valuation. The parties agree that they will obtain a market evaluation from a qualified real estate professional acceptable to both parties to determine the approximate fair market value of the City Property and the FFP Property. The cost of the market evaluation shall be borne equally by the City and Developer.

2.3. Transfer of Real Property to Developer for Parking Ramp and Other Uses. Developer agrees that after execution of this Agreement it shall acquire fee simple title of the FFP Property so that the property can be consolidated with the City Property to complete the Project. The City agrees that after all conditions described in Section 5 or elsewhere in this Agreement have been satisfied or released it shall transfer fee simple title of the City Property without liens or encumbrances (unless specifically provided for in this Agreement) to Developer by warranty deed. This transfer is made in consideration for, and is specifically conditioned upon, Developer’s covenants and promises made as part of this Agreement, including Developer’s commitment to include as part of the Project the City Parking Unit described in Section 8 a parking ramp located on the Combined Parcel that will provide reasonable ingress

and egress to the City Parking Unit. The City shall have no obligation to transfer the City Property to Developer until Developer has acquired the FFP Property and the City has assured itself that there are no liens or encumbrances affecting the FFP Property that are not acceptable to the City. Developer shall have no obligation to accept the City Property from the City until Developer has assured itself that there are no liens or encumbrances affecting the City Property that are not acceptable to Developer. Developer is presently aware of an encroachment on the property that covers approximately one foot along the southern boundary of the property, and hereby acknowledges that such encroachment does not constitute a lien or encumbrance affecting the City property that is not acceptable to Developer. Upon transfer of the FFP Property and the City Property to Developer the Developer shall own the Combined Parcel free and clear of any retained interest or right of reversion of the City except as specifically described in section 2.4 and section 2.5 below. The City shall comply with all state statutes and City ordinances in effecting the transfer of the City Property to Developer, including M.C.A. § 7-15-4262. The City shall transfer the City Property to Developer in consideration for Developer's covenants and promises made as part of this Agreement and without additional monetary remuneration. The parties agree that the transfer of the City Property is for fair value when consideration is given to how the property will be used in accordance with the urban renewal plan; the restrictions, covenants, conditions, and obligations assumed by Developer under this Agreement relative to the property and the objectives of the urban renewal plan for preventing recurrence of blight that will be achieved as a result of the transfer. The City shall provide a standard form title insurance policy for the benefit of Developer at the time title to the City Property is transferred to Developer.

2.4. Interim Use of City Property. The parties acknowledge that the City Property currently provides approximately 70 parking spaces that are rented by the City to the public on an hourly and month-to-month basis. The City hereby represents and avers that the month-to-month parking contracts may be legally and properly terminated so as to fully comply with the City's obligations under this Agreement. The parties agree that upon transfer of the City Property to Developer that the City may continue to use and rent individual parking spaces to members of the public consistent with the City's past practices for the period described in this section ("Interim Usage Period"). The City's Interim Usage Period shall continue until sixty (60) days after Developer provides the City with written notice that access to the former City Property is needed by Developer to commence construction of the Building or other components of the Project. The City shall retain all income and bear all costs associated with the ownership and operation of the former City Property during the Interim Usage Period. The City shall defend and indemnify Developer against all claims arising out of or related to the City's use, lease, operation, closure or management of the former City Property during the Interim Usage Period or the City's non-renewal or termination of any parking contract. The City shall take all necessary steps to insure that all vehicles and personal property are removed from the former City Property and the property is available for demolition and construction no later than sixty (60) days after receipt of Developer's written notice. The City shall terminate or not renew all existing or future parking contracts to the extent necessary to comply with the City's obligations under this Agreement. The City shall also use its best efforts to provide alternative parking facilities for persons who might be displaced as a result of the construction of the Project to the greatest extent deemed reasonable by the City.

2.5. Limited Right of Reversion Concerning City Property. The parties anticipate and agree that the Project will be completed in accordance with the terms and schedule described in this Agreement. However, in the event that the City Property is transferred to Developer pursuant to Paragraph 2.3 but Developer thereafter elects not to commence construction of the Project based on any contingency provided for Developer's benefit in this Agreement, or if Developer hereafter fails to commence construction of the Project for any other reason, then the former City Property shall be reconveyed by Developer to the City on the terms described in this section. In the event that events occur that trigger this limited right of reversion, Developer shall, within sixty (60) days of receiving a written request for reconveyance ("Request for Reconveyance") by the City, transfer the former City Property to the City by quitclaim deed without charge to the City. The City's limited right of reversion shall terminate, and the Developer shall have no right or obligation to reconvey the former City Property to the City, if prior to the Developer having received a Request for Reconveyance, the Developer, with the knowledge and consent of the City, first mortgages or otherwise pledges the Combined Parcel to a bank or other third party as security for a loan or loans used to finance the Project.

2.6. Environmental History. To the best of Developer's knowledge based on diligent investigation that includes a Phase One environmental assessment, all known hazardous substances or conditions related to the FFP Property have been or immediately will be abated or encapsulated in accordance with applicable laws. Developer has or immediately will comply with all mandatory requirements of applicable law with respect to environmental hazards or hazardous substances affecting the FFP Property. To the best of the City's knowledge based on diligent investigation that includes a Phase One environmental assessment, all known hazardous substances or conditions related to the City Property have been or immediately will be abated or encapsulated in accordance with applicable laws. The City has or immediately will comply with all mandatory requirements of applicable law with respect to environmental hazards or hazardous substances affecting the City Property. The cost of the Phase One environmental assessment prepared by McDevitt Associates shall be borne equally by the City and Developer.

3. TAX INCREMENT DISTRICT AND BOND FINANCING

3.1. Creation of 27th Street Tax Increment District. Prior to or immediately subsequent to the execution of this Agreement, employees of the City shall submit to the Billings City Council for its consideration such resolutions, ordinances, reports, plans or other documentation that, if approved by the City Council after appropriate public input and due consideration by the City Council, shall be sufficient to create a site-specific tax increment district with boundaries that correspond to the boundaries of the Combined Parcel (hereafter "27th Street TID"). The City shall comply with all requirements of state law in the evaluation and possible creation of the proposed 27th Street TID and shall have no obligation to create said district unless the City Council determines in its discretion that the district is warranted and consistent with state law. The parties anticipate that in order to create the 27th Street TID it will be necessary to exclude the Combined Parcel from the existing Extended Tax Increment Finance District approved by the City Council on March 8, 2004 pursuant to Resolution No. 04-18097.

3.2. Sale of Tax Increment District Bonds and Developer's Guarantee of Tax Obligation. If the City creates the 27th Street TID in accordance with the foregoing paragraph, it

shall immediately thereafter take steps to sell bonds secured by the portion of future tax revenues attributable to the tax increment collected from the owner or owners of the Property (hereafter "TID Bonds"). Developer acknowledges and agrees that as intended owner of the Property it shall be responsible to pay all property taxes properly attributable to the Combined Parcel and developer's improvements until such time as Developer sells or otherwise transfers title to the Property or any fractionalized part of the Property. The parties acknowledge and agree that Developer intends to file a declaration for unit ownership under the Montana Unit Ownership Act, Title 70, Chapter 23, Montana Code Annotated, and thereby submit the Property to the condominium form of ownership. Developer shall have no continuing liability for property taxes attributable to any individual condominium unit upon transfer of the unit to the City or any other party.

3.3. Bond Counsel and Associated Costs. The parties acknowledge that the City will retain legal counsel to prepare necessary documentation related to the sale of the TID Bonds. The City shall retain counsel of its choosing and shall pay his or her fees subject to reimbursement by Developer as described below. The parties also acknowledge that the City has retained a Minnesota consulting firm, Springsted, to advise it on the issuance and sale of the TID Bonds related to the Project. Developer shall reimburse the City for all fees and incidental expenses paid to bond counsel and Springsted up to but not exceeding a total of \$25,000. The City shall be responsible for all other fees or other costs charged by bond counsel, other attorneys or consultants retained by the City in connection with the tax increment district, the preparation or sale of TID Bonds, or this Agreement. Developer shall reimburse the City for the above-described costs whether or not the TID Bonds are sold.

3.4. Minimum Funding from TID Bonds. Exhibit C-1 is a letter from the Montana Department of Revenue that estimates the approximate market value of the Project, including public and private parking facilities. Exhibit C-2 is a spreadsheet that calculates the approximate amount of the tax increment that the parties anticipate will be available to secure TID Bonds as well as the approximate amount that the City currently expects to raise from the sale of such bonds ("Bond Proceeds Amount"). The calculations shown in Exhibit C-2 are based on the taxable portion of the Project, which was derived by subtracting the value of the non-taxable public parking facility from the value of the entire Project. These funds are critical to the success of the Project. The parties therefore agree that Developer shall not have any obligation to proceed with the Project and may terminate this Agreement without further liability to the City or any other party if the Developer determines that the amount generated by the sale of the TID Bonds will be less than the Bond Proceeds Amount.

4. GRANT AND RELEASE OF TID FUNDS

4.1. Grant of Funds. The City agrees to grant to Developer the Bond Proceeds Amount or such greater amount as may be raised from the sale of TID Bonds. Release of the Minimum Bond Proceeds Amount shall be conditioned upon satisfaction of the conditions precedent set forth in Section 5 below and satisfaction of Developer's obligations, covenants and warranties set forth in this Agreement. The funds shall be released and used as set forth in this Section 4.

4.2. Release of Funds as Required by Developer. The City agrees to pay out proceeds from the TID Bonds in amounts commensurate with Developer's expenditures for construction of Developer's Improvements. The term "Developer's Improvements" shall mean the improvements required to be constructed by Developer on the Combined Parcel as described in Section 7. Developer's Improvements shall not include the cost of land acquisition or the value of the Combined Parcel but may include design, engineering, architectural, and legal fees. Developer shall document its construction expenses and proof of partial completion and provide lien releases to the City with each interim release request documenting the portion of completion. The City may release proceeds from the TID Bonds to Developer or pay them directly to Developer's contractors or suppliers. The parties agree that the bond proceeds shall be released during the initial stage of construction, assuming Developer has provided documentation of its construction expenses in accordance with this section. Unless the parties agree to a different schedule, the City shall not be required to release bond proceeds more than once each month.

4.3. Release of Funds for Hardship Circumstances. Developer may request hardship status for immediate release of funds. Developer shall document the financial need and/or its inability to finance the Project with funds from other sources. The City, in its sole discretion, may release funds for hardship circumstances in amounts it determines appropriate.

4.4. Release of Funds following Project Completion. If for any reason proceeds from the TID Bonds have not been released by the City prior to completion of the Project in accordance with Section 4.2, the City shall release any remaining balance owed to Developer upon completion of the Project, determined as follows:

- (a) Developer has completed construction of Developer's Improvements in accordance with the Design Drawings attached as Exhibit D and the Performance Schedule attached as Exhibit G.
- (b) Project costs shall have been paid by Developer and proof of payment and corresponding lien waivers shall be provided to the City in amounts generally consistent with the Project Budget described in Section E.
- (c) The Project includes public benefits of the type contemplated by the City Council when it approved the 27th Street TID or that otherwise satisfy state law requirements that a public benefit be obtained as a condition of tax increment district financing.
- (d) Developer has received a certificate of occupancy from the City of Billings for the Project.
- (e) Developer has received a Certificate of Satisfaction as defined in Section 7.9 below.

4.5. Cooperation to Determine Satisfaction of Conditions. The City and the City's representatives, agents and consultants shall work with Developer to obtain satisfaction of the Conditions Precedent described in Section 5 below. In addition, the City shall work with

Developer to confirm partial completion of improvements in comparison to the Performance Schedule when Developer requests interim releases of funds under Section 4.2 above.

4.6. Use of Grant Funds. The grant funds which are the subject of this Agreement shall be used in accordance with Montana's Urban Renewal Law under the direction of the City as described in this Agreement.

4.7. Availability of Grant Funds. The City has committed funds to the Project from expected proceeds of the 27th Street TID and the TID Bonds. In the event funds are not available due to causes beyond the control of the City, this Agreement shall terminate, and upon such termination neither party shall have further liability to the other; however, the parties shall remain responsible for indemnifying each other in accordance with Section 7.12 below.

5. CONDITIONS PRECEDENT FOR RELEASE OF TID FUNDS

5.1. Conditions. The City's obligation to release proceeds from TID Bonds to Developer under this Agreement is subject to satisfaction or written waiver of each of the following conditions to the reasonable satisfaction of the City ("Conditions Precedent"):

- (a) Developer has presented the City with proof of ownership of the FFP Property by proof of title insurance reflecting Developer as the fee owner of the Property, subject only to liens and encumbrances satisfactory to the City.
- (b) Developer has obtained financing and provided the City with proof of financing, in the form of commitment letters or loan documents, for the construction of Developer's Improvements within the time period set forth in the Performance Schedule defined in Section 10.
- (c) Developer has prepared and submitted design development drawings for the Developer's Improvements ("Design Drawings") in accordance with the terms of this Agreement and the Design Drawings have been reviewed and approved by the City and the estimated cost of the approved design is within Developer's Budget.
- (d) Developer has prepared and submitted a budget setting forth the estimated cost of construction of Developer's Improvements ("Developer's Budget"). Developer's Budget shall not include the cost of FFP Property acquisition. A true and correct copy of the Developer's Budget is attached hereto as Exhibit E.
- (e) Developer has provided the City with proof of zoning compliance and approval by any necessary governmental entities.

5.2. Termination for Failure of Conditions. If the Conditions Precedent are not satisfied or waived within ninety (90) days of the date of this Agreement, then either party may terminate this Agreement by written notice to the other, and upon such termination neither party shall have further liability to the other except the parties shall remain responsible for

indemnifying each other in accordance with Section 7.12.

6. FANNIE MAE LOAN FUNDS

The City shall make a short-term loan to Developer of at least two million dollars (\$2,000,000) to help finance construction of the Project. The term of the loan shall be at least twenty-four (24) months or longer and shall require interest-only payments until maturity. This loan shall be made from the City's revolving loan balance available through Fannie Mae and shall be contingent upon Developer's ability to satisfy standard loan requirements currently being used by Fannie Mae and/or the City. The City acknowledges and agrees that any mortgage securing repayment of the loan shall be subordinated to the mortgage of Developer's primary lender. The City agrees to pay out loan proceeds equal to Developer's construction expenses of Developer's Improvements as they are incurred. Construction expenses may include design, engineering, architectural and legal fees. Developer shall document its construction expenses and provide proof of partial completion and lien releases to the City with each interim release request documenting the portion of completion. The City may release loan proceeds to Developer or pay them directly to Developer's contractors or suppliers. The parties agree that the loan proceeds shall be released after proceeds from the TID Bonds have been released to Developer and before Developer draws upon the loan authorized by Developer's primary lender. Unless the parties agree to a different schedule, the City shall not be required to release loan proceeds more than once each month.

7. DEVELOPER'S IMPROVEMENTS AND COVENANTS

7.1. Construction of Developer's Improvements. Developer agrees to construct and develop the Developer's Improvements consistent with the Design Drawings and this Agreement. The parties currently anticipate that the Project will include an 8 to 12 story building with first-floor commercial space, mid-level parking, and upper-level residential and commercial units. The Building will be divided into separate condominium units. The Project shall be designed with special consideration given to the Downtown Billings Framework Plan and the Downtown Billings Urban Design Sketchbook. The City and Developer agree that the façade design will be generally consistent with traditional storefronts present in Downtown Billings and will have minimal set back from North 27th Street to maintain a retail-like appearance. The Project shall be designed to enhance the character and location of the Property and to further the goals of the City of Billings urban renewal plan. Windows will cover approximately 70% of the walls at the street level to reinforce the retail character of the neighborhood. In addition to public parking facilities to be owned by the City, the Project will be developed with privately-owned, on-site parking sufficient to meet the needs of the condominium owners and tenants.

7.2 Developer's Private Loan. The parties acknowledge that Developer has obtained a loan commitment for the Project from Stockman Bank ("Developer's Lender") and that Developer intends to execute a loan agreement, mortgage, and other loan documents consistent with the loan commitment and acceptable to Developer and Developer's Lender (collectively "Loan Documents"). Developer shall have no obligation to commence construction, order building materials, acquire real property, or incur other substantial expenses

related to the Project until Developer's Lender has executed the final Loan Documents and confirmed its ongoing willingness to finance the Project on the terms described in the loan commitment and the Loan Documents. The parties acknowledge that the Loan Documents are and will continue to be contingent upon various conditions described in the loan commitment. A copy of the loan commitment has been provided by Developer to the City. The parties to this Agreement wish to act in a manner consistent with the Loan Documents so as not to jeopardize Developer's financing. The City therefore acknowledges that it has reviewed the loan commitment and that its terms and conditions are acceptable to the City to the extent they require consent or other action by the City. If the loan commitment or Loan Documents contain terms and conditions that are inconsistent with the terms and conditions of this Agreement, the terms and conditions of the loan commitment and Loan Documents shall prevail in defining the City's rights and obligations under this Agreement.

7.3. Architects and Contractors. Developer shall have the right to select its architects, general contractor, subcontractors and consultants at its sole discretion. The parties acknowledge that Developer has retained Harrison G. Fagg & Associates, A.I.A. to design and oversee construction of the Project. Developer shall require all architects, engineers, or other professional consultants to maintain professional liability insurance in an insurable amount not less than \$1.5 million combined single limit covering all professional activities performed by them in connection with Developer's Improvements. In addition, Developer shall require its general contractor to maintain broad form commercial general liability insurance in an insurable amount of not less than \$1.5 million combined single limit, covering all work performed by the contractor in connection with Developer's Improvements. Developer shall demonstrate proof of coverage to the City upon request by providing a certificate of insurance.

7.4. Insurance. Developer shall maintain property, fire and casualty insurance covering the Property in an amount commensurate with the replacement cost of Developer's Improvements during development and construction of the Project and until issuance of the Certificate of Satisfaction. The City shall be named as an additional insured on Developer's insurance policy. In the event the Property is damaged or destroyed prior to issuance of the Certificate of Satisfaction, the City shall be entitled to recover proceeds of such insurance in proportion to the amount of all funds released for the Project by the City divided by the total of all funds released for the Project by all sources, including Developer's primary lender. The City may, in its sole discretion, recommit funds for reconstruction of the Project in the event Developer determines to reconstruct the Project. In addition, Developer shall maintain worker's compensation insurance to the extent such coverage is required under Montana law.

7.5. Access by the City. The City and the City's representatives, agents and designees shall have the right, at reasonable times and upon reasonable notice to Developer, to enter upon the Property to inspect construction of Developer's Improvements in accordance with this section and Section 8.4. The City shall have access to all records and contracts pertaining to the Project upon reasonable notice and request. Developer shall keep and maintain accounting records for the Project and shall make the same available to the City upon request, including but not limited to all purchase orders, invoices, statements, payment documents and journals and ledgers related to the Project.

7.6. Governmental Permits. Before commencing construction of Developer's Improvements, Developer shall obtain all necessary land use, building and other governmental permits. Developer shall maintain all necessary land use, building and other governmental permits during construction of the Project.

7.7. Local, State and Federal Laws. Developer shall carry out the construction of the Developer's Improvements in conformity with all applicable local, state and federal laws.

7.8. Voluntary Compliance with Prevailing Wage Laws. The parties acknowledge that part of the Project involves the construction of parking facilities that will be transferred to the City upon completion of the Project. There may therefore be an issue whether this Agreement constitutes in part a public works contract subject to Montana's prevailing wage statutes, M.C.A. § 18-2-401 (2003) *et al.* Developer does not believe that this Agreement is subject to such laws, but, if it is, Developer contends that such laws only govern the portion of the Project that involves the construction of parking facilities intended for public use. Nevertheless, in order to avoid potential delay or controversy related to this issue, the parties hereby agree that Developer and Developer's contractors and other agents shall pay the standard prevailing rate of wages as determined by the Montana commissioner of labor in accordance with M.C.A. § 18-2-402 for all construction services performed on-site during the course of the Project. The provisions of this paragraph may only be enforced by the parties to this Agreement, and nothing herein is intended to create any rights in third parties who might otherwise claim to be beneficiaries of this Agreement. By entering into the agreement described in this Section 7.8, which is intended solely to avoid delay or controversy between the parties hereto, neither the City nor Developer shall be deemed to have made any concessions or waived any rights concerning the applicability or inapplicability of Montana's prevailing wage statutes except as specifically provided herein for the benefit of the other party to this Agreement under the express terms of this section.

7.9. Prohibition Against Transfer. Prior to the issuance by the City of the Certificate of Satisfaction, Developer shall not, except as permitted by this Agreement, without the prior approval of the City, transfer its ownership interest in any part of the Combined Parcel or Developer's Improvements. Notwithstanding the foregoing, nothing in this paragraph shall prohibit:

- (a) The transfer of the Property or any part of the Property after issuance of the Certificate of Satisfaction;
- (b) The pledge or mortgage of any part of the Property as security for any lender or lenders of Developer;
- (c) The sale or lease of individual condominium units in the Building if the appropriate declaration for unit ownership has been filed and such sales otherwise comply with applicable local and state laws;
- (d) The leasing of space in the Building;

- (e) The sale of the Property at foreclosure (or conveyance in lieu of foreclosure). Any transfer in foreclosure or in lieu thereof shall be subject to the restriction that the exterior of the Building not be materially modified from the design approved by the City without the City's approval, which shall not be unreasonably withheld or delayed.

7.10. Certificate of Satisfaction. Promptly after substantial completion of Developer's Improvements (excluding any build-out by tenants or condominium owners that is the responsibility of the tenants or condominium owners), the City shall furnish Developer with a Certificate of Satisfaction of this Agreement upon written request therefore by Developer, substantially in the form of Exhibit F. Upon issuance of the Certificate of Satisfaction, Developer and the Property shall be fully relieved of all obligations and restrictions under this Agreement, including the prohibition against transfer imposed by the previous paragraph, but excluding the obligation to indemnify the other party in accordance with Section 7.12. The City shall not unreasonably withhold, condition or delay the Certificate of Satisfaction. Such Certificate of Satisfaction shall be a conclusive determination of satisfactory completion of the construction required by this Agreement as to the Property, and such Certificate shall so state. After issuance of the Certificate of Satisfaction, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement with respect to the Property. Either party may file a copy of the Certificate of Satisfaction with the Clerk and Recorder of Yellowstone County. After issuance of the Certificate of Satisfaction, neither the City nor any other person claiming any right under the City shall be entitled to exercise any right under this Agreement. The Certificate of Satisfaction shall not constitute a certificate of occupancy or evidence thereof under the building permit or codes of the City of Billings. Purchasers or lessees of individual condominium units who acquire or lease their unit from Developer prior to issuance of the Certificate of Satisfaction and in accordance with Section 7.9(c) shall not incur any obligation or liability to the City arising under this Agreement.

7.11. No Speculation. Developer represents that its acquisition and ownership of the Property will be for redevelopment and not for short-term speculation in land holding.

7.12. Control and Mutual Indemnification. Developer shall have sole control and responsibility for design and construction of the Project except the City may exercise such rights as are specifically granted to it by this Agreement. Developer shall indemnify, defend and hold the City and its officials, employees and agents harmless for, from and against any and all claims, damages, costs, judgments and expenses, including attorneys fees, arising out of or resulting from the negligence or willful misconduct of Developer or Developer's employees or agents, including without limitation any claims for personal injury, property damage, or for liability to any contractor or its subcontractors, agents or employees. The City shall indemnify, defend and hold Developer and its members, officers, employees and agents harmless for, from and against any and all claims, damages, costs, judgments and expenses, including attorneys fees, arising out of or resulting from the negligence or willful misconduct of the City or the City's employees or agents, including without limitation any claims for personal injury, property damage, or for liability to any contractor or its subcontractors, agents or employees. The provisions of this paragraph shall survive completion of the Project and termination of this

Agreement.

7.13. Taxes/Assessments. Developer shall pay all property taxes, special improvement district assessments, and other assessments on the Property when due in accordance with this section and Section 3.2.

8. CITY PURCHASE OF PARKING FACILITIES

8.1. Agreement to Buy and Sell Parking Facilities. The City hereby agrees to purchase, and Developer hereby agrees to sell, certain parking facilities to be constructed as part of the Project on the terms and conditions and subject to the contingencies described in this Agreement. The obligation to buy and the obligation to sell shall remain binding upon the parties, and no other buy-sell agreement shall be necessary to create a binding contract for the conveyance of the parking facilities. However, the parties shall execute such additional documents as are specifically provided for in this Agreement or as are necessary to effectuate the intent of the parties as described in this Agreement.

8.2. Form of Ownership Interest. The parties agree that Developer, as sole owner of the Property, shall prepare and record a declaration of unit ownership ("Declaration") in accordance with M.C.A. § 70-23-103 (2003) and other provisions of the Montana Unit Ownership Act ("Act"). The terms of the Declaration shall be reviewed and approved by the City prior to its recordation. The City shall not unreasonably withhold its approval. The terms of the Declaration shall identify one or more "units," as defined in the Act, that are dedicated for use as public parking facilities and that shall be conveyed to the City in accordance with this Agreement ("City Parking Unit").

8.3. Design of City Parking Unit. The City Parking Unit shall comply with minimum size requirements and other specifications described in this section. The City's obligations under this Agreement are contingent upon the City's review and approval of the Design Drawings attached as Exhibit D. Developer shall cooperate with the City's engineers, architects, or other design professionals to provide detailed drawings or additional information concerning the design of the City Parking Unit if requested by the City or the City's agents. The City shall be afforded control over the design of the City Parking Unit as long as the design does not adversely affect other parts of the Project or materially increase Developer's costs in comparison to the Design Drawings prepared by Developer and approved by the City. Unless otherwise agreed by the parties in writing, the City Parking Unit shall consist of two floors of the building's parking garage and shall provide sufficient floor area to accommodate a minimum of 106 parking stalls, a part of which shall include at least the minimum number of legally-mandated, ADA-compliant handicap stalls. All parking stalls, drive corridors, and parking ramps within the City Parking Unit shall meet existing City standards as required to obtain a building permit issued by the City. The City Parking Unit shall also include stair and elevator access to each floor of the unit, electrical lighting, and other structural components typically found in other multi-story public parking facilities owned by the City. The City Parking Unit shall include all ramps or other structures used to connect the upper level public parking facility with the public street. The primary structural components of the City Parking Unit shall be reinforced concrete. The upper exterior walls of the City Parking Unit shall be open to the

outside air, and the unit shall not be heated or air conditioned. All stall striping, floor and wall signage, electronic entry or ticket control equipment, and other equipment normally located inside an attendant's booth shall be the responsibility of the City to pay for and install. The City Parking Unit shall be designed and legally structured so that occupants of the Building and members of the public may conveniently ingress and egress upper floors of the Building by foot or by vehicle by passing through the City Parking Unit or common elements such as stairs and elevators located interior or adjacent to the City Parking Unit on a 24 hour, 365 day basis. The City and Developer or Developer's successors shall share on an equitable basis the cost of repairing and maintaining stairways, drive ramps, elevators and other common elements of the Building that are used by the public and other occupants of the Building. The terms and conditions of this cost-sharing arrangement shall be included in the declaration of unit ownership, condominium association bylaws, or other documents that the parties hereto shall negotiate in good faith and approve without substantial delay after the effective date of this Agreement.

8.4 Inspection of City Parking Unit. The parties agree that the City may have reasonable access to the Property during construction for the purpose of inspecting Developer's Improvements and confirming compliance with this Agreement. Any qualified City employee may inspect the Property and the City Parking Unit. If the City wishes to retain for this purpose an architect, engineer, or other consultant who is not a regular City employee, the City shall first obtain Developer's consent to the person chosen by the City. Developer's consent shall not be unreasonably withheld. The City agrees that Developer's Lender or the lender's agent may also inspect the Property, including the City Parking Unit, at any time prior to issuance of the Certificate of Satisfaction.

8.5. Purchase Price and Progress Payments. The City agrees to pay Developer as consideration for the purchase of the City Parking Unit the sums described in this section. The City shall purchase two floors of the Building's parking garage. The total amount to be paid by the City ("Purchase Price") shall be calculated by multiplying the total number of parking stalls included in the two floors (but in no case fewer than 106) by the following:

Minimum 106 stalls	\$16,250 per stall
Additional stalls	Price to be negotiated

The City's minimum purchase price shall be \$1,780,838.40 ("Minimum Purchase Price"). The price per stall described above shall be increased if, as a result of the City's design review described in Section 8.3 above, the City elects to include design or construction changes that depart from the Design Drawings and materially increase Developer's costs in the construction of the City Parking Unit or other parts of the Project. The amount of such changes shall be equal to the increased costs occasioned by the City's changes. Any reduction in costs shall inure to the sole benefit of Developer. The City shall make monthly progress payments to Developer based on the percentage of the City Parking Unit completed during the preceding month. Developer shall submit each month's payment request to the City within five (5) business days of the first day of each month. Each such request shall be certified by Developer's architect and shall describe the dollar amount being requested, the particular work that was done,

and the percentage that the work constitutes in comparison to the total work to be completed. The City's progress payments shall be due thirty (30) days from receipt of each payment request.

8.6 Sources of City Funds. The City may in its discretion rely upon any source of funds to pay the Purchase Price with the exception of the 27th Street TID tax increment and proceeds from the sale of TID Bonds, which shall be a grant to Developer in accordance with Section 4 above. However, the parties acknowledge that it is the City's current intention to use funds available in the City's Downtown Parking Fund to pay a portion of the Purchase Price.

8.7. Voluntary Compliance with Municipal Bidding Laws. The parties acknowledge that Montana's statute requiring competitive bidding for construction projects in excess of \$25,000, M.C.A. § 7-5-4302(1), does not apply in circumstances where a municipality intends to purchase an existing building or structure instead of fungible items or services that can be furnished on a competitive basis. 37 Mont. A.G. Op. 31 (May 31, 1977). This Agreement requires the City to purchase the City Parking Unit, a non-fungible condominium unit to be uniquely located in a particular building at a particular site. The parties therefore do not believe that state law requires that the purchase of the City Parking Unit be let for public bids. Nevertheless, the parties also acknowledge that the City desires to comply with the spirit of Montana's bidding laws to the greatest extent possible, regardless of whether the above-referenced statute applies or not, and therefore voluntarily agree that they will cooperate to solicit competitive bids for the construction of the City Parking Unit. The parties will work together to develop a request for bids that will be published by the City in accordance with the City's usual practices. The request for bids will describe the part of the Project relating to construction of the City Parking Unit that the parties believe can be separately bid and constructed without impairing the structural soundness, architectural integrity, quality, aesthetics, timely completion, or organizational efficiency of the Project as a whole. The winning bid shall be approved in the reasonable discretion of both parties, and both parties shall approve the contract with the winning bidder. The parties specifically agree that Developer may withhold its approval if, without limitation, the cost of the winning bid is materially more on a per-stall basis than Developer's per-stall cost for other floors of the parking facility; Developer believes that a particular bidder would not work effectively or efficiently with other contractors hired by Developer; or a particular bidder might jeopardize the structural soundness, architectural integrity, quality, aesthetics, timely completion, or organizational efficiency of the Project as a whole.

8.8. Delivery of Title Documents. Developer shall convey legal title to the City in the form of a condominium deed upon payment of the Purchase Price. The condominium deed shall be given with the usual covenants expressed in Section 30-11-110, Montana Code Annotated, but subject to the following exceptions and such additional exceptions as may be mutually acceptable to the parties:

- (a) All reservations and exceptions of record and in patents from the United States or the State of Montana;
- (b) All recorded or visible easements, recorded covenants and conditions, rights of way, building and use restrictions, waivers or agreements given to or entered into

with governmental entities, and zoning ordinances;

- (c) Taxes and assessments for the year when the declaration of unit ownership is recorded with the Clerk and Recorder and subsequent years;
- (d) All prior conveyances, leases or transfers of any interest in minerals, including oil, gas and other hydrocarbons;
- (e) The effects of the terms, covenants, conditions, restrictions, limitations, exceptions, reservations, rights, provisions, obligations, powers, easements, liens and charges contained in (1) the declaration of unit ownership, (2) the bylaws of the condominium association, and (3) any floor plans, recorded with the Yellowstone County Clerk and Recorder.

In accordance with M.C.A. § 70-23-602 (2003), Developer shall cause its lender or lenders to release the City Parking Unit from the mortgage or other security instrument granted by Developer to the lender or lenders prior to delivering the condominium deed to the City.

9. CONDOMINIUM DOCUMENTS AND ORGANIZATION

9.1. Declaration of Unit Ownership. Prior to or promptly after execution of this Agreement, Developer shall prepare a draft declaration of unit ownership in accordance with the Montana Unit Ownership Act. Developer shall submit the draft declaration to the City for its review and approval. The City shall not unreasonably withhold its approval. Neither party shall have any obligation to perform any duty under this Agreement until the parties have agreed on the material terms of the Declaration. Developer shall submit the Declaration to the Montana Department of Revenue for approval pursuant to M.C.A. § 70-23-304 and record floor plans and the architect's certification with the Yellowstone County Clerk and Recorder in accordance with M.C.A. § 70-23-306. Developer shall bear the cost of recording the Declaration and all related documents.

9.2. Condominium Association and Bylaws. Prior to or promptly after execution of this Agreement, Developer shall file articles of incorporation to establish a condominium owners' association under the Montana Non-Profit Corporation Act. The name of the corporation shall be "Sandstone Condominium Association" or such other name as may be chosen by Developer. Developer shall then cause bylaws to be drafted and submit them to the City for its review and approval. The City shall not unreasonably withhold its approval. Neither party shall have any obligation to perform any duty under this Agreement until the parties have agreed on the material terms of the bylaws.

10. PERFORMANCE SCHEDULE

10.1. General. A Schedule of Performance of construction of Developer's Improvements is attached as Exhibit G and incorporated herein (the "Performance Schedule"). Developer shall proceed expeditiously to complete construction of the Project in accordance with the Performance Schedule. All construction work for the Project shall be completed by the

completion date set forth in the Performance Schedule. Developer shall be excused for delays resulting from the following circumstances: an act of God or public enemy; fire; storm; wind; flood; earthquake; epidemic; explosion; lightning; continuous loss of power of other utilities for more than thirty days; nuclear radiation; geological or archeological condition; quarantine restrictions; riot or public discord; act of terrorism; criminal damage; the suspension of the national or state banking system due to financial crises; a union strike; unanticipated pre-existing but undiscovered conditions; or appeal or revocation of governmental permits.

10.2. Weather Delays. The Performance Schedule shall be adjusted to reflect weather delays (those days or parts of days during which substantial work cannot be done on the Project due to weather). Developer shall not be liable for damages or penalties arising from weather delays.

11. WARRANTIES

11.1. Developer Representations and Warranties. Developer warrants and represents that the information and documentation provided pursuant to Section 5.1 and 7 are accurate and complete and that Developer will promptly notify the City of any material changes in such information and documentation. Developer warrants and represents that it will complete all Developer's Improvements in accordance with this Agreement and the Performance Schedule.

11.2. Joint Representations and Warranties. Each party makes the following representations and warranties to the other party as of the date hereof:

- (a) Authority. Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.
- (b) Requisite Action. All requisite action has been taken by each party prior to entering into of this Agreement except as noted herein. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required except as noted herein.
- (c) Due Execution. The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

12. CONDITION CONCERNING PRE-SALES OF CONDOMINIUM UNITS

The parties agree to delay performance of many of the obligations described in this Agreement until Developer has obtained binding commitments to purchase or lease a substantial portion of the Building. Specifically, the parties agree that the City shall have no obligation to transfer the City Property to Developer, release proceeds of TID Bonds, release Fannie Mae loan funds, or make progress payments under Section 8.4 until Developer has demonstrated to the

City's reasonable satisfaction that interested parties have signed purchase contracts, options including non-refundable down payments, leases or other binding commitments to purchase or lease (collectively "Pre-Sale Contracts") at least fifty percent (50%) of the transferable floor space of the Building. The parties further agree that Developer shall have no obligation to commence construction, order building materials, acquire real property, pay loan fees, or incur other substantial expenses to advance the Project until interested parties have signed Pre-Sale Contracts to purchase or lease at least fifty percent (50%) of the transferable floor space of the Building on terms acceptable to Developer's Lender. For purposes of this section, "transferable floor space" shall not include the City Parking Unit or common elements of the Building. The parties acknowledge and agree that the Pre-Sale Contracts contemplated under this section may include reasonable contingencies acceptable to the interested parties and Developer.

13. DEFAULTS AND REMEDIES

13.1. Default. Subject to the extensions of time set forth in Section 10, and subject to the notice and opportunity-to-cure provisions contained in this Agreement, a failure or material delay by any party in the performance of any term or provision of this Agreement constitutes a default. However, if the defaulting party commences to cure such default within thirty (30) days after receipt of a notice specifying the default, and thereafter diligently prosecutes such cure to completion, then such party shall not be deemed to be in default. The injured party shall give written notice of default to the defaulting party, specifying the default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until sixty (60) days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

13.2. Rights and Remedies. Subject to the provisions of Section 13.1 hereof, in addition to its other rights or remedies, if Developer fails to cure a default or withdraws from the Project for any reason, the City shall have no obligation to release grant funds to Developer. If Developer fails to cure a material default or withdraws from the Project for any reason after funds have been released for the Project, Developer shall repay the City the amount of any funds released to Developer for the Project. Either party may seek any legal or equitable remedy to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement.

13.3. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

13.4. Dispute Resolution. Prior to submitting a matter to District Court, the parties shall first attempt to resolve the dispute informally in accordance with this section. In the event a dispute arises, the complaining party shall deliver written notice of the matter in dispute to the other party at the address and in the manner provided for in Section 14.2 hereof. Each party shall

thereafter promptly designate a representative to address the matter, and the representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good faith efforts, to resolve the disputed matter within 15 days of the initial notice requesting dispute resolution, either party may then initiate court action. Nothing in this paragraph shall foreclose the right of either party to seek emergency injunctive relief if the informal dispute resolution procedure described above would entail unavoidable delay and cause serious and immediate injury.

14. GENERAL PROVISIONS

14.1. Litigation. In the event any party initiates an action or suit against another party for an alleged breach of any covenant or provision of this Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses of the action, arbitration or suit, including reasonable attorneys' fees, witness fees and any other professional fees resulting therefrom.

14.2. Notices. All notices or other communications required or permitted hereunder must be in writing and shall be delivered personally (including by a professional messenger service), by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth below. All notices sent by mail shall be deemed received two (2) days after the date of mailing, and all notices sent by other means permitted herein shall be deemed received on the date delivered. Notices shall be sent as follows to:

Developer: Downtown Billings Investors, Inc.
Attn: Harrison G. Fagg
222 North 32nd Street
Billings, MT 59101
Telephone: (406) 248-7811
Facsimile: (406) 259-9278

City of Billings: City of Billings
Attn: Brent Brooks City Attorney
210 North 27th Street
Billings, MT 59101
Telephone: (406) 657-8205
Facsimile: (406) 657-3067

14.3. Nonliability of Officials and Employees. No director, officer, member, official, employee or agent of Developer or the City shall be personally liable to any party or any successor-in-interest thereto in the event of any default or breach by any party or for any amount which may become due to any party or its successor or for any obligations created under the terms of this Agreement.

14.4. Headings. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

14.5. Time of Essence. Time is of the essence of this Agreement. All obligations of the City and Developer to each other shall be due at the time specified by the Agreement or as the same may be extended by mutual agreement of the parties in writing.

14.6. Construction/Governing Law/Venue. This Agreement is the product of the parties' mutual efforts and negotiation and should not be interpreted in favor of or against either the City or Developer. The parties further agree that this Agreement shall be construed to effectuate the normal and reasonable expectations of sophisticated parties. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Montana. Any action in law or equity or judicial proceeding for the enforcement of this Agreement or any of the provisions contained herein shall be instituted and maintained only in the Thirteenth Judicial District Court for Yellowstone County, Montana.

14.7. Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

14.8. No Partnership. Nothing in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

14.9. Government Rights. Except as provided herein, by making this Agreement, the City of Billings is not obligating itself or any other agency with respect to any discretionary action relating to the development of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

14.10. Non-Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

14.11. Entire Agreement/Counterparts. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. This Agreement may be signed in counterparts.

14.12. Successors. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

14.13 Further Documents. The parties to this Agreement shall cooperate with each

other subsequent to the execution of this Agreement to prepare and execute any and all additional documents necessary to give full force and effect to this Agreement.

The City of Billings (“City”)

By: _____
Its: Mayor

Attest: _____
Its: City Clerk

STATE OF MONTANA)
)ss.
County of Yellowstone)

On this _____ day of _____, 2005, before me, a Notary Public for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

[signature]

[typed/printed name]
Notary Public for the State of Montana
Residing at: _____, Montana
My Commission Expires: _____, 20__

Downtown Billings Investors, LLC
 (“Developer”)

By: _____
Its: Authorized Member

TABLE OF EXHIBITS

Exhibit A	Legal Descriptions
Exhibit B	Diagram of City Property and FFP Property
Exhibit C-1	Letter from Department of Revenue
Exhibit C-2	Tax Increment District Values
Exhibit D	Developer's Design Drawings
Exhibit E	Developer's Preliminary Budget
Exhibit F	Certificate of Satisfaction
Exhibit G	Performance Schedule

EXHIBIT A

LEGAL DESCRIPTIONS

Fagg Family Properties, LLC Property

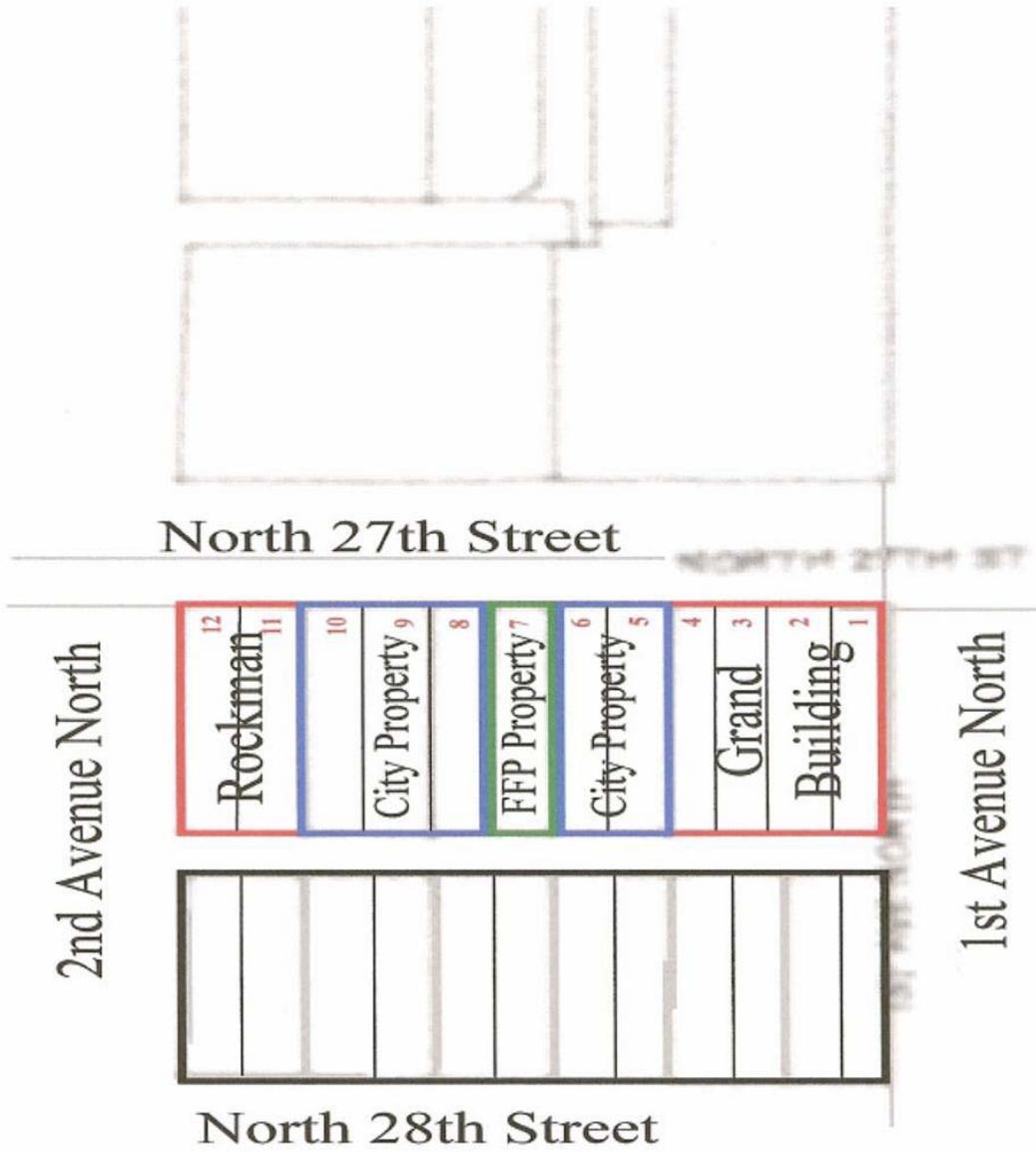
Lot 7, Block 92, of Billings Original Townsite, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County under Document #16312.

City of Billings Property

Lots 5, 6, 8, 9, and 10, Block 92, of Billings Original Townsite, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County under Document #16312.

EXHIBIT B

Diagram of City Property & FFP Property





Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

June 2, 2005

To Whom It May Concern:

Mr. Harrison Fagg has contacted the Department of Revenue, Yellowstone County Appraisal office requesting an estimate of market value for the purposes of taxation on the proposed new construction of a 15 story multi-use office building located in the 100 block of North 27th Street in Billings, Montana.

Preliminary plans for the project consist of fifteen floors containing the following:

Floor 1 – Multi-use office area

Floor 2 through 6 – Parking Garage with a total of 215 spaces

Floor 7 through 8 – Office area

Floor 9 through 14 – Apartment/Condominium units (34 total living units)

Penthouse – Loft area for apartment units and mechanical room.

Gross area of the total building was calculated at 122,913 square feet and will be located on a 21,000 square foot parcel of land.

I have reviewed the plans and specification, provided to our office by Mr. Fagg, for the proposed building and have estimated a market value of \$17,685,700 based on replacement cost new as of January 1, 2002.

Land	- \$	289,100
Building	-	<u>\$17,396,600</u>
Total	-	\$17,685,700

If you have further questions, please contact me at (406) 896-4010.

Sincerely

A handwritten signature in cursive script that reads "Vicki Nelson".

Vicki Nelson
Department of Revenue
Yellowstone County Appraisal Office
175 N 27th Street
Billings, MT 59101

[THIS PAGE INTENTIONALLY LEFT BLANK.]

EXHIBIT C-2

ESTIMATES ONLY BASED ON 2003 TAX INFORMATION

	2003	2004	2005	2006	2007	2008	2009	2010
Value as of 2003 (A)	\$ 400,400							
DOR Value	17,685,700							
Less: City Parking Portion of Project	2,809,435							
DOR Value	14,876,265							
Factor to calculate value before reappraisal (VBR)	79.4%							
Estimated value before reappraisal	11,811,754	12,322,485	12,833,216	13,343,947	13,854,678	14,365,409	14,876,170	14,876,170
Value per DOR less VBR	3,064,511							
Phase in over six years factor	<u>16.666%</u>							
Phase in value	510,731	510,731	510,731	510,731	510,731	510,761		
VBR plus phase in value (B)	12,322,485	12,833,216	13,343,947	13,854,678	14,365,409	14,876,170	14,876,170	14,876,170
Commercial property exemption	<u>86.2%</u> <u>85.8%</u> <u>85.4%</u> <u>85.0%</u> <u>85.0%</u> <u>85.0%</u>							
Taxable Market Value	11,502,482 11,887,314 12,268,059 12,644,745 12,644,745 12,644,745							
Factor to get taxable value	<u>3.22%</u> <u>3.14%</u> <u>3.07%</u> <u>3.01%</u> <u>3.01%</u> <u>3.01%</u>							
Taxable value	370,380 373,262 376,629 380,607 380,607 380,607							
Regular Tax Taxable Value distribution								
[(A) divided by (B)]	<u>3.0%</u> <u>2.9%</u> <u>2.8%</u> <u>2.7%</u> <u>2.7%</u> <u>2.7%</u>							
Regular Tax Taxable Value	11,111 10,825 10,546 10,276 10,276 10,276							
Total mills	<u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u>							
Regular Tax	6,481 6,314 6,151 5,994 5,994 5,994							
Tax Increment Taxable Value								
Total mills	<u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u> <u>583.29</u>							
Tax Increment Tax	209,558 211,406 213,533 216,010 216,010 216,010							
Less:								
University mills (6 mills)	(2,156) (2,175) (2,197) (2,222) (2,222) (2,222)							
Vo Tech mills (1.5 mills)	<u>(539)</u> <u>(544)</u> <u>(549)</u> <u>(555)</u> <u>(555)</u> <u>(555)</u>							
Amount Available for Tax Increment	206,863 208,688 210,787 213,233 213,233 213,233							
Increment available for debt service payment	206,800							
Interest Rate	5.0%							
Term	<u>20</u>							
Total increment dollars available	2,577,185							
Less: Est. issuance costs and bond coverage	529,685							
Estimated amount Available For Total Project	2,047,500							

EXHIBIT D

DEVELOPER'S DESIGN DRAWINGS

EXHIBIT E

DEVELOPER'S PRELIMINARY BUDGET

Preface

The following cost breakdown is based on the architectural development, preliminary plans and a cost estimate provided by the anticipated contractor. Prices may vary as the project progresses.

The following study reflects the building of a 15-story structure in the 100 block of North 27th Street. It analyzes the following type structure:

<u>Floor</u>	<u>Use</u>	<u>Square Foot Totals</u>
1	Commercial	21,000
2-6	City and Private Parking Garage	82,320
7-8	Office Space	25,346
9-12	Condominiums	50,692
13-14	Penthouse Condominiums	19,040
15	Penthouse Lofts & Mechanical	<u>9,520</u>
Total		207,918

The project is designed in re-enforced concrete, or pre-cast concrete.

Parking Garage Cost

<u>Floor</u>	<u># of Stalls</u>	<u>Area</u>	<u>Cost/s.f.</u>	<u>Area Cost</u>	<u>Total Cost</u>
2 - Parking	53	19,704	\$ 36.00	\$709,344.00	
3 - Parking	53	19,704	\$ 36.00	\$709,344.00	
4 - Parking	53	19,704	\$ 36.00	\$709,344.00	
5 - Parking	53	19,704	\$ 36.00	\$709,344.00	
6 - Parking	<u>3</u>	3,504	\$ 36.00	\$126,144.00	
	215				<u>\$ 2,963,520.00</u>
Sub-Total			\$ 2,963,520.00		
		Architectural Fee @ 6.00%		<u>\$ 177,811.20</u>	
		Sub-Total		\$ 3,141,331.20	
		Soft Costs		<u>\$ 74,588.00</u>	
		Sub-Total		\$ 3,215,919.20	
		Contingency @ 2.50%		<u>\$ 80,397.98</u>	
		Total Parking Cost		\$3,296,317.18	

Commercial/Condominiums Cost

<u>Floor</u>	<u>Area</u>	<u>Area Usage</u>	<u>Cost/s.f.</u>	<u>Area Cost</u>	<u>Total Cost</u>
1 - Commercial	21,000				
Bank		10,000	\$ 70.00	\$700,000.00	
Commercial		6,194	\$ 70.00	\$433,580.00	
Parking Ramp		2,431	\$ 50.00	\$121,550.00	
Lobby		2,375	\$ 80.00	<u>\$190,000.00</u>	
					\$ 1,445,130.00
7 - Office	12,673				
Saleable		10,887	\$ 70.00	\$762,090.00	
Circulation		1,786	\$ 95.00	<u>\$169,670.00</u>	
					\$ 931,760.00
8 - Office	12,673				
Saleable		10,887	\$ 70.00	\$762,090.00	
Circulation		1,786	\$ 95.00	<u>\$169,670.00</u>	
					\$ 931,760.00
9 - Condominiums	12,673	10,887	\$ 95.00	\$1,034,265.00	
Circulation		1,786	\$ 95.00	<u>\$ 169,670.00</u>	
					\$ 1,203,935.00
10 - Condominiums	12,673	10,887	\$ 95.00	\$1,034,265.00	
Circulation		1,786	\$ 95.00	<u>\$ 169,670.00</u>	
					\$ 1,203,935.00
11 - Condominiums	12,673	10,887	\$ 95.00	\$1,034,265.00	
Circulation		1,786	\$ 95.00	<u>\$ 169,670.00</u>	
					\$ 1,203,935.00
12 - Condominiums	12,673	10,887	\$ 95.00	\$1,034,265.00	
Circulation		1,786	\$ 95.00	<u>\$ 169,670.00</u>	
					\$ 1,203,935.00
13 - Penthouse	9,520				
Condominiums		7,734	\$100.00	\$773,400.00	
Circulation		1,786	\$ 95.00	<u>\$169,670.00</u>	
					\$ 943,070.00
14 - Penthouse	9,520				
Condominiums		7,734	\$100.00	\$773,400.00	
Circulation		1,786	\$ 95.00	<u>\$169,670.00</u>	
					\$ 943,070.00
15 - Penthouse Lofts	9,520				
& Mechanical					
Penthouse Lofts		5,380	\$100.00	\$538,000.00	

Mechanical Area 3,547	\$ 50.00	<u>\$177,350.00</u>	\$ <u>715,350.00</u>
Sub-Total			\$ 10,725,880.00
Architectural Fee @ 8.75%			\$ <u>938,514.50</u>
Sub-Total			\$ 11,664,394.50
Soft Costs			\$ <u>816,797.00</u>
Sub-Total			\$ 12,481,191.50
Contingency @ 2.50%			\$ <u>312,029.79</u>
Total Commercial & Condominium Cost			\$ 12,793,221.29

Soft Costs

<u>Item</u>	<u>Commercial & Condominium</u>	<u>Parking</u>	<u>Total Cost</u>
Land	\$604,000.00	\$ -	\$604,000.00
Sales and Promotion	\$45,000.00	\$ -	\$ 45,000.00
Site Work	\$15,000.00	\$15,000.00	\$ 30,000.00
Building Permit	\$21,289.00	\$ 7,096.00	\$ 28,385.00
Connection Fees	\$ 6,000.00	\$ 2,000.00	\$ 8,000.00
Demolition	\$18,508.00	\$ 6,492.00	\$ 25,000.00
Legal	\$40,000.00	\$30,000.00	\$ 70,000.00
Land Appraisal	\$ 1,250.00	\$ 1,250.00	\$ 2,500.00
Environmental Study	\$ 750.00	\$ 750.00	\$ 1,500.00
Taxes During Construction	\$50,000.00	\$ -	\$ 50,000.00
Traffic Study	\$ -	\$ 7,000.00	\$ 7,000.00
Insurance & Accounting	\$15,000.00	\$ 5,000.00	\$ 20,000.00
Total Soft Costs	\$816,797.00	\$74,588.00	\$891,385.00

Finance Costs

	<u>Commercial & Condominium</u>	<u>Parking</u>	<u>Total Cost</u>
Total Project	\$12,793,221.29	\$3,296,317.18	\$16,089,538.47
Interest During Construction			
Fannie Mae - \$2,000,000			
@ 4%/2 =	\$ 40,000.00	\$ -	\$ 40,000.00
Stockman Bank - \$8,100,083			
@ 6.5%/2 =	\$ 263,252.70	\$ -	\$ 263,252.70
Origination Fee			
- Fannie Mae - 1%	\$ 20,000.00	\$ -	\$ 20,000.00
- Stockman Bank - 1%	\$ 90,000.00	\$ -	\$ 90,000.00
Bond Counsel	\$ 40,000.00	\$ -	\$ 40,000.00

Underwriting Discount	\$ 50,000.00	\$ -	\$ 50,000.00
Tax Increment Fee	\$ 50,000.00	\$ -	\$ 50,000.00
Title Insurance	\$ 12,000.00	\$ 3,000.00	\$ 15,000.00
Total Finance Cost	\$ 565,252.70	\$ 3,000.00	\$ 568,252.70

Total Project Costs

	<u>Commercial & Condominium Cost</u>	<u>Parking Cost</u>	<u>Total Cost</u>
Construction Cost	\$12,793,221.29	\$3,296,317.18	\$16,089,538.47
Finance Cost	\$ 565,252.70	\$ 3,000.00	\$ 568,252.70
Total Project Cost	\$13,358,473.99	\$3,299,317.18	\$16,657,791.17

Project Funds Available

Tax Increment Bond Proceeds	\$ 2,008,493.00
Partnership Grant/Loan	\$ 35,000.00
Fannie Mae Revolving Loan Fund	\$ 2,000,000.00
Bank Loan	\$ 8,100,083.00
Developer's Funds Paid to Date	\$ 125,000.00
Parking Garage Sales Income	\$ 3,493,750.00
Land - City	\$ 448,000.00
Land - FFP	\$ 156,000.00
Realtor's Participation	\$ 25,000.00
Secondary Financing Developer	\$ 266,465.16

Total Funds Available **\$ 16,657,791.17**

Total Project Cost **\$ 16,657,791.17**

Footnote

Note on Public-Benefit Site Development Costs

Public benefit site development costs are included in the preliminary budget described above. These include, but are not limited to, items such as utilities, sidewalks, façade development, alley resurfacing, curb/gutter, landscaping and other improvements of the site that will be paid by the developer in whole or in part from funds obtained as a grant from the City using tax increment bond proceeds. These costs may vary as the project proceeds.

Alley Improvements	\$ 32,000.00
Landscape	\$ 28,000.00
Sidewalk	\$ 22,000.00
Utilities	\$ 100,000.00
Façade Improvement	\$ 1,700,000.00
Sub-Total	\$ 1,882,000.00
8.75% Architectural	\$ 164,675.00

	Sub-Total	\$ 2,046,675.00
2.5% Contingency		<u>\$ 51,166.88</u>
	Total	\$ 2,097,841.88

EXHIBIT F

CERTIFICATE OF SATISFACTION

Recorded at the Request of
and after Recording Return to:
Cole Law Firm, PLLC
P. O. Box 7052
Billings, MT 59103-7052

Grantor/Grantee: City of Billings
Grantor/Grantee: Downtown Billings Investors, LLC
Legal Description: Lot 5, 6, 7, 8, 9 and 10, Block 92, of Billings Original Townsite, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County under Document #16312.
Assessor's Tax Parcel ID#s: A00630A (Lots 5 & 6), A00631 (Lot 7), A00632 (Lot 8), A00633 (Lots 9 & 10)

CERTIFICATE OF SATISFACTION

This CERTIFICATE OF SATISFACTION (this "Certificate") is made as of _____, 20__, by the CITY OF BILLINGS, a municipality of the State of Montana (the "City") to DOWNTOWN BILLINGS INVESTORS, LLC, a Montana limited liability company ("Developer").

The City and Developer are parties to that certain Development Agreement regarding the property described on Exhibit A of the Development Agreement (the "Property").

Pursuant to Section 7.10 of the Development Agreement, the City hereby acknowledges that Developer has satisfied all conditions to issuance by the City of this Certificate of Satisfaction and therefore the City hereby issues this Certificate of Satisfaction.

Issuance of this Certificate of Satisfaction evidences the fact that Developer and the Property are hereby fully relieved of all obligations and restrictions under the Development Agreement, including the prohibition against transfer imposed by Section 7.9 of the Development Agreement but excluding the obligation to indemnify the City in accordance with Section 7.12. This Certificate of Satisfaction shall be a conclusive determination of satisfactory completion of the construction required by the Development Agreement as to the Property. Any party owning or hereafter purchasing, leasing or otherwise acquiring any interest in the Property shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or

EXHIBIT G

PERFORMANCE SCHEDULE

Determination of Land Values	May 2, 2005
Phase I Environmental Report Completed	May 3, 2005
Complete Preliminary Architectural Drawings	May 20, 2005
Title Report Completed	May 26, 2005
Urban Renewal Plan Completed	May 26, 2005
Planning Board Approval of Urban Renewal Plan	June 14, 2005
Submission of Urban Renewal Plan to City Council	June 16, 2005
Fannie-Mae Loan Application Completion & Submittal	June 20, 2005
Urban Renewal Plan Approved by City Council	June 27, 2005
Site Specific Tax Increment District Approved by City Council	June 27, 2005
Development Agreement Approved	June 27, 2005
Draft Declaration of Unit Ownership Prepared	July 15, 2005
Start Sales Program for The Sandstone	July 15, 2005
Resubmit Loan to Stockman Bank	August 10, 2005
Bond Resolution Staff Report	August 25, 2005
Fannie-Mae Staff Report	August 25, 2005
Resolution of Intent to Sell Bond (Council Meeting)	September 12, 2005
Resolution to Accept Fannie-Mae	September 12 or 16, 2005
Start Architectural Working Drawings	September 12, 2005
Award Bonds	October 10, 2005

Finish Working Drawings	December 12, 2005
50% Completion of Sales	December 12, 2005
Finalization of Stockman Bank Loan	December 12, 2005
Demolition Completed	December 15, 2005
Bidding Period for City Parking Unit	Dec. 12 – January 16, 2006
Award of Construction Contract	January 30, 2006
Start of Construction	March 1, 2006
Estimated Completion Date	June 1, 2007

RESOLUTION 05-

A RESOLUTION APPROVING A DEVELOPMENT AGREEMENT FOR THE REDEVELOPMENT OF LOTS 5-10, BLOCK 92 OF THE BILLINGS ORIGINAL TOWNSITE WITH DOWNTOWN BILLINGS INVESTORS, LLC AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT

WHEREAS, the City of Billings finds it desirable to redevelop downtown 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, and,

WHEREAS, Downtown Billings Investors, LLC submitted a development proposal that, in cooperation with the City of Billings, will accomplish this redevelopment by constructing a 12-15 story building with retail, parking, office and residential units.

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

The City Council approves the Development Agreement for the property redevelopment as described in the agreement and which is attached to this Resolution, and

The Mayor is authorized to execute said agreement on behalf of the City of Billings and other such documents that effectuate the agreement.

APPROVED AND PASSED by the City Council of the City of Billings this ____ day of _____, 2005.

THE CITY OF BILLINGS:

**BY: _____
Charles F. Tooley MAYOR**

ATTEST:

**BY: _____
Marita Herold, CMC/AE CITY CLERK**

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

Attachment A
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 premises (improved and unimproved 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 27, 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 **27th** 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
	Per Sq.	
	Ft.	
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	

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 27, 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 **27th** day of **July, 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 premises (improved and unimproved 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 27, 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 **27th** day of **July, 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
	Per Sq.	
	Ft.	
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	

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

17B



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JUNE 27, 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 the City Council approve the resolution on June 27, 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 27, 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 **27th** 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 27, 2005

TITLE: Appointment of Interim City Administrator
 DEPARTMENT: Administrative Services
 PRESENTED BY: Rick Harden, HR Manager

PROBLEM/ISSUE STATEMENT: City Charter Section 4.01. City Administrator: Employment, Compensation and Qualifications states that the City Council “shall employ a City Administrator on the basis of merit for an indefinite term. The Administrator shall not be the Mayor or a Councilmember at the time of employment and need not be a resident of the City or state at the time of employment.”

With the resignation of Kristoff Bauer being effective July 1, 2005, there is a need to appoint an interim City Administrator while a search for a permanent replacement is conducted.

ALTERNATIVES ANALYZED:

- Appoint an interim administrator from among existing staff; or
- Seek an individual from outside the organization to serve as interim.

FINANCIAL IMPACT:

- An individual from inside the organization usually is entitled to a 15% salary increase for the duration of the appointment.
- An outside individual likely would contract with the Council regarding salary and other terms.

RECOMMENDATION

Staff recommends that Council appoint an interim City Administrator while the search for a permanent Administrator is being conducted, and authorize the Mayor to sign a contract with the individual selected.

Approved By: City Administrator ____ City Attorney ____

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