

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

August 8, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Richard Clark

ROLL CALL

MINUTES – July 25, 2005

COURTESIES

- American Water Work Assn, 5-year Director's Award
- Mayor's Award to Water Treatment Plant employees for lifesaving rescue
- VFW presentation

PROCLAMATIONS

BOARD & COMMISSION REPORTS – Animal Control Board

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #8 & #9 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. **Bid Awards:**

(1) **W.O. 04-13, Filter Building Expansion and Improvements.**
(Opened 7/26/05). Recommend delaying award to 8/22/05.
[\(Corresponding Staff Memo A1\)](#)

B. Professional Services Contract to complete Class and Compensation Plan, Associated Employers of Montana and Employers Association, Inc., \$31,700.00.

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

C. Professional Services Contract for a stadium feasibility study, stadium conceptual plan and cost estimate, HNTB Architecture, Inc., \$55,000.00 for the preliminary design and feasibility study and \$5,000.00 for the bond election process services and completion of the design and construction of the stadium (if funded) for 10.25% of the project total amount.

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

D. ADA Settlement Agreement with U.S. Dept. of Justice – Civil Rights Division, Disability Rights Section.

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

E. Agreement with Yellowstone County Council on Aging for the senior programs at the Billings Community Center, \$21,000.00.

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

F. FY2006/2007 City/State Maintenance Agreement and Special Projects Contract Overlay Agreement, \$500,000.00/year for regular street maintenance and \$300,000.00/year for overlay contract maintenance.

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

G. Amendment #8, AIP #29, engineering design, survey, and contract administration for the construction of Taxiway "G", design of Commercial Ramp Improvements, study of Runway 7/25 expansion and development of specifications for purchase of a front-end loader for the airfield snow removal and sanding operations, Morrison-Maierle, \$376,416.00.

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

H. Contract with Montana Dept. of Public Health and Human Services – Developmental Disabilities Division, for specialized transportation for developmentally disabled individuals, term: extend 1 year through 6/30/06, \$179,770.00.

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

I. Aviation Building and Ground Lease with FES Development, LLC, term: 1 year with a one-year renewal. \$17,850.00 for first year and subsequent year adjusted by the CPI-U.

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

J. Concession Agreement with Airport Gifts for the Airport gift shop concession, term: 5 years.

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

K. Executive Hangar Ground Lease with Sarpy Creek Land Company, LLC, term: 20 years, \$4,020.00 for first year, adjusted annually by CPI.

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

L. Revocable Permit and Non-Recorded Easement Agreement with UNAVCO for plate boundary observatory GPS monitoring program, term: 15 years, \$0.00.

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

M. Commercial Aviation Ground Lease Renewal with Edwards Jet Center, term: 1 year, \$11,059.00.

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

N. Commercial Aviation Ground Lease Assignment, from Jon Marchi to Whitefish Credit Union to secure financing, \$0.00.

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

O. Zone 4 Reservoir Appraisal establishing a fair market value of \$137,024.00 for a portion of Tract 1, C/S 3030 for the purpose of constructing water storage and pumping facilities and authorizing Staff to obtain the property from GSK Partners, LLP.

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

P. Revolving Loan for Northern Plains Resource Council, \$212,000.00.

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

Q. Street Closure: Western Wheel Bar Customer Appreciation Celebration, August 27, 2005, Minnesota Ave. between S. 27th St. and S. 28th St.

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

R. Tax Increment Fund Housing Grant to Marchi-Tolliver Partnership, \$72,000 for twelve units of the Terrace Apartments located at 300 N. 25th St.

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

S. Acknowledging receipt of Annexation Petition #05-08: 33.71-acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners, and setting a public hearing for 9/12/05.

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

T. Resolution of Intent to Create Park Maintenance District #4030, King's Green Subdivision – Second and Third filings, and setting a public hearing for 9/12/05.

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

U. Resolution of Intent to dispose of City property described as Lots 4-6 and the east ½ of Lots 1-3, Blk 184, O.T. and setting a public hearing date for 9/12/05.

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

V. Second/final reading ordinance for Zone Change #760: a zone change from Residential Manufactured Home to Highway Commercial on property described as Tract 2, C/S 529 and located at 2202 Main Street, approve the zone change and adopt determinations of the 12 discussed criteria. Terrance Luff, owner; Jim Carroll, Downtown Realty, agent.

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

W. Second/final reading ordinance extending the boundaries of Ward IV to include the recently annexed properties in Annex #05-04: a 10.532-acre parcel located near the northeast corner of Grand Avenue and 60th Street West intersection, known as Tract 123 of the Sunny Cove Fruit Farms property, aka the proposed Foxtail Subdivision, 2nd Filing.

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

X. Preliminary Plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th filing, generally located south of Central Avenue at the northeast intersection of South 32nd St. W., Avanta Federal Credit Union, owner; Engineering, Inc., representative, approval of the preliminary plat, adoption of the findings of fact and approval of the variances.

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

Y. Preliminary Plat of St. Thomas Subdivision, generally located on the southeast corner of Colton Blvd. and Woody Dr., conditional approval of the preliminary plat and adoption of the findings of fact.

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

Z. Preliminary Plat of Lincoln Subdivision, generally located on the east side of Lincoln Lane at 605 Lincoln Lane, conditional approval of the preliminary plat and adopting of the findings of fact.

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

AA. Final Plat of Alkali Creek Subdivision, 5th Filing.
[\(Corresponding Staff Memo AA\)](#)

BB. Bills and Payroll.
(1) July 14, 2005
[\(Corresponding Staff Memo BB1\)](#)

(2) July 19, 2005
[\(Corresponding Staff Memo BB2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #05-07:** an undeveloped 172-acre parcel located east of the Ironwood Subdivision along Molt Road between the Yellowstone Country Club and the Rims, described as Tract 1, C/S 3030, GSK Partners, LLC petitioner. Staff recommends conditional approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **SID 1368: A SPECIAL IMPROVEMENT DISTRICT FOR PUBLIC IMPROVEMENTS ALONG ANNANDALE ROAD BETWEEN GLENEAGLES BLVD. AND CHERRY HILLS ROAD AND CONSISTING OF WATER, SEWER, STORM DRAIN AND STREET IMPROVEMENTS:**
(A) PUBLIC HEARING AND RESOLUTION creating SID #1368: Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3A\)](#)
(B) PROFESSIONAL SERVICES CONTRACT with Engineering Inc., \$96,781.71. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3B\)](#)
(C) RESOLUTION authorizing construction bids for the project. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3C\)](#)
4. **PUBLIC HEARING AND RESOLUTION** creating Park Maintenance District #4028 for the purpose of maintaining the park in Vintage Estates Subdivision. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND VARIANCE #OE05-01:** a variance from BMCC Section 22-407.1(4), requiring a maximum of one (1) A-frame sign shall be allowed for each business. The sign must abut the business exterior wall within four (4) feet of the business entrance and be no closer than one (1) foot from the entrance. Two (2) or three (3) businesses may share a temporary sign. The subject location is Lot 6, Block 93, O.T, generally located between First Avenue North and Second Avenue North and between North Broadway and North 29th Street. Rock Creek Coffee Co.

LLC, applicant. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)

6. **PUBLIC HEARING AND RESOLUTON** approving and adopting budget amendments for FY 2004/2005. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 6\)](#)

7. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC Section 7-1504(c), providing that the MDU Franchise does not preclude MDU from challenging any fee or tax. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)

8. **SALE OF CITY PROPERTY** to SAE Express for \$128,340.00. Staff recommends authorizing Staff to negotiate a revised sale of \$93,340.00 and provide an additional \$35,000.00 credit for the trade property. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 8\)](#)

9. **RESOLUTION FOR A CORRECTION TO FY2005/2006 BUDGET.** Staff recommends adopting corrected Exhibit A of the FY 2005/2006 budget. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 9\)](#)

10. **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

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: W.O. 04-13—Filter Building Expansion and Improvements

DEPARTMENT: Public Works - Engineering

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

PROBLEM/ISSUE STATEMENT: This project encompasses expansion and improvements to the Filter Building at the Water Treatment Plant, to include four new filters, renovation of the existing Filter Building, conversion of the old Filter Building into an Operations Center, addition of a new Maintenance Building, and all associated site work and miscellaneous improvements. HDR Engineering, Inc designed the project. Council approved an amendment to HDR's contract for professional services on June 13, 2005, to include bidding and construction administration.

Bids were opened on July 26, 2005, and by law, Council must act on the bid opening at this meeting. Three bids were received. All bids were well above the Engineer's Estimate. HDR is researching the bids to determine the reason for the discrepancies and decide if the project scope and corresponding estimate needs revision.

FINANCIAL IMPACT: The project is to be funded by the State Revolving Fund (SRF) and the Public Utilities Reserve Fund.

Location of Work: Billings Water Treatment Plant

Funding Sources: SRF Loan—C.I.P. #PUD-103

Approved Dollar Amount for Project: **\$16,751,137**

Spent (and obligated) to date: **\$ 1,004,232**

Funding available: **\$15,746,905**

Bids were opened on July 26, 2005 with the following results:

Firm	COP Construction	Williams Brother Construction	Dick Anderson Construction	Engineer's Estimate
Bid Schedule 1	\$16,300,000	\$17,070,000	\$22,000,000	\$12,720,100
Bid Schedule 2	\$1,020,000	\$922,200	\$1,200,000	\$740,100

TOTAL	\$17,320,000	\$17,992,200	\$23,200,000	\$13,460,200
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RECOMMENDATION

Staff recommends that Council delay action until August 22 on awarding a construction contract for W.O. 04-13—Filter Building Expansion and Improvements.

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

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Classification & Compensation Study Contract with Associated Employers of Montana and Employers Association, Inc.

DEPARTMENT: Administration / Human Resources Division

PRESENTED BY: Rick Harden, HR Manager

PROBLEM/ISSUE STATEMENT: Upon receipt and review of the Fox Lawson Classification and Compensation study recommendations, there was almost total agreement that the City could not abide by the reported recommendations. This conclusion was held by City Administration, Department Heads, and the Class and Comp Committee. The major complaint was the cost of implementation. Secondarily, there were some concerns that too many job classes had been combined. It was generally felt that the new job descriptions did, in most cases, accurately reflect the jobs they described.

ALTERNATIVES ANALYZED: There are three possible alternatives:

- Have Fox Lawson redo the study based upon new guidance from the Class & Comp Committee;
- Have another firm conduct an analysis based upon new guidance from the Class & Comp Committee.
- Abandon the Class and Comp effort and use the present system.

FINANCIAL IMPACT: \$31,700 to \$37,200. The lower dollar amount reflects not having another salary survey conducted by the consultant while the higher figure includes doing a salary survey. \$25,000 was budgeted in FY 06 to conduct the study, so a budget amendment will probably be requested later in the year.

RECOMMENDATION

Staff recommends that Council approve a contract with Associated Employers of Montana and Employers Association, Inc., for the amount of \$31,700, to complete the Class and Comp plan and authorize the Mayor to sign the attached contract and HR to conduct a salary survey within its own resources.

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

ATTACHMENTS

A: Contract for Professional Services

INTRODUCTION

Upon receipt and review of the Fox Lawson Classification and Compensation study recommendations, there was almost total agreement that the City could not abide by the reported recommendations. This conclusion was held by City Administration, Department Heads, and the Class and Comp Committee. The major complaint was the cost of implementation. Secondarily, there were some concerns that too many job classes had been combined. It was generally felt that the new job descriptions did, in most cases, accurately reflect the jobs.

BACKGROUND

The City Council as part of the FY 03 budget process approved the expenditure of \$200,000 to conduct a Classification & Compensation study and also approved the plan to select a consulting firm to conduct the project and a committee consisting of management, employees, union representatives, and Council members to shepherd the project and select a consulting firm.

On May 12, 2003, the City Council approved the staff recommendation to contract with Fox Lawson & Associates to conduct the project and that same date the Mayor signed the contract with Fox Lawson & Associates to conduct the Classification & Compensation study for \$78,000.

The study began in May of 2003 and was completed in September of 2004.

The final results of the Fox Lawson study were disturbing on two accounts: one, the implementation was cost prohibitive; and second, we had reduced and combined too many jobs which were arguably not related based on the classification factors being used. Discussions were held with Fox Lawson to correct these concerns however, it was determined that any major overhaul of the report would be seen as “playing with the data.” After considerable discussion among the Classification & Compensation Committee, it was determined that a new “modified” study should be conducted with “lessons learned” implemented in the in the guidance given the new consultant.

In the spring of 2005, the Classification & Compensation Committee solicited bids for the modified study, interviewed, and selected a consulting firm, Associated Employers of Montana and Employers Association, Inc.

ALTERNATIVES ANALYSIS There are three possible alternatives:

- Have Fox Lawson redo the study based upon new guidance from the Class & Comp Committee. This option was discussed within the Committee and it was determined that a fresh start with a new consultant was necessary.
- Have another firm conduct an analysis based upon new guidance from the Class & Comp Committee.

- Abandon the Class and Comp effort and use the present system. This would require the training of the Classification Committee by the previous consultant who conducted a study 13 years ago. Discussions were held with that consultant and the Committee felt that a fresh start and look at our system was necessary.

RECOMMENDATION

Staff recommends that Council approve a contract with Associated Employers of Montana and Employers Association, Inc., for the amount of \$31,700, to complete the Class and Comp plan and authorize the Mayor to sign the attached contract and HR to conduct a salary survey within its own resources.

ATTACHMENTS

A: Contract for Professional Services

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Cobb Field Stadium Design and Feasibility Study Consultant Contract
DEPARTMENT: Parks, Recreation, and Public Lands Department
PRESENTED BY: Gene Blackwell, Interim Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The City Of Billings has commissioned a study to determine the feasibility of whether the City should consider the construction of a replacement baseball stadium for Cobb Field. The first phase of this project is to retain the services of a consultant to perform a stadium feasibility study, prepare a stadium conceptual plan and cost estimate and submit findings and recommendation to the City Council. The contract further includes design and construction administration of the stadium if the funding is approved by election contingent upon successful completion of the preliminary planning and feasibility work. Over 30 Request for Proposals were sent out and 6 firms responded by the July 8th deadline. On July 19th and 21st the Selection Committee comprised of 2 Council Members, 2 Park Board Members, 3 Citizens appointed by the Mayor and 2 Staff met to review and discuss the submitted proposals. Based on discussion and a numerical rating system adopted by the City, 2 finalists were selected and invited out for an interview. The interviews were conducted on July 26th and the Selection Committee made their final recommendation.

FINANCIAL IMPACT: Funding for the study and preliminary design phase of the project is through regular appropriation in the FY2006 Capital Improvement Program:

Location of Work: Cobb Field Stadium, 901 North 27th Street

Funding Sources: City of Billings CIP General Fund - \$60,000.00

The completion of the stadium design and construction will depend on the approval and availability of funding to include General Obligation Bonds and private funding, with the Consultant fees for the Final Phase services to be 10.25% of the total project amount.

ALTERNATIVES AVAILABLE:

- Award contract to the recommended finalist, or
- award contract to the other finalist, or
- reject all proposals.

The Cobb Field Selection Committee recommends the firm of HNTB Architecture, Inc. of Kansas City, Missouri, Gateway Consultants Group, of Cleveland, Ohio, and CTA Architects Engineers of Billings, Montana to develop a feasibility study and preliminary design for Cobb Field, and to provide final design and construction phase services, if funding is approved.

RECOMMENDATION

Staff recommends that Council approve the award of the contract for the Cobb Field Stadium project to HNTB Architecture, Inc. for the amount of \$ **55,000.00**, for the Preliminary Design and Feasibility Study, \$5,000 for Bond Election Process Services, and for the completion of the design and construction of the stadium, if funded, for 10.25% of the project total amount.

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

ATTACHMENT

A. Contract document and Attachments A and B thereto attached.

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 8, 2005

TITLE: ADA Settlement Agreement
DEPARTMENT: Administration/ Facilities Management
PRESENTED BY: Saree Couture, Facilities Manager

PROBLEM/ISSUE STATEMENT: In the fall of 2004, the City of Billings was selected by the US Dept. of Justice (DOJ) to participate in Project Civic Action. The City's facilities and services were inspected for compliance with the Americans with Disabilities Act (ADA). This audit included all City facilities except the cemetery and the Airport and MET, which are covered by the US Dept. of Transportation. Title II of the ADA requires state and local governments to provide access to all programs under the jurisdiction of those governments. The inspection identified a number of facilities and services that must comply with the ADA. These outstanding items are to be addressed by a Settlement Agreement between the DOJ and the City of Billings. The Settlement Agreement requires the City to correct these issues within one to three years. The Council is asked to approve the settlement agreement and authorize the Mayor to sign it on behalf of the City.

ALTERNATIVES ANALYZED: The City must comply with the ADA. The City could reject the Settlement Agreement but it opens itself to litigation with the DOJ and disabled individuals.

FINANCIAL IMPACT: Over one half of the items cited can be accomplished with small expenditures that are easily incorporated into annual budgets. About 70 items can range from \$500 to \$12,000, depending on how the solution is approached. All corrections will require staff time to coordinate and manage.

RECOMMENDATION

Staff recommends that the Council approve and authorize the Mayor to sign the ADA Settlement Agreement.

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

ATTACHMENTS*

Settlement Agreement between United States of America and the City of Billings

- A. Notice
- B. Grievance Procedure
- C. Policy on Effective Communication with Deaf and Hard-of-Hearing
- D. Guide for Law Enforcement Officers
- I. Newly Constructed Facilities
- J. Altered Facilities
- K. Existing Facilities
- L. Leased Facilities

*the Attachments are available in the City Clerk's Office or can be electronically mailed.

INTRODUCTION

The Council is being asked to approve a Settlement Agreement with the US Dept. of Justice (DOJ). The DOJ recently inspected the City of Billings' facilities and services for compliance with the ADA and found a number of items that need to be corrected. The Settlement Agreement identifies those items and provides time limits within the City must comply.

BACKGROUND

The ADA was passed by Congress in July, 1990 and became effective in 1992. Title III of the law addressed access for the public to commercial facilities. Title II of the Law specifically addressed the responsibility of state and local governments to give the disabled public access of government public processes, facilities and programs. The City of Billings has made great strides in complying with the ADA and adopted a program in 2002 that outlined compliance items yet to complete and the estimate of dollars to complete those. The program was not put on any time frame, whereas this Settlement Agreement would do that. In conducting the audit, Department of Justice (DOJ) representatives visited the sites and inspected those facilities for compliance to the ADA. This process is part of Project Civic Action, a program initiated the U.S. Attorney General in 1999. Over 120 cities in the United States have been visited and participated in these Settlement Agreements with the DOJ. Overall, the progress in Billings is very good, however, there is more work to be completed. The spirit of this process is to create a positive process to complete ADA compliance in municipalities around our country, while the DOJ assumes a role of advisor and resource rather the simply enforcer. There is no "grandfathering" of facilities; all government entities must make programs and processes accessible to the disabled public.

ALTERNATIVES ANALYZED

The City must comply with the ADA. The City could reject the settlement agreement but it opens itself to litigation with the DOJ and disabled individuals. The alternatives that are available to the City are in extending the time limits during the life of the Agreement to meet the City's budget challenges.

RECOMMENDATION

Staff recommends that the Council approve and authorize the Mayor to sign the ADA Settlement Agreement.

ATTACHMENTS*

Settlement Agreement between United States of America and the City of Billings

- A. Notice
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**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF
AMERICA AND BILLINGS, MONTANA UNDER THE AMERICANS WITH
DISABILITIES ACT DJ 204-44-47**

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice (Department) initiated this matter as a compliance review of Billings, Montana under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28

C.F.R. Part 35. Because the City receives financial assistance from the Department of Justice, the review was also conducted under the authority of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department's implementing regulation, 28 C.F.R. Part 42, Subpart G.

The review was conducted by the Disability Rights Section of the Department's Civil Rights Division and focused on the City's compliance with the following title II requirements: which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA's new construction or alterations requirements: Operations Center, Animal Shelter, Fire Station 4, Country Manor Park, Amend Park, Skate Park, Parks & Recreation / Senior Center, Park 4 Garage and Terry Park.

- C to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105;
- C to notify applicants, participants, beneficiaries, and other interested persons of their rights and the City's obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
- C to designate a responsible employee to coordinate its efforts to comply with and carry out the City's ADA responsibilities, 28 C.F.R. § 35.107(a);
- C to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);
- C to operate each program, service, or activity so that, when viewed in its entirety, it is

readily accessible to and usable by individuals with disabilities, 28 C.F.R. § 35.150, by:

- C delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible,
- C physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's title II regulation, 28 C.F.R. § 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A.
- C to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151;
- C to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
- C to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, including 9-1-1 services, for persons who use TTY's and computer modems, 28 C.F.R. § 35.162;
- C to provide information for interested persons with disabilities concerning the existence and location of the City's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- C to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

As part of its compliance review, the Department reviewed the following facilities,

The Department's program access review covered those of the City's programs, services, and activities that operate in the following facilities: City Hall, Park 3 Garage, North Park, Hawthorne Park, Pioneer Park, Veterans Park, Highland Park, Rose Park, Westwood Park, Park 2 Garage, City Library, Utility Service Center, Cobb Field, Fire Station 2 and Regional Landfill.

The Department reviewed the City's policies and procedures regarding voting, emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

Finally, the Department reviewed the City's Police Department's policies and procedures regarding providing effective communication to persons who are deaf or

hard-of-hearing.

JURISDICTION

1. The ADA applies to the Billings because it is a “public entity” as defined by title II, 42 U.S.C. § 12131(1).
 1. 2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the City with title II of the ADA and the Department's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
 2. 3. The Department is authorized under 28 C.F.R. Part 42, Subpart G, to determine the City's compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to the Billings, Montana provided by the Department of Justice should the Department fail to secure voluntary compliance pursuant to Subpart G or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.
 3. 4. The parties to this Agreement are the United States of America and the City of Billings, Montana.
 4. 5. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
 5. 6. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Agreement, except as provided in the section entitled “Implementation and Enforcement.”

ACTIONS TAKEN BY CITY

7. The City has a designated ADA Coordinator. The ADA Coordinator is responsible for coordinating the City's efforts to comply with and carry out its responsibilities under the ADA, including any investigation of any complaint alleging its noncompliance with title II or alleging any actions that would be prohibited under title II. The City's ADA Coordinator has been working, and continues to work on an ongoing effort that will make each City program, service, and activity

readily accessible to people with disabilities. The City makes available to all interested individuals the name(s), office address(es), and telephone number(s) of the ADA Coordinator's Office.

2. 8. The City conducted a self-evaluation and developed a transition plan. In order to ensure that the programs offered at City facilities are readily accessible to and usable by people with disabilities, the City increased the number of programs, services, and activities accessible to persons with disabilities.

REMEDIAL ACTION

NOTIFICATION

1. 9. Within two months of the effective date of this Agreement, the City will adopt the attached Notice (Attachment A); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the City; post the Notice on its Internet Home Page; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
2. 10. Within three months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the City will implement and report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of the City's accessible programs, services, and activities.

GRIEVANCE PROCEDURE

11. Within three months of the effective date of this Agreement, the City will adopt the attached ADA Grievance Procedure (Attachment B), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

GENERAL EFFECTIVE COMMUNICATION PROVISIONS

12. Within three months of the effective date of this Agreement, the City will identify sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription

services, and documents in alternate formats (Braille, large print, cassette tapes, etc.).

2. 13. The City will take steps to ensure that all appropriate employees are trained and practiced in using the Montana Relay Service to make and receive calls.

9-1-1

1. 14. Within three months of the effective date of this Agreement, the City will ensure that each 9-1-1 call station is equipped with a TTY or computer equivalent.
2. 15. Within three months of the effective date of this Agreement, the city will develop procedures for answering 9-1-1 calls that include training all call takers to use a TTY to take 9-1-1 calls, to recognize a “silent” open line as a potential TTY call and respond by TTY, and to ensure that TTY calls are answered as quickly as other calls received.
3. 16. The City will monitor its incoming 9-1-1 TTY calls to ensure they are answered as quickly and accurately as other calls received.
4. 17. The City will incorporate correct TTY call-taking procedures into 9-1-1 call takers’ performance evaluations and will amend its personnel policies to include written disciplinary procedures for call takers who fail to perform TTY call-taking consistent with the training and procedures. The City will implement and report to the Department its evaluation and procedures within three months of the effective date of this Agreement.

LAW ENFORCEMENT AND EFFECTIVE COMMUNICATION

1. 18. Within three months of the effective date of this Agreement, Billings, Montana will adapt for its own use and implement the Billings Police Department Policy Statement on Effective Communication with People Who are Deaf or Hard of Hearing [Attachment C] and distribute to all police department officers the *Guide for Law Enforcement Officers When in Contact with People Who are Deaf or Hard of Hearing* [Attachment D].
2. 19. Within three months of the effective date of this Agreement, the City will contract with one or more local qualified oral/sign language interpreter agencies to ensure that the interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week, to its police department or make other appropriate arrangements (such as contracting directly with or hiring qualified interpreters).
3. 20. Within three months of the effective date of this Agreement, Billings, Montana will ensure that each police station or substation is equipped with a working TTY to enable persons who are deaf, hard of hearing, or who have speech impairments to make outgoing telephone calls. Where inmate telephone calls are time-limited, the City will adopt policies permitting inmates who use TTY’s a longer period of time to make those calls, due to the slower nature of TTY communications compared with voice communications.

EMPLOYMENT

21. Within three months of the effective date of this Agreement, the City will amend its employment policies, as necessary, to comply with the regulations of the U.S. Equal Employment Opportunity Commission implementing title I of the Americans with Disabilities Act of 1990, codified at 29 C.F.R. Part 1630. At minimum, those policies will provide that the City:
 - C will not discriminate on the basis of disability in its hiring or employment practices.
 - C will not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations or inquiries may be made, but only after a conditional offer of employment is made and only if required of all applicants for the position.
 - C will make reasonable accommodations for the known physical or mental limitations of a qualified applicant or employee with a disability upon request unless the accommodation would cause an undue hardship on the operation of the City's business.
 - C will maintain any employee's medical records separate from personnel files and keep them confidential.
 - C will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent the City's selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

EMERGENCY MANAGEMENT PROCEDURES AND POLICIES

- .22. If the City contracts with another entity, such as the American Red Cross or another local government, to provide its emergency preparedness plans and emergency response services, the City will ensure that the other entity complies with the following provisions on its behalf.
23. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that it regularly solicits and incorporates input from persons with a variety of disabilities and those who serve them regarding all phases of its emergency management plan (preparation, notification, response, and clean up).
24. Within three months of the effective date of this Agreement, the City will

implement and report to the Department its written procedures that ensure that its community evacuation plans enable those who have mobility impairments, vision impairments, hearing impairments, cognitive disabilities, mental illness, or other disabilities to safely self-evacuate or be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If the City adopts or maintains such a registry, its report to the Department will discuss its procedures for ensuring voluntariness, appropriate confidentiality controls, and how the registry will be kept updated, as well as its outreach plan to inform persons with disabilities of its availability. Whether or not a registry is used, the City plan should address accessible transportation needs for persons with disabilities.

4. 25. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that if its emergency warning systems use sirens or other audible alerts, it will also provide ways to inform persons with hearing impairments of an impending disaster. The use of auto-dialed TTY messages to pre-registered individuals who are deaf or hard of hearing, text messaging, e-mails, open-captioning on local TV stations and other innovative uses of technology may be incorporated into such procedures, as well as lower-tech options such as dispatching qualified sign language interpreters to assist with emergency TV broadcasts.
5. 26. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that at least one emergency shelter has a back-up generator and a way to keep medications refrigerated (such as a refrigerator or a cooler with ice). Such shelter(s) will be made available to persons whose disabilities require access to electricity and refrigeration, for example, for using life-sustaining medical devices, providing power to motorized wheelchairs, and preserving certain medications, such as insulin, that require refrigeration. The written procedures will include a plan for notifying persons of the location of such shelter(s).
 - .27. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that persons who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
6. 28. Some of the City's emergency shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility under the ADA. This Agreement does not

limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.

7. 29. Within three months of the effective date of this Agreement and until all emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms serving the shelter area, the City will identify and widely publicize to the public and to persons with disabilities and the organizations that serve them the most accessible emergency shelters.
8. 30. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written procedures that ensure that it has identified temporary accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been compromised.

SIDEWALKS

1. 31. Within three months of the effective date of this Agreement, the City will implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.
2. 32. Within three months of the effective date of this Agreement, the City will identify and report to the Department all streets, roads, and highways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a street, road, or highway is considered an alteration for the purposes of this Agreement. Filling a pothole is not considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all intersections of the streets, roads, and highways identified under this paragraph having curbs or other barriers to entry from a street level pedestrian walkway.
 33. Beginning no later than three months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a new street, road, or highway is constructed or altered.
3. 34. Within three months of the effective date of this Agreement, the City will identify all street level pedestrian walkways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a walkway is considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway.

4. 35. Beginning no later than three months after the effective date of this Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.

WEB-BASED SERVICES AND PROGRAMS

1. 36. Within 1 month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the City will distribute to all persons – employees and contractors – who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by the City (Internet Personnel) the technical assistance document, “Accessibility of State and Local Government Websites to People with Disabilities,” which is Attachment H to this Agreement (it is also available at www.ada.gov/websites2.htm).
2. 37. Within three months of the effective date of this Agreement, and throughout the life of the Agreement, the City will do the following:
 - A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
 - B. Ensure that all new and modified web pages and content are accessible;
 - C. Develop and implement a plan for making existing web content more accessible;
 - D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
 - E. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

PHYSICAL CHANGES TO FACILITIES

Page 9 of 13

38. The elements or features of the City facilities that do not comply with the Standards, including those listed in Attachments I, J, K, and L, prevent persons with disabilities from fully and equally enjoying the City services, programs, or activities and constitute discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150.
 1. 39. The City will comply with the cited provisions of the Standards when taking the actions required by this Agreement.

2. 40. Within three months of the effective date of this Agreement, the City will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.
3. 41. Newly Constructed Facilities: In order to ensure that the following spaces and elements in City facilities, for which construction was commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the City will take the actions listed in Attachment I.
4. 42. Altered Facilities: In order to ensure that the following spaces and elements in City facilities, for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the City will take the actions listed in Attachment J.
5. 43. Program Access in Billings, Montana Existing Facilities: In order to ensure that each of the City programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, the City will take the actions listed in Attachment K.

PROGRAM MODIFICATIONS

44. Access to Billings, Montana Programs Housed in Others' Facilities: In order to ensure that the City programs, services, and activities that are the subject of this Agreement and that are operated by the City at facilities owned or controlled by other entities, when viewed in its entirety, are readily accessible to and usable by persons with mobility impairments, the City will take the actions listed in Attachment L.

MISCELLANEOUS PROVISIONS

45. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the City will submit written reports to the Department summarizing the actions the City has taken pursuant to this Agreement. Reports will include detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
2. 46. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the City will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).

3. 47. Within six months of the effective date of this Agreement, the City will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The City will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including individuals with disabilities, in developing or procuring the ADA training program.

4. 48. Within one year of the effective date of this Agreement, the City will deliver its training program to all City employees who have direct contact with members of the public. At the end of that period, the City will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

IMPLEMENTATION AND ENFORCEMENT

1. 49. If at any time the City desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.

2. 50. The Department may review compliance with this Agreement at any time. If the Department believes that the City has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify the City in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the City, it may institute a civil action in federal district court to enforce the terms of this Agreement.

3. 51. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the City to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.

4. 52. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.

5. 53. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by the City or the Department on request.

6. 54. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other federal law. This Agreement does not affect the City's continuing responsibility to comply with all aspects of the ADA and section 504 of the Rehabilitation Act.

7. 55. This Agreement will remain in effect for four years.

8. 56. The person signing for the City represents that he or she is authorized to bind the City to this Agreement.

9. 57. The effective date of this Agreement is the date of the last signature below.

For the City:

For the United States:

R. ALEXANDER ACOSTA, Assistant Attorney
General for Civil Rights

By: _____ JOHN
L. WODATCH, Chief JEANINE WORDEN,
Deputy Chief MARY LOU MOBLEY, Senior
Counsel MELLIE NELSON, Supervisory
Attorney TONI POCHUCHA, Investigator
MICHELE ANTONIO MALLOZZI, Architect
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, N.W. Disability
Rights Section - NYA Washington, DC 20530

By: _____
CHUCK TOOLEY, Mayor Date:

Date:

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E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8th, 2005

TITLE: Yellowstone County Council on Aging Agreement

DEPARTMENT: Parks, Recreation & Public Lands Department

PRESENTED BY: Robin Grinsteiner, Billings Community Center-Recreation Division

PROBLEM/ISSUE STATEMENT: The City of Billings currently receives \$21,000.00 annually from the Yellowstone County Council on Aging (YCCOA) for the senior programs of the Billings Community Center. The attached document sets forth the terms of the agreement that is renewed each year. The approval of this agreement is necessary to receive these funds.

ALTERNATIVES ANALYZED:

1. Approve the agreement. (Recommended)
2. Disapprove the agreement.

FINANCIAL IMPACT: This funding source comprises almost 12 % of the Community Center's total budget.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the agreement with the Yellowstone County Council on Aging, Inc.

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

ATTACHMENTS:

A: Cover letter from YCCOA requesting a returned signed copy of agreement upon approval.
B: Memorandum of Agreement with Yellowstone County Council on Aging, Inc. (2 pages)

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

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: **Fiscal Years 2006 & 2007 City/State Maintenance Agreement and Contract Overlay Agreement**

DEPARTMENT: **Public Works Department**

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

PROBLEM/ISSUE STATEMENT: The City of Billings currently maintains the State-owned highway system within the city limits. The City also completes an overlay contract for preventative maintenance on state routes within the city limits. This is accomplished through a **two-year agreement** with the State of Montana.

ALTERNATIVES ANALYZED:

1. Approve the Fiscal Years 2006 & 2007 (July 1, 2005 – June 30, 2007) City/State Maintenance Agreement and Contract Overlay Agreement.
2. Allow the State to maintain its highway system within the Billings city limits.

FINANCIAL IMPACT: The State of Montana will pay the City of Billings \$500,000/year for regular street maintenance, including a contribution to the City's Equipment Replacement Program, and \$300,000 for performing overlay contract maintenance on the State highway system within the city limits. These revenues, as well as the corresponding expenditures for street maintenance projects, are included in the approved FY 2006 budget.

RECOMMENDATION

Staff recommends that the City Council approve the FY 2006 & 2007 (July 1, 2005 – June 30, 2007) City/State Maintenance Agreement and Contract Overlay Agreement.

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

ATTACHMENTS

Attachment A – FY 2006 & 2007 City/State Maintenance Agreement. (11 pages)
Attachment B – FY 2006 & 2007 City/State Contract Overlay Agreement. (4 pages)

MAINTENANCE AGREEMENT BETWEEN THE CITY OF BILLINGS AND THE STATE OF MONTANA

This agreement is between the City of Billings (the City) and the Montana Department of Transportation (the State) to define the Street and Traffic Control maintenance responsibilities of the City and the State in accordance with State Law which allows the State to enter into an Agreement with local government to provide maintenance on state routes with provision for full reimbursement. The term of this agreement shall be for the two year period of July 1, 2005 through June 30, 2007.

LIMITS OF AGREEMENT: The following listing of streets and intersections is a full and complete listing of areas covered by this Agreement. Unless otherwise defined, the list shall include all intersections along the route and intersecting streets for a distance of 15' or to the end of the curb radius return whichever is greater, and shall include all of the street right-of-way. During the term of this Agreement, additional areas may be added by written Agreement of the parties.

1. Laurel Road from the east side of Parkway Lane to the west abutment of the 6th Street West Overpass.
2. Montana Avenue from the west abutment of the 6th Street West Overpass to Division Street, specifically excluding any structural repair, deck repair, or railing repair.
3. Division Street from Montana Avenue to 1st Avenue North.
4. 1st Avenue North from Main Street to Division Street.
5. All of the streets constructed in conjunction with the 6th Street West Overpass excluding specifically the structural portion of this project.
6. 1st Avenue South - Minnesota connection from 6th Street West Overpass through the North 13th Street Overpass to 1st Avenue North.
7. North 13th from 1st Avenue North to 4th Avenue North.
8. 4th Avenue North from North 13th Street to Main Street.
9. Intersection of 1st Avenue North, Main Street, and Highway 87 East to 500' east on 87 East to the overhead sign.
10. Main Street from 1st Avenue North to the southwest side of the Roundup Road turnoff.
11. North and South 27th Street from the north ROW of Belknap Avenue to 100' west of

the last merge lane on the Airport intersection. Excluding the bridge over the BBWA Canal.

12. King Avenue from 24th Street West to Daniel Street.
13. On the 13th and 6th Street West Underpass, the maintenance by the City will include the roadway surface and the storm drainage system.
14. The traffic signals located at the intersection of the North Frontage Road and U.S. 87E near the Lockwood Interchange and the two signals at the ramps of the Lockwood Interchange.
15. The flasher at Main, Roundup Road and Bench Boulevard.
16. The traffic signals located on South Billings Boulevard at King Avenue and on the ramp to the Interchange.
17. The traffic signals located on the King Avenue Interchange.
18. MDT's designated portion of State Secondary 318.
19. Sweeping sections:
 - '-King Avenue West from Daniels to Mullowney Lane-Southbound
 - '-King Avenue West from Mullowney Lane to Daniels-Northbound
 - '-City Center loop from King Avenue West to Parkway Lane on Laurel Road-Eastbound
 - '-Laurel Road from Parkway Lane up ramp to King Avenue West-Westbound
 - '-Ramp from King Avenue West to Laurel Road-Eastbound

SCOPE OF AGREEMENT: This agreement covers all of the activities ordinarily associated with Street maintenance activities including, but not limited to, street patching, crack sealing, street overlays, sweeping, storm sewer repair and replacement, snow plowing, snow removal, ice control, signal maintenance, street striping, sign replacement, vegetation control and other normally accepted preventative maintenance practices. The agreement specifically excludes any activity commonly known as bridge repair including, but not limited to, concrete barrier repair, deck repair, and structural repair, for any structure over twenty feet long.

ITEMS COVERED: Payment to the City for this agreement shall be for the following:

1. **TRAFFIC CONTROL MAINTENANCE ACTIVITIES:**
 - A) State shall continue to provide power for those signals that are presently being billed to the State by NorthWestern Energy.
 - B) City will provide all maintenance necessary to operate the Traffic Control System, and the State will reimburse the City in accordance with Appendix B for costs of labor and equipment required for the proper maintenance of the Traffic Control

System.

- C) For the purposes of this Agreement the Traffic Control System includes all items covered in Part II (excluding 2B-31 Urban Parking and Stopping signs, 2D-39 Street name signs, 2D-4 Parking area signs and 2D-41 Park and Ride Signs) Part III, Part IV, Part V and Part VII of the Manual on Uniform Traffic Control devices dated 1988 and revisions thereto.
- D) Maintenance at the Lockwood Interchange (location #13) will include signal maintenance only; no signs, etc. will be covered by this agreement.
- E) Street lighting facilities on these routes are not covered by this agreement and will remain the responsibility of the State, with the exception of those which are City or State owned and created as Special Improvement Lighting Maintenance Districts.

2. STREET CLEANING ACTIVITIES:

The City will clean and sweep the streets on the same sweeping and cleaning schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B.

3. STORM SEWER MAINTENANCE:

The City will provide periodic maintenance of the drainage systems to keep the system in working order. When failure of any part of the system occurs, the City will notify the State for special project type work. Special project work, which may include the installation of extra sumps, replacement of pumps and/or motor controls will be at extra cost to the State, as both the State and City may agree upon.

4. SNOW REMOVAL AND ICE CONTROL:

The City will provide snow removal and ice control on the streets detailed herein and the sidewalk under the North 13th Street Underpass on the same snow removal and ice control schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B. In the event of an emergency snow operation, the State will be requested to furnish additional equipment and/or materials with adequate notification. Costs for additional equipment and/or materials must be pre-approved by the State. These costs are in addition to the payment detailed in Appendix B.

5. SURFACE PATCHING:

The City will patch the streets detailed herein on the same patching schedule that they are providing for all City arterial streets. The State shall reimburse the City for cost of all labor, equipment and material used in this operation in accordance with Appendix B. Major patching repairs and any special equipment rental such as a milling machine will be negotiated as a Special Project Activity as defined in item 6.

6. SPECIAL PROJECT ACTIVITIES:

Special Project activities include any activity which is not part of the basic maintenance service. This would include costs associated with railroad crossings, seal coats, overlays, major repairs, etc. Special project activities will be negotiated and paid for separate from this agreement.

COSTS: The costs associated with this agreement shall be as shown in Appendix A. This shall be a lump sum cost for the maintenance portion of the agreement, and shall be paid to the City on a monthly basis on the schedule shown in Appendix C.

In the event that during the regular session or any special sessions of the state legislature during the term of this agreement a reduction of funding is directed for operation of the State, the same rate of reduction shall apply to the total of this Agreement plus any special projects Agreement (i.e. if a 5% reduction is experienced, this reduction and compensatory work will be taken from the special projects agreement, overlay contract).

RECORDS: The City presently has a State approved budget system for these affected activities. The labor equipment and materials used on the streets covered in this agreement shall be assigned a special budget category. No record keeping shall be attempted to break contractual costs against individual streets that are covered in this agreement. All City records concerning this project are open for audit by the State at any reasonable time.

PAYMENT: The City shall submit billing and a narrative summary of the work done in the preceding month on or before the 10th of the current month. The State agrees to make payment within 20 calendar days of receipt of the billings.

TERMINATION: This agreement may be terminated upon thirty days written notice by either party except as specifically detailed herein otherwise.

QUARTERLY MEETING: There shall, as a minimum, be one meeting per calendar quarter to assess the effectiveness of this program and to assure that budgeting restraints are met. Either party to this agreement may have any staff present.

COMPENSATED DAMAGES: It is understood that any damages that are caused by third parties that can be collected from third parties will be repaired by the City, and a billing for these repairs shall be sent to the State along with any documentation which the City has available to help the State in making the collection. The State shall pay the City for these repairs on an actual documented cost plus 10% administration and overhead. Payment under this provision shall be in addition to the payment detailed in Appendix B.

PRIORITIES FOR CONSTRUCTION OR RECONSTRUCTION: It is understood that the

City, through the 3C's (Comprehensive, Coordinated, Cooperative) planning process has adopted a priority program which rates all potential improvements using a uniform set of criteria. No special or different criteria will be used on the streets covered in this agreement.

CONTROL OF ACCESS AND UTILITIES: The control of access and utilities within these streets shall remain with the State.

HOLD HARMLESS/INDEMNIFICATION: The State agrees to hold harmless and/or indemnify the City for damages resulting from the construction or design done by the State of the streets and areas covered by this Agreement. This hold harmless/indemnification clause shall not cover damages which are caused either directly or indirectly by the work done by the City pursuant to this Agreement. City agrees to defend, protect, indemnify and save harmless the State against and from all claims, liabilities, demands, causes of action, judgments, and losses claimed to be due to the City's performance of the activities of this Agreement, specifically including any claims that any work was not done in a proper or timely manner.

CIVIL RIGHTS COMPLIANCE: City must comply with all applicable Federal and State laws including, but not limited to, prevailing wage laws and those laws referred to in the two-page NOTICE attached hereto, which is made a part of this Agreement by its reference.

IN WITNESS THEREOF, the parties hereto caused this Agreement to be executed in duplicate by their duly authorized officers.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

Approved for Legal Content:
By:

Date: _____

By:

Billings District Administrator
Date: _____

CITY OF BILLINGS

By:

Mayor
Date: _____

APPENDIX A

BUDGET July 1, 2005 - June 30, 2007

CITY OF BILLINGS - STATE ROUTE MAINTENANCE

	FY 2006	FY 2007
LABOR COSTS:		
Salaries & Wages	231,657	227,845
Overtime/ Callout, etc.	<u>6,717</u>	<u>6,885</u>
TOTAL LABOR	238,374	234,730
12% of 4 Supervisors Time, 48% Electrician, 12% Sign Fabricator, 37% signal technician		
plus 49% of new signal tech. position and & 3 Laborers Equivalent (portions of 26 laborer positions)		
MATERIALS:		
Operating Supplies	500	505
Paint	15,000	15,150
Heat Tape Markings	9,000	9,090
Storm Parts	1,500	1,515
Sign Parts	600	606
Signal Supplies	24,000	24,240
Water, Phone & Underpass pump electricity	1,320	1,333
Gravel & Sand	10,000	10,100
Road Oil	4,000	4,040
Asphalt	6,500	6,565
Salt & Ice Melt	<u>26,000</u>	<u>26,260</u>
TOTAL MATERIALS	98,420	99,404
EQUIPMENT & INSURANCE:		
Administration & Rent	29,201	29,493
Gas, Oil & Grease	14,429	14,573
Motor Veh. Parts	15,304	15,457
Labor Mot. Veh.	17,820	17,998
Equipment Rental (Furnished by MDT or billed in addition)		
Liability Insurance	14,992	15,142
Equip. Replacement	<u>71,459</u>	<u>73,201</u>
TOTAL EQUIPMENT	163,206	165,866
Total Street/Traffic Maintenance of State Routes	500,000	500,000

APPENDIX B

**City of Billings - Montana Department of Transportation, Street and Traffic
Maintenance Budget July 1, 2005 to June 30, 2007.**

	FY 2006	FY 2007
Traffic Control Maintenance:		
Labor, Administration & Overhead	86,935	85,606
Materials & Services	48,600	49,086
Equipment	<u>59,521</u>	<u>60,491</u>
Total Traffic Control	195,056	195,183
Street Surface Maintenance:		
Labor, Administration & Overhead	30,417	29,952
Materials	21,000	21,210
Equipment	<u>20,825</u>	<u>21,164</u>
Subtotal	72,242	72,326
Storm Sewer Repair & Maintenance:		
Labor, Administration & Overhead	3,790	3,732
Materials	1,500	1,515
Equipment	<u>2,595</u>	<u>2,637</u>
Subtotal	7,885	7,884
Street Cleaning & Sweeping:		
Labor, Administration & Overhead	71,822	70,724
Materials	1,320	1,333
Equipment	<u>49,174</u>	<u>49,975</u>
Subtotal	122,316	122,032
Snow Removal & Ice Control:		
Labor, Administration & Overhead	45,410	44,716
Materials	26,000	26,260
Equipment	<u>31,091</u>	<u>31,597</u>
Subtotal	102,501	102,573
TOTAL MAINTENANCE	500,000	500,000

APPENDIX C
City of Billings - Montana Department of Transportation, Street and Traffic
Maintenance Budget July 1, 2005 to June 30, 2007.

MONTH	TRAFFIC MAINT	STREET MAINT	TOTAL FY 2006	TRAFFIC MAINT	STREET MAINT
July	19,510	15,250	34,760	19,520	15,240
August	17,560	27,440	45,000	17,570	27,430
September	15,600	33,540	49,140	15,610	33,530
October	11,700	15,250	26,950	11,710	15,240
November	7,800	21,350	29,150	7,810	21,340
December	13,650	24,400	38,050	13,660	24,390
January	9,750	27,440	37,190	9,760	27,430
February	9,750	18,300	28,050	9,760	18,290
March	15,600	39,640	55,240	15,610	39,630
April	19,510	21,350	40,860	19,520	21,340
May	29,260	24,400	53,660	29,280	24,390
June	25,366	36,584	61,950	25,373	36,567
TOTAL	195,056	304,943	500,000	195,183	304,816

APPENDIX D

Agreement for Fiscal 2006 & 2007

MDT Agreement Street-Traffic Operating & Maintenance Hours

	2004 Hours	% of Total
Street Repair	13,459	17.4%
Storm	7,839	10.1%
St.Maint.	24,822	32.0%
Traffic Control	15,433	19.9%
Street Light	7,833	10.1%
MDT	8,128	10.5%
Total	77,514	100.0%

10.5% -- MDT % of total yearly reserve of Street/Traffic Fleet based on FY 2004 actual hours.

REQUESTED BUDGET:		Equipment Reserve Amt.	MDT Share	MDT %	Labor & Benefits	O & M	Maintenance Total	
FY2006	5 Year Average ERP		\$681,214	\$71,459	10.5%	\$238,374	\$190,167	\$500,000

REQUESTED BUDGET:		Equipment Reserve Amt.	MDT Share	MDT %	Labor & Benefits	O & M	Maintenance Total	
FY 2007	5 Year Average ERP		\$697,820	\$73,201	10.5%	\$234,730	\$192,069	\$500,000

**SPECIAL PROJECTS - CONTRACT MAINTENANCE AGREEMENT BETWEEN
THE CITY OF BILLINGS AND THE STATE OF MONTANA**

A) It is recognized by all parties to this agreement that certain preventive maintenance activities are necessary to be able to avoid future major reconstruction costs. In order to accomplish this maintenance the parties agree to the following schedule of maintenance activities:

CONTRACT MAINTENANCE AGREEMENT

Resurface 1st Avenue South (35th to State)	\$300,000
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TOTAL PROJECT AGREEMENT FOR FY 2006 & 2007	<u>\$300,000</u>
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B) Since it is impractical to project the type of maintenance needs it is understood and agreed that annually the City and the Department of Transportation, Highways Division shall determine the project for the second year.

C) The work contemplated in the preventive maintenance shall be let to private contractor by the City and included in its preventive maintenance program and the State shall reimburse the City for actual construction costs of the agreed upon work to be performed plus 10% administration and testing charge. All contracts for preventive maintenance work must be approved by the Montana Highway Commission prior to award. The City shall bill the State periodically based on payments to the Contractor throughout the construction period. The contracted work to be paid by the State shall be separated in the contract so actual costs can be determined. The City agrees that any contract awarded pursuant to this agreement will require compliance with all state and federal laws and regulations, including but not limited to workers' compensation and civil rights requirements per the attached notice.

D) Paver laid overlay shall be a minimum of one tenth foot of asphaltic concrete preceded by a proper cleaning and leveling course. All shall be applied in compliance with accepted engineering practices and shall include all necessary utility adjustments, and other items related to and affected by the street improvement as agreed upon.

E) Chip seal shall be the application of an asphaltic material and cover course in accordance with accepted engineering practices and shall include all necessary preparation, clean-up and traffic control.

F) Other surface preventive maintenance shall be applied according to the manufacturers recommendations and shall receive approval of the Montana Department of Transportation prior to application.

There will be no variance to any of the bid document specifications without the explicit approval of the Montana Department of Transportation, Billings Division.

IN WITNESS THEREOF, the parties hereto caused this Agreement to be executed in duplicate by their duly authorized officers.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

By: _____
Billings District Administrator

Date: _____

CITY OF BILLINGS

By: _____
Mayor

Date: _____

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

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Approval of Amendment #8 with Morrison-Maierle, Inc. for Airport Improvement Project (AIP) 29

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 knowledge of 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 term contract is with Morrison-Maierle, Inc. to provide engineering design, survey, contract administration for Airport Capital projects, including Federal AIP and Passenger Facilities Charge (PFC) projects, and the general Departmental engineering services as needed. The base agreement is amended each time a new project is undertaken. Amendment #8 includes the required engineering design, survey, contract administration for the construction of this year's AIP 29 projects, which include Taxiway "G" and design of Commercial Ramp Improvements, the study of Runway 7/25 for expansion, and the purchase of a front-end loader for the airfield snow removal and sanding operations. The scope of work and fees associated with these projects were reviewed and negotiated by Airport staff. The AIP 29 construction projects will provide new asphalt pavement, and lighting to Taxiway "G" south of Taxiway "A." Also included in the agreement is the development of specifications for a new front-end loader. Including Amendment #8, the total cost of the engineering work under this agreement during the first four years has totaled \$2,493,072 and has produced over \$14,500,000 in construction projects and \$830,000 in equipment purchases.

FINANCIAL IMPACT: The total cost of the Engineering Contract Amendment #8 with Morrison-Maierle, Inc. is \$376,416, and will be funded with a 95/5 AIP entitlement grant. The FAA portion will be \$357,595 and the City's match is \$18,821. The source of the City's match is the Department's Capital fund.

RECOMMENDATION

Staff recommends that the City Council approve Amendment #8 to the Morrison-Maierle, Inc. term contract in the amount of \$376,416 to cover the engineering services needed to complete AIP 29.

Approved By: City Administrator City Attorney

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H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Approval of Contract with Montana Department of Public Health and Human Services – Developmental Disabilities Division

DEPARTMENT: Aviation/Transit Department-Transit Division

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

PROBLEM/ISSUE STATEMENT: Since July 1997, the Montana Department of Public Health and Human Services – Developmental Disabilities Division (DD) has contracted with MET Transit to provide specialized transportation for developmentally disabled individuals from their home or group home to and from their respective DD Division day/work programs. The service we provide improves the quality of life for persons with developmental disabilities. This contract is based on a per-person, per-month ridership.

On July 28, 2003, City Council approved the current contract, which was awarded by the State on July 1, 2003. This contract contains a clause, which allows the contract for service to be extended for up to three additional one-year periods if both parties agree. On July 26, 2004, Council did approve the extension of the contract through June 30, 2005. The DD Division is again requesting that we extend the current contract for an additional one year period through June 30, 2006. The City has utilized a similar clause in past contracts. Legal has reviewed this clause and has approved it as to form and content. Staff believes that this contract should be extended for the additional year.

FINANCIAL IMPACT: Through this contract extension the City's Transit Division could receive up to \$179,770 in revenue for FY 05/06 for the services provided. This revenue was budgeted in the FY 06 budget.

RECOMMENDATION

Staff recommends that Council approve the contract extension and authorize the Mayor to execute the attached transportation contract between the City's MET Transit Division and the Montana Department of Public Health and Human Services (DPHHS) – Developmental Disabilities Division (DD Division).

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

ATTACHMENT

A – DD Contract Amendment (7 pages)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Lease of City Hangar Property to FES Development, L.L.C.
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The City is the owner of a 60 foot by 70 foot aircraft hangar on the west end of the Airport. This hangar property was recently vacated and is available for a new tenant. This hangar is located in the executive hangar area and includes office space with full utilities. This type of hangar is typically used in a corporate setting and tends to be difficult to lease to the general aircraft owner populace due to the higher square foot price. The other two City owned executive hangars are occupied by the Deaconess Hospital Life Flight operation, and the U.S. Fish and Wildlife Services. These two hangars are being leased for \$4.40 per square foot per annum. All of the recent inquiries received by staff for hangar space have been informed of this space and have opted to look elsewhere, mainly due to the proposed lease rate in the \$4.40 range. Recently, Francis Styren contacted us looking for hangar space and was interested in the City's available hangar. He is relocating to Billings from the Seattle area and has offered to enter into a one-year lease with a one-year renewal while he establishes himself in Billings. He would like to lease the hangar under his company's name of FES Development, L.L.C., and we have negotiated a square foot lease rate of \$4.25.

FINANCIAL IMPACT: The execution of this lease will generate annual revenues of \$17,850 in the first year, and the subsequent year would be adjusted for the effects of inflation using the Consumer Price Index for All Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council approve the Aviation Building and Ground Lease with FES Development, L.L.C.

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

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Approval of New Airport Gift Shop Concession

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Airport Gift Shop Concession is due to expire August 31, 2005. Staff has advertised for the opportunity for qualified concessionaires to submit proposals to operate the five (5) year Gift Shop Concession and a Request for Proposal packet was sent to all interested parties. This concession oversees the operation of the Airport's gift shop located on the concourse level in the center of the Airport Terminal Building. During the proposal process, the City formed a committee that included Councilman Ruegamer and staff members. The proposals were evaluated according to a list of items that included Revenues to the City, participation as a Disadvantaged Business Enterprise, Experience, Store Concept, and Customer Service. Proposals were received Tuesday, July 19, 2005 from the following businesses vying for the opportunity to operate the Airport Gift Shop Concession:

GIFT SHOP PROPOSERS

Airport Gifts – Local company and current gift shop Concessionaire at the Airport.

Air Host – The Airport's restaurant Concessionaire who also operates gift shops in other airports. They are based out of Memphis, Tennessee.

Gifted Wings – The current gift shop Concessionaire at the Missoula Airport and a past concessionaire at the Gallatin Airport near Bozeman.

After evaluating the proposals, the selection committee unanimously picked Airport Gifts to continue to operate the Airport Gift Shop. Significant factors contributing to the selection of Airport Gifts included a sound management plan, highest percentage of revenues offered (18.5% in years 1, 2 and 5, and 18.75% in years 3 and 4), and the only certified Disadvantaged Business Enterprise (DBE), which will significantly help the Airport operation meet its annual DBE goal requirements, a Federal Aviation Administration (FAA) Grant recipient requirement.

FINANCIAL IMPACT: The Gift Shop Concession generates approximately \$620,000 to \$650,000 in gross revenues from which the Concessionaire remits the percentage that was proposed to the City. This will generally result in revenues for the Airport operation between \$115,000 and \$120,000 annually, depending on the total annual gross revenues generated.

RECOMMENDATION

Staff recommends that Council award the five (5) year Airport Gift Shop Concession to Airport Gifts and authorize the Mayor to execute the new Gift Shop Concession Agreement.

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

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

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 8, 2005

TITLE: Council Approval of Executive Hangar Ground Lease with Sarpy Creek Land Company, LLC

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Ms. Tempe Connell of Sarpy Creek Land Company desires to construct a large, new eighty-foot by eighty-foot executive aircraft hangar in the City's Executive Hangar area located at the west end of the Billings Logan International Airport. This area was specifically developed in the 1970's to accommodate the general aviation tenants with this type of lease and hangar construction. A fourth hangar row was added a few years ago to accommodate the continuing growth in this area. This twenty (20) year ground lease would be for 19,142 square feet. This would be the thirteenth 20-year ground lease in this specified area. The ground lease rate of \$.21 per square foot per annum is in line with the rate being paid by the other ground lease tenants located in this Executive Hangar site. We have compared our ground lease rates with other commercial service airports and have found that our ground lease rates are comparable. This lease format, which is similar to all of the Airport ground lease documents, has been used for many years and has always been approved by the City Attorney's office. The Aviation Department averages two or three leases per year using this type of lease, either for a new lease or for a lease renewal. The lease identifies that the tenant is responsible for maintaining the leasehold, and includes the appropriate insurance coverage requirements and indemnification language. This is a standard business transaction for the Airport.

FINANCIAL IMPACT: This ground lease will generate \$4,020 in the first year of the lease. Future lease year rentals will be adjusted annually by the Consumer Price Index.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute a new twenty-year Executive Hangar Ground Lease at the Billings Logan International Airport with Sarpy Creek Land Company, LLC.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Agreement with UNAVCO for a Plate Boundary Observatory GPS Monitoring Station on the Airfield of the Airport

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Airport staff has been approached to participate in a scientific project called EarthScope, which is a National Science Foundation research facility that is exploring the structure and evolution of the North American continent and the physical processes controlling earthquakes and volcanoes. A significant part of this project entails establishing a Plate Boundary Observatory GPS network covering western North America and Alaska. This is basically a network of continuously monitoring Global Positioning System (GPS) stations that will measure deformations across the active boundary between the Pacific and North American tectonic plates. The Airport was selected to entertain a site in this project because it offers an unobstructed view of the sky, the area is secure, and the equipment can be installed in bedrock. The City Attorney's office has reviewed UNAVCO's Revocable Permit and Non-Recorded Easement Agreement that specifies the terms for letting this equipment be installed on the Airport and after some modifications, the City Attorney believes it to be fine. The City would get no financial benefit from this, but would receive the ability for our engineers to plug into the equipment to get super accurate GPS coordinates for calibrating their GPS equipment with. This is basically a public service being provided by the City to help further the scientific community's research of the regional earthquake faults and Yellowstone Basin volcanic activity. UNAVCO is a non-profit membership governed consortium funded through the National Science Foundation and the National Aeronautics and Space Administration (NASA).

The small amount of required space for the equipment would be installed out of the way on the airfield. It is a self-sufficient GPS unit that operates via solar power and transmits data with what is basically a cell phone connection. Once in place, the equipment requires little if any maintenance, which UNAVCO would supply if needed. This agreement allows for the equipment to be put in place for 15 years, but if future airport projects should require that it be removed, the agreement allows for this to happen.

FINANCIAL IMPACT: There is no financial impact from participating in this project.

RECOMMENDATION

Staff recommends that Council approve the City's participation in Plate Boundary Observatory GPS Monitoring program and authorize the Mayor to sign the Revocable Permit and Non-Recorded Easement Agreement with UNAVCO

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

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Renewal of Commercial Aviation Ground Lease with Edwards Jet Center
DEPARTMENT: Aviation and Transit
PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The lease term for the Commercial Aviation Ground Lease with Edwards Jet Center for the use of Commercial Lot 2 at the Billings Logan International Airport recently expired. This parcel sits directly east of the Airport Terminal Building and extends from the taxiway system on the north end of the parcel to the Airport's frontage road on the south. Since this parcel is adjacent to the Airport frontage road, there is some potential that some portion of this parcel may be impacted by the forthcoming design for the new Airport Road Improvements that will rebuild secondary Highway 318 from the Airport down to Alkali Creek. In order to safeguard against holding up this important road improvement project, staff is recommending that this lease be renewed for only one additional year until we have a more complete idea of what the final design of the Airport Road Improvements will be. At that point, staff will negotiate a longer term lease with Edwards Jet Center for this 64,900 square foot parcel, which they use in their Fixed Base Operator business.

FINANCIAL IMPACT: This one year lease will generate approximately \$11,059 in annual revenues for the City's Airport Operation. This rate was calculated by adjusting the old lease rate by the increase in the Consumer Price Index for All Urban Consumers (CPI-U).

RECOMMENDATION

Staff recommends that Council approve the one year renewal of the Commercial Aviation Ground Lease with Edwards Jet Center for the Airport's Commercial Lot 2 parcel.

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

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N

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Assignment of Jon Marchi's Commercial Aviation Ground Lease to the Whitefish Credit Union to Secure Financing

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Jon Marchi has a Commercial Aviation Ground Lease with the City with just over 19 years remaining on the term. Mr. Marchi's parcel is the location of Big Sky Airline's corporate office and maintenance hangar on the east end of the Airport. Mr. Marchi served on Big Sky Airlines Board of Directors. Mr. Marchi is requesting to have the lease assigned to Whitefish Credit Union to provide the bank with the security it needs to issue a financing package. The City has approved a number of these arrangements in the past, including one previously with Mr. Marchi.

FINANCIAL IMPACT: There would be no financial impact to the City, as Mr. Marchi will still be required to pay the ground lease rentals previously approved by Council.

RECOMMENDATION

Staff recommends that Council approve the assignment of the Commercial Aviation Ground

Lease with Jon Marchi, to the Whitefish Credit Union, for the purpose of securing financing.

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

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O

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Zone 4 Reservoir Appraisal

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Public Works water utility needs to acquire property as a site for future water storage and pumping facilities in the northwest portion of the City's service area near Yellowstone County Club. The proposed acquisition is comprised of temporary and permanent easements and fee simple purchase. The proposed site is part of Tract 1, Certificate of Survey 3030 located approximately ½ mile north of the Yellowstone Country Club at about 54th St. West. In accordance with the City's property acquisition policy, Resolution 93-16740, staff obtained two appraisals establishing the value of the property at \$137,024. In further accordance with the acquisition policy staff is requesting that Council establish the fair market value of the property based on the appraisals. A copy of the review appraisal is being supplied for your information. The Council is being asked to approve the appraisal and land acquisition concurrently with the annexation of this tract of land, which is scheduled for August 8.

FINANCIAL IMPACT: There is sufficient money budgeted in the FY 06 water major capital budget to cover the property purchase.

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$137,024 for a portion of Tract 1, Certificate of Survey 3030 for the purpose of constructing water storage and pumping facilities and authorize staff to obtain the property from GSK Partners, LLP.

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

BACKGROUND

The Zone 4 water reservoir project has been discussed over the last several years and is identified in the City's Capital Improvement Plan in FY 06 and 07. Geographically pressure zone 4 covers the area along Rimrock Road west from 17th St. West to the Yellowstone Country Club area. Water system studies have identified the need for additional reservoir capacity in this pressure zone for the following reasons:

- 1) Improve hydraulic balance – During the summer pressures along the westerly portions of Rimrock Road fluctuate. Having additional storage on the westerly end of this zone will help even out these fluctuations.
- 2) Provide emergency storage for fire and power outages – Fires place increased demands on the system and power outages reduce the ability to run pumps. Having additional storage minimizes the impacts of these types of events.

The interest the City is seeking in the property includes the following:

- 3.632 acres of fee simple acquisition (\$79,515)
- 2.328 acres of permanent easement (\$48,419)
- 2.076 acres of temporary construction easement (\$9,090)

RECOMMENDATION

Staff recommends that Council establish a fair market value of \$137,024 for a portion of Tract 1, Certificate of Survey 3030 for the purpose of constructing water storage and pumping facilities and authorize staff to obtain the property from GSK Partners, LLP.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Revolving Loan Fund Recommendations for:

Northern Plains Resource Council

DEPARTMENT: Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The Downtown Revolving Loan Committee recommended the following loan:

Northern Plains Resource Council	\$212,000.00
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FINANCIAL IMPACT: After awarding this loan, the loan fund will have a balance available of approximately \$9,000.00.

RECOMMENDATION

Staff recommends that council approve the loan.

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

ATTACHMENT

A-Loan Description

Attachment A

Revolving Loan Fund Loans

Monday, August 8, 2005

The Northern Plains Resource Council loan will have the following terms:

Loan	\$212,000.00
Interest Rate	2.625% Adjusted annually.
Term	Amortized over 20 years with a six year balloon payment.
Payments	Minimum Payments based on a 5% rate
Personal guarantees	The City will have personal guarantees from three individuals totaling \$150,000.
Security	The City will secure a second lien on the real estate.

This loan is to finance a portion of the remodeling of a building at 220 South 27th Street for office space.

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Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Western Wheel Bar Customer Appreciation Celebration Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Tawni Cox of the Western Wheel Bar requests the temporary closure of Minnesota Avenue between S.27th Street and S. 28th Street for a Customer Appreciation Celebration on Saturday, August 27, 2005, from 4:00 pm to 2:00 am. The event will include a barbecue and a band outside.

Recommended conditions of approval include Wagon Wheel Bar:

- Obtain proper permit for alcohol consumption in the right of way
- Obtain proper noise permit from Police Department
- Clean area to be used and provide and empty waste cans
- Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
- Provide and install adequate traffic barricades and signs directing motorists around closure
- Provide a certificate of insurance naming City of Billings as additional insured
- Provide a 10' 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

RECOMMENDATION

Staff recommends that Council approve the temporary closure of Minnesota Avenue between S.27th Street and S. 28th Street on Saturday, August 27, 2005, from 4:00 pm to 2:00 am.

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

ATTACHMENTS

- A.** Letter outlining event (1 page)
- B.** Right of Way Permit Application (2 pages)
- C.** Map outlining street closure (1 page)
- D.** Certificate of insurance (1 page)

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R

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Downtown Billings Partnership (DBP) Recommendation to provide a Grant Award in excess of \$49,999 to Marchi-Tolliver Partnership for twelve units of the Terrace Apartments located at 300 N. 25th Street.

DEPARTMENT: Administration - Finance Division

PRESENTED BY: Patrick M Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The DBP seeks Council approval for a \$72,000 housing grant to Marchi-Tolliver Partnership for twelve units of the Terrace Apartments located at 300 N. 25th Street. The DBP previously awarded a \$4,000 housing grant to the entity for two different units of the Terrace Apartments. Because the combined grants exceed \$50,000, the housing grants must receive Council approval before funds may be allocated to the \$72,000 project.

The DBP approved the \$72,000 grant at its May 27, 2005 board meeting as a part of consent agenda item 2c (see attachments A and B). The May 27, 2005 board meeting included discussion of agenda item 4a to add \$52,000 to the budgeted Housing Grant line item thus increasing the remaining budget authority from \$20,000 to \$72,000. No board action was taken at that time, however, on June 24, 2005, the board approved reallocating \$112,000 [\$52,000 for the Terrace Apartments (for an approved project total of \$72,000) and \$60,000 for the SoNoMa project] to the Housing Grant line at agenda item 4b (see attachment C).

FINANCIAL IMPACT: The Tax Increment Fund has a FY 2006 budget for this grant.

RECOMMENDATION

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

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

ATTACHMENTS

A – Downtown Billings Partnership Board Agenda Item 2c for May 27, 2005 board meeting

B – Project Managers Report approved as a Consent Agenda Item (see Attachment A)

C – Downtown Billings Partnership Board Agenda Item 4b for June 24, 2005 board meeting

ATTACHMENT A

**DOWNTOWN BILLINGS PARTNERSHIP, INC.
BOARD OF DIRECTORS MEETING
FRIDAY, MAY 27, 2005 – 7:30 A.M.
DBP BOARD ROOM**

PRESENT: Kay Foster, Bill Fisher, Al Rapacz, Bill Honaker, Jon Saunders, Kristoff Bauer, Tom Mackay, Ann Miller, Chuck Barthuly, Jock West, Kim Olsen, Lisa Woods and Randy Hafer

GUESTS Mary Westwood

DBP STAFF: Greg Krueger, Casidee Riley and Gladys Phelps

AGENDA

1. CALL TO ORDER/INTRODUCTIONS/COURTESIES

DBP Board President, Ann Miller, called the meeting to order at 7:35 a.m. President Miller announced that this is the last DBP Board meeting for Tom Mackay, DBA Board President and DBP Representative. The DBA's fiscal year ends on May 31st and the new DBA President and DBP Representative is Jon Saunders. A gift and Certificate of Appreciation was presented to Mr. Mackay for his contribution to the DBP and downtown Billings. Executive Director Krueger announced that today's meeting is also the last DBP Board meeting for DBP Project Director Casidee Riley. Her resignation is effective June 15th, as she will be relocating to California. Director Krueger presented her a gift for her work and contribution to the DBP.

Director Krueger also provided the Board an update on the B.I.D. 62% of the affected property owners in the proposed B.I.D. District have signed the Petition to Create. The Petition will be submitted to the City Council in June. Whereas, the first year of the B.I.D. is being paid from Tax Increment Funds, the B.I.D. will be in operation on July 1, 2005.

2. CONSENT AGENDA

- a) **Minutes of Previous Meeting – April 22, 2005**
- b) **Executive Director's Report: Loans/Grants/Agreement – City Council Update**
- c) **Project Manager's Report and approved grants**
- d) **DBP Financial Reports: Projects Budget – Operations Budget**
- e) **Staff Grants Update**

Jock West moved to approve the Consent Agenda, seconded by Kay Foster. Motion carried.

Director Krueger informed the Board that the Skypoint plaque would be dedicated on June 11th, honoring Elizabeth Burley, who named Skypoint in 2002.

President Miller requested a clarification of the wording in the April minutes regarding Sandstone Towers. Jock West, who is an attorney, stated that the wording was correct.

3. BRIEF PRESENTATION: DBA Downtown Minute

DBA Executive Director, Lisa Woods, presented the first "Downtown Minute" for viewing. This "Minute" focuses on parking – POP – Plenty of Parking. Director Woods thanked the Board and for all those involved in the funding assistance for this project. Jon Saunders informed the Board that the "Minute" will begin airing this afternoon on KTVQ's 5:30 p.m. news and on the late news and weekend news during June. A new "Minute" will be produced every month. President Miller directed staff to send KTVQ and the DBA thank you cards for this project.

4. EXECUTIVE COMMITTEE RECOMMENDATIONS

a) **Action Item: Ongoing Project Budget/Grant Program Management by Board –**
President Miller provided a recap of the reason this item was on the agenda. She informed the Board that property owner, Ken Tolliver, had applied for a Housing Grant of \$72,000 for renovation of apartments at the Terrace Apartment Building. The Housing Committee approved this grant, although there is only \$20,000 remaining in the Housing Grant Line Item in the DBP Projects Budget. The Housing Committee recommended moving funding from one line item to another. Director Krueger stated that the City Council is "comfortable" with the DBP Projects Budget and that the DBP just needs to stay within the budget allocated; allocations can be moved between line items. President Miller requested that the Board decide whether funding should be moved between line items. The Board also needs to identify what is "sacred" regarding programs and projects. Director Krueger continued by reiterating that the Housing Committee had approved the total grant if \$72,000, pending DBP Board approval, as this is an important and viable project. Project Manager Riley has reviewed current encumbrances that will not be utilized by June 30, 2005 and has found that there is \$108,000 that will remain unspent. The \$52,000 could come from this area.
President Miller presented two questions that the Board needs to address at this time:

- i. Can \$52,000 be allocated to the Terrace Apartment project?
- ii. Can funding be moved between Line Items within the Projects Budget?

Kim Olsen provided a review of the criteria utilized for the funding of Housing Grants.

Kay Foster moved to approve \$52,000 in a Housing Grant for the Terrace Apartments.
Motion died for lack of a second. President Miller stated that this could be returned for further consideration when more information is provided.

Discussion followed regarding program applications and whether the programs should be kept open even if the current allocated fiscal year funding is depleted. The Executive Committee recommends that all the programs be kept open except for the Technical Assistance Bank. Director Krueger provided a recap of the TAB and suggested that it should be closed. The DBP maintains a library of the TAB's done on the majority of the downtown buildings. Kim Olsen informed the Board that the TAB is administered in-house by the DBP Projects Manager and could possibly be placed under the DBP's Operations Budget rather than the Projects Budget. Discussion continued. Kristoff Bauer recommended that all program applications continue to be accepted and provide the applicant the status of the program that they are applying for. Kim Olsen provided a recap of the Facade Program. **Kristoff Bauer moved to approve the process of continuing to accept all**

Grant Program applications, including the TAB, seconded by Al Rapacz. Motion carried.

b) **Action Item: Nominating Committee** – President Miller provided a recap of the nominations:

- Member-At-Large – Jock West
- President – Jock West
- Vice-President – Chuck Tooley
- Secretary – Kim Olsen
- Treasurer – Joe McClure

President Miller asked for nominations from the floor. There were none. She also informed the Board that the Mayor, Chuck Tooley, would hold the Vice-President position until December 31st, when his term as Mayor ends. Election of the aforementioned will be held at the June Board meeting.

c) **Action Item: BID-DBP Office Relocation** – Director Krueger provided a review and recap of the proposed relocation. The new location at 2815 Second Avenue North has a large warehouse area that will accommodate BID equipment and DBA Events equipment and holiday decorations. There is alley access to drive into. The rent will be shared equally between the DBP, BID and the DBA. The DBP has previously paid the complete rent for the shared office space. This is a one-year lease. The Executive Committee recommends approval of the relocation. **Kay Foster moved to approve the relocation of the DBP office to 2815 Second Avenue North, seconded by Randy Hafer. Motion carried.**

5. OLD BUSINESS AND BRIEF PARTNER REPORTS

a) **Partner Updates and Reports:**

- **DBA** – Tom Mackay thanked the Board and stated that he had enjoyed his tenure as the DBA Representative to the Board. Along with Jon Saunders as the new DBA President and DBP Representative, Todd Buchanan was elected President-Elect and is the DBP Alternate. DBA Executive Director, Lisa Woods, is also an alternate to the DBP Board.
- **Cultural Partners** – President Miller informed the Board that Bill Fisher is the new Cultural Partners Representative to the DBP Board. She stated that the Cultural Partners are going through a transition period. She also reminded the Board that the High Plains Book Fest is scheduled for June 23-26. The Cultural Partners now have their own website.
- **Property Owners** - Randy Hafer informed the Board that the June Board meeting will be his last Board meeting, as Bill Honaker will be the new Chair of the Property Owners' Committee. Mr. Hafer provided a brief recap of the May Property Owners' Committee meeting, as the regional GSA Manager had attended and discussed the James F. Battin Federal Building and the asbestos problem.

b) **Project and Committee Reports:**

- **DBP Committee: Future Organization – DBP and DDC** – Kay Foster provided an update. She has received commitment from the perspective committee members that include: Bruce McCandless, Mike Schaer, Charlie Yegen, Chuck Barthuly, Brenda Burkhardtseimer, Joe McClure, Greg Krueger, a DBA representative and herself.

President Miller stated that at the June Board meeting the specific charge for this committee would be defined.

6. NEW BUSINESS

- President Miller requested identification of what projects must be funded and address the movement of the funding. Director Krueger needs guidance by the Board to move forward. This will be discussed at the June Board meeting with the Board making the decisions.
- President Miller informed the Board that it needs to consider the Empire Bar project, as something needs to be done. The proposal from Bill Honaker is “still on the table”. Randy Hafer emphasized that it is essential that the Board takes action regarding this property. It is a negative detraction for tenants on the other side of the street. President Miller stated that options to consider is whether the DBP should buy the property and turn around and sell the property and the liquor license.
- President Miller informed the Board that Director Krueger has signed a contract with the DBP as its Executive Director for three years, until the end of the TID.

7. ROUND TABLE DISCUSSION – PUBLIC COMMENT – ADJOURNMENT

The meeting was adjourned at 8:55 a.m.

Respectfully submitted,



Gladys Phelps
Assistant Secretary

ATTACHMENT B

DOWNTOWN BILLINGS PARTNERSHIP, INC.
Project Manager's Report
(PDF only)

**DOWNTOWN BILLINGS PARTNERSHIP, INC.
BOARD OF DIRECTORS MEETING
FRIDAY, JUNE 24, 2005 – 7:30 A.M.
MSU-B CONFERENCE ROOM
207 NORTH BROADWAY**

PRESENT: Harrison Fagg, Jim Reno, Ann Miller, Jon Saunders, Bill Fisher, Kay Foster, Lisa Woods, Chuck Barthuly, Kristoff Bauer, Jock West, Bill Honaker, Randy Hafer and Brenda Burkhartsmeier

GUESTS: Liz Kampa-Weatherwax, Don Olsen, Jeff Pugmire and Maribeth Haynes

DBP STAFF: Greg Krueger, Casidee Riley, Lisa Harmon and Gladys Phelps

AGENDA

1. CALL TO ORDER/INTRODUCTIONS/COURTESIES

DBP Board President, Ann Miller, called the meeting to order at 7:40 a.m. Director Krueger introduced Lisa Harmon as the new Operations Director for the DBP/BID. He also informed the Board that today is Project Manager's last meeting and day with the DBP as she is relocating to California. President Miller announced that today's meeting is also the last Board meeting for Randy Hafer, Greg McDonald and Kristoff Bauer. She presented each with a departing gift as a thank-you for their commitment and dedication to the DBP and downtown Billings. Director Krueger presented President Miller with a Certification of Appreciation for her tenure as Board President during this past year. He also thanked City Administrator Bauer for his work that he has done for the DBP and for the City of Billings.

2. CONSENT AGENDA

- a) Minutes of Previous Meeting – May 27, 2005
- b) Executive Director's Report: Loans/Grants/Agreements – City Council Action Update
- c) Project Manager's Report and approved grants
- d) DBP Financial Reports: Projects – Operations Budget
- e) Staff Grants Update

Greg McDonald moved to approve the Consent Agenda, seconded by Chuck Barthuly. Motion carried.

President Miller requested clarification of the Operations Budget remaining balance, as there had been a different amount indicated on page 1 on the overall Projects Budget and page 2 on the Operations Budget of the spreadsheet at the Executive Committee meeting. Director Krueger stated, although the Operations Budget is a part of the Projects Budget, he sometimes does not update regularly on the Projects Budget spreadsheet. The correct and current balance of the Operations Budget is always correct on the Operations Budget spreadsheet. Director Krueger also provided the Board with a draft of the encumbrance list for FY 05.

DBA Director Woods informed the Board that a grant of \$2,500 had been received from the Piper Jaffray Foundation.

3. BRIEF PRESENTATION: City of Billings Parking Division

This agenda item is delayed until the end of the business meeting.

4. EXECUTIVE COMMITTEE RECOMMENDATIONS

a) Action Item: Elections: At Large Member and FY2006 Officers - The Executive Committee recommends the following candidate for the Member-At-Large position and the slate of officers:

- Member-At-Large – Jock West
- President – Jock West
- Vice-President – Chuck Tooley
- Secretary – Kim Olsen
- Treasurer – Joe McClure

Jim Reno moved to elect the aforementioned Member-At-Large and officers, seconded by Harrison Fagg. Motion carried unanimously.

b) Action Item: Budget Re-Allocations – Budget Goal Discussion/Evaluation – President Miller Informed the Board that the Executive Committee is recommending approval of reallocating \$112,000 from the Quiet Zone Line Item to the Housing Grant Line Item, both under the Property Owners' Line Item in the Projects Budget. Director Krueger provided a recap of this proposal and President Miller provided a recap of the Executive Committee's discussion on this. Discussion followed. This reallocation will allow the funding for the Terrace Apartments Project at \$52,000 and the SoNoMa Project at \$60,000. Jock West commented that the DBP Executive Committee should have the authority to override Sub-Committee's decisions; i.e., Housing Committee, Urban Design Committee, etc. Director Krueger provided a review of the Terrace Apartments project and why it should be approved. Brenda Burkhartsmeier stated that it is important that the DBP have rules and guidelines and Sub-Committees. President Miller reiterated that the Executive Committee recommends approval of this budget reallocation. **Brenda Burkhartsmeier moved to approve the aforementioned budget reallocation, seconded by Harrison Fagg. Motion carried with 1 no vote.**

c) Action Item: Audit Contract with Galusha, Higgins & Galusha – President Miller provided a recap of the audit proposal. The Executive Committee recommends approval of the three-year audit contract. **Jim Reno moved to approve the three-year audit contract, seconded by Jock West. Motion carried.**

d) Action Item: Charge to DBP “Partnership Beyond 2008” Committee – President Miller provided a review of the charges that the Committee needs to address. The Executive Committee recommends approval. **Brenda Burkhartsmeier moved to approve charges for the Committee, seconded by Chuck Barthuly. Motion carried.**

5. OLD BUSINESS AND BRIEF PARTNER REPORTS

a) Request from Randy Hafer regarding Facade Grant Program – President Miller provided a recap of the Executive Committee's discussion regarding this issue. The Executive Committee did not make a recommendation regarding approval or disapproval of the request, leaving the decision to the complete Board of Directors. Randy Hafer presented a recap of the project of the L & L Building (old Arcade building). He informed the Board that he was

aware of his encumbrance expiring on June 30, 2005 and had planned to submit his paid invoices for the project by that date. He is appealing the June 10th deadline for submittal of completion of the project or lose the award. Project Manager Riley provided a recap of the project award. Discussion followed. Director Krueger stated that a determination needs to be made regarding how encumbrances are handled. It will take Board action to change the policy and guidelines. Kristoff Bauer recommended that the application policy can be changed and then Mr. Hafer can reapply for the remainder of the funding upon total completion of the project. Partial payment could be paid for what is completed now. **Jock West moved to enforce the guidelines as stated but allow Mr. Hafer to apply for partial payment for what is completed on the project and extend to deadline from June 10, 2005 to June 30, 2005, seconded by Kay Foster. Motion carried.** Director Krueger informed the Board that Mr. Hafer will have between 80%-90% of his project completed by June 30th. A second motion followed. **Kristoff Bauer moved to direct the Facade Committee to reword the Facade Grant Application to allow reapplication, seconded by Brenda Burkhartsmeier. Motion carried.**

b) Partner Update and Reports:

- **Urban Design** – Don Olsen was present to provide an update and review of the Signage and Wayfinding Project. The current project is in Phase 1 with the Beauchamp Group completing designs and working with the Montana Department of Transportation and the Federal Department of Highways for their sign approval. Mr. Olsen asked the Board if they will support this project in the future to complete it. He reminded the Board the previous signage project had been rejected by the City Council. If the DBP Board does not wish to support the project, it should be terminated. President Miller stated that this will be discussed at the July Board meeting.
- **City** – Kristoff Bauer informed the Board that the City is attempting to develop space in the Library for the Federal Courts when the James F. Battin Federal Building undergoes asbestos abatement. The City is moving forward tentatively. The DBP Board needs to stay aware of the progress of this endeavor.
- **Property Owners' Committee** – Randy Hafer informed the Board that he has received a letter from Congressman Rehberg regarding the Federal Building and his support to keep the offices in the downtown area. Mr. Hafer also stated that Senator Burns' office has contacted him about his support.

3. BRIEF PRESENTATION: City of Parking Division

Liz Kampa-Weatherwax, City Parking Division Supervisor, provided a presentation on the proposed parking rate increases for meters and the parking garages. She has already provided several presentations to different downtown organizations for their input. Discussion followed her presentation. Comments given stated that the meters should increase but not the parking garages. It was clarified that only monthly garage rates would increase, not hourly rates. The overall consensus was that the rate increase was reasonable. It was emphasized that the reserved parking spaces in the garages should be only from 7:00 a.m.-6:00 a.m., not 24 hours/day.

6. NEW BUSINESS

There was no new business.

7. ROUND TABLE DISCUSSION – PUBLIC COMMENT – ADJOURNMENT

The meeting was adjourned at 9:35 a.m.

Respectfully submitted,



Gladys Phelps
Assistant Secretary

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

S

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: Annexation Petition #05-08: Acknowledge receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II through Ramona Mattix, AICP, Planning Director

PROBLEM/ISSUE STATEMENT: Owners and petitioners Ernest and Francisca Shaw are petitioning to annex an approximate 33.71 acre parcel legally described as Tracts 1 and 2 of Certificate of Survey 3190 located within Section 22, T1N, R26E, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is addressed as 120 Wicks Lane and is located directly adjacent to the south of Wicks Lane midway between Lake Elmo Drive and Nutter Boulevard. The north half of the subject property is located within the Residential 7000 (R-7000) zoning district and the southern half is located within the Residential 6000 (R-6000) zoning district. There is a concurrent zone change application for the subject property to rezone the northern portion of the property to Residential 5000 (R-5000). The City Zoning Commission will hear this request on August 2, 2005, and will forward a recommendation to the City Council for the August 22, 2005, meeting.

The petitioners are requesting annexation in order to obtain city water and sewer services. The City Council will consider this annexation at two (2) separate Council meetings. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for September 12, 2005. The Council will vote on the petition at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a 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 subject property is wholly surrounded by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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 September 12, 2005, to consider annexing this property.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A. Property Data
- B. Annexation Petition
- C. Annexation Map
- D. Zoning Exhibit

ATTACHMENT A
Property Data

Type of annexation: Petitioned - MCA 7-2-4600

Petitioner: Ernest and Francisca Shaw

Purpose of annexation: To Obtain City Services

Property included: Tracts 1 and 2 of Certificate of Survey 3190

Location: Directly adjacent to the south of Wicks Lane
midway between Lake Elmo Drive and
Nutter Boulevard

Total area: 33.71 acres

Current zoning: R-6000 and R-7000

Current land use: Single-Family Residence

Future zoning: R-6000 and R-5000 (pending zone change)

Future land use: Single-Family Residential

ATTACHMENT B

Annexation Petition

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

05/27/05 2005

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 Parmly 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
6-27-05	Ernest Shaw	<i>Ernest Shaw</i>	120 Wicks Lane
6-27-05	Francisca Shaw	<i>Francisca Shaw</i>	120 Wicks Lane

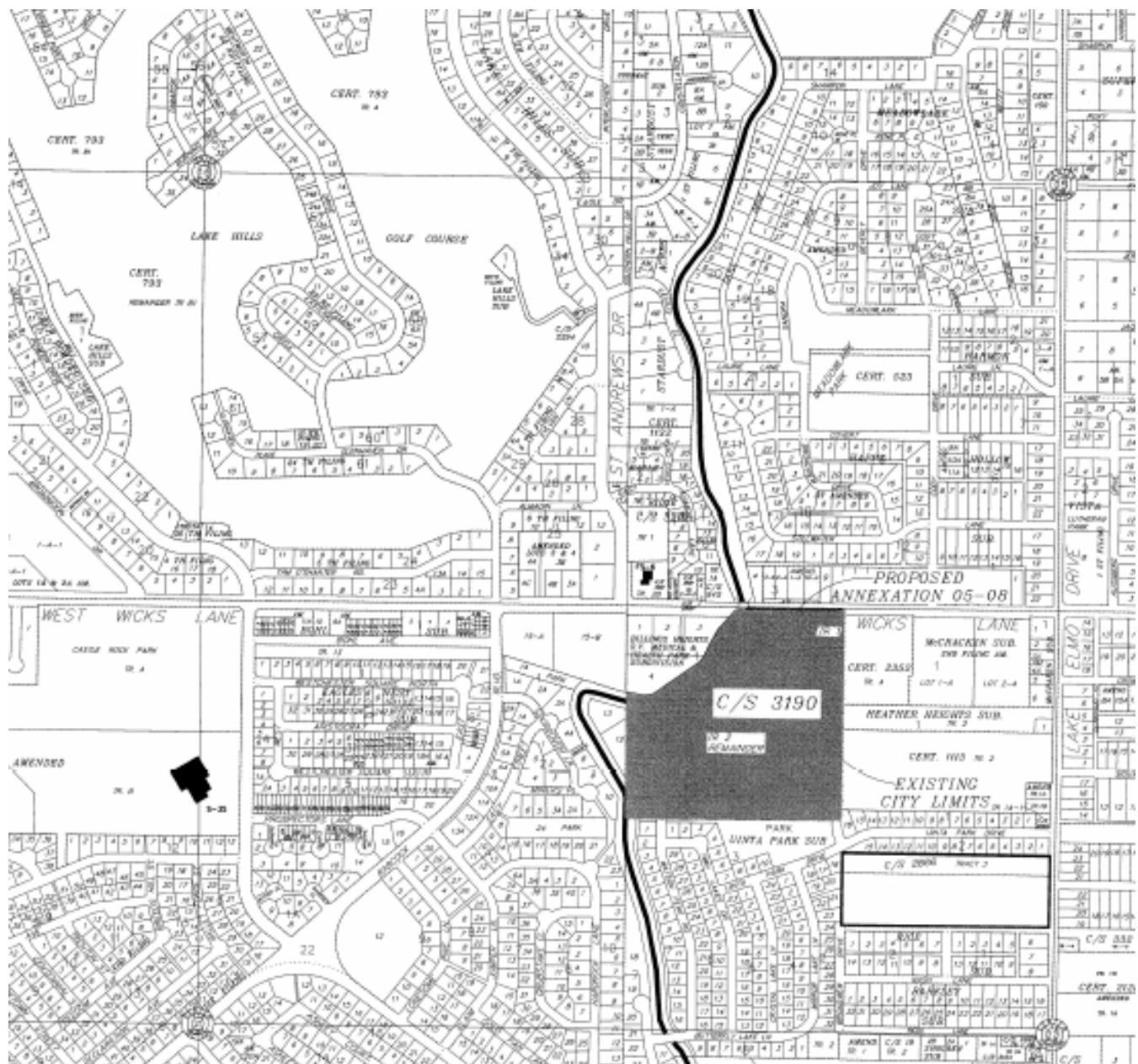
(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

ATTACHMENT C

Annexation Map



ATTACHMENT D

Zoning Exhibit



(Back to Consent Agenda)

T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Resolution of Intent to Create - Park Maint. District No. 4030, King's Green Subdivision, Second and Third Filings

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: King's Green Subdivision, Second and Third Filings contains a strip of approximately 1.09 acres of parkland area along the southern boundary of the subdivision to serve as a buffer from the Interstate for the homes there. The development of the landscape buffer will be through private contract by the developer and the maintenance of the area will be through a park maintenance district. The Park Maintenance District needs to be created at this time to provide for the maintenance of the public area improvements. The Resolution of Intent to Create the District is the first step in the process to include all lots of King's Green Subdivision, Second and Third Filings, in Park Maintenance District No. 4030.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District 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 the Park Maintenance District at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$5,710.00 for the first year. The assessment rate for this amount is \$116.53 per lot in District 4030. The assessment for the lots is shown in "Exhibit D" of the attached Park Maintenance District documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create Park Maintenance District No. 4030 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the September 12th, 2005, City Council meeting.

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

ATTACHMENT

A: Resolution of Intent to Create Park Maintenance District No. 4030; and Exhibits A-D thereto attached.

INTRODUCTION

Approval of the Resolution of Intent to Create Park Maintenance District No. 4030 for the maintenance of King's Green Subdivision, Second and Third Filings, public areas is the first step in creating the Park Maintenance District by setting a date for a Public Hearing and consideration of the Resolution to Create the district, and provide for the notification of the property owners included within the proposed district of the intended action.

PROCEDURAL HISTORY

- The King's Green Subdivision, Second and Third Filings, have been approved and filed.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the September 12th, 2005, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The King's Green Subdivision, Second and Third Filings, Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots included in King's Green Subdivision, Second and Third Filings, excluding Lot 9A of Block 7, King's Green Subdivision, Third Filing. All filings have on file Waivers of Protest for the formation of the park maintenance district for all lots within King's Green Subdivision, Second and Third Filings.

Approval of the Resolution of Intent to Create Park Maintenance District No. 4030 for King's Green Subdivision, Second and Third Filings, 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 September 12th, 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 King's Green Subdivision, Second and Third Filings.
- The appearance of poorly or non-maintained strips along a number of 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' 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 Intent to Create Park Maintenance District No. 4030 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the September 12th, 2005, City Council meeting.

ATTACHMENT

A: Resolution of Intent to Create Park Maintenance District No. 4030; and Exhibits A-D thereto attached.

RESOLUTION NO. 05-

A RESOLUTION DECLARING IT TO BE THE INTENTION OF
THE CITY COUNCIL TO CREATE PARK MAINTENANCE
DISTRICT NO. 4030 FOR THE PURPOSE OF MAINTAINING
EXISTING AND FUTURE PUBLIC AREA IMPROVEMENTS
IN

KING'S GREEN SUBDIVISION, SECOND AND THIRD 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 Park Maintenance District; Intention To Create Park Maintenance District. The City proposes to maintain certain special improvements to benefit certain property located in the City of Billings, Montana. The Improvements consist of landscaping, trails, irrigation systems, and other public area improvements that may be identified in the future, as more particularly described in Section 5. It is the intention of the Billings City Council to create and establish in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a special improvement maintenance district (the "Special Improvement Maintenance District") for the purpose of financing the maintenance costs for the hardscaping, landscaping, drainageways, weed control, and other portions of the improvements made with the development of King's Green Subdivision, Second and Third 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 Park Maintenance District No.4030 of the City of Billings, Montana.

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

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A" and "C" are hereby declared to be the Park Maintenance District and the territory which will benefit and be benefited by the maintenance of the King's Green Subdivision, Second and Third 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: landscaping, trails, trees, irrigation

systems, irrigation system water services, storm water detention facilities, and other park equipment and 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 properties within the District are to be assessed for a portion of the costs of maintaining the King's Green Subdivision, Second and Third Filings, Public Area Improvements, as specified herein. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the King's Green Subdivision, Second and Third Filings, Public Area Improvements.

Section 7. Assessable Area. All properties in the District will be assessed for their proportionate share of the costs of maintaining the King's Green Subdivision, Second and Third Filings public area improvements. The total number of Lots in the District to be assessed for the first year is 49 Lots. The costs of maintaining the Improvements for the first year shall be \$116.53 per 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 King's Green Subdivision, Second and Third Filings, Public Area Improvements shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the proposed District subject to assessment and taxation for the cost and expense of maintaining the King's Green Subdivision, Second and Third Filings public area improvements may make and file with the City Clerk until 5:00 p.m. M.D.T., August 26th, 2005 on the expiration date of said 15-day period, written protest against the proposed Special Improvement Maintenance District No. 4030, 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 Monday, September 12th, 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 August 11th and August 18th, 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

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

U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Resolution of Intent to Dispose of City Property – Lots 4-6 and the east 1/2 of Lots 1-3, Block 184, Billings Original Town

DEPARTMENT: Planning and Community Services

PRESENTED BY: Ramona Mattix, Planning Director

PROBLEM/ISSUE STATEMENT: Bannum Inc. is interested in purchasing City owned property on the northwest corner of 8th Avenue South and South 27th Street. Bannum is interested in using the site to construct a 15-bed Community Corrections Center halfway house. 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 (18,500 sq. ft.) could generate approximately \$45,250 in revenue based on a value at \$2.50 per square foot.. The site, including structures that existed at the time, was acquired for redevelopment purposes in three transactions in the 1990s for \$73,106 using Tax Increment resources.

RECOMMENDATION

Staff recommends that the Council approve the attached Resolution of Intent to Sell City-Owned Property on Lots 4-6 and the east 1/2 of Lots 1-3, Block 184, 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 September 12th.

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

ATTACHMENT

- A. Resolution of Intent to Sell City-Owned Property (1)
- B. Letter from Bannum Inc. (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 6th Avenue South and South 26th Street and described as Lots 4-6 and the east 1/2 of Lots 1-3, Block 184, 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 September 12, 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 August 25, September 1, and September 8, 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 August, 2005.

THE CITY OF BILLINGS:

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

ATTEST:

Marita Herold, CMC/AAE CITY CLERK

July 15, 2005

Michael Oliver, ABR
Prudential Floberg Realtors
1550 Poly Drive
Billings, MT 59102

Re: Purchase of city of Billings lots 4-6 and east ½ of lots 1-3, Blk 184

Dear Doris Cole

The purpose of this letter is to outline the manner in which Bannum Inc. (“Buyer”) intends to purchase the above mentioned parcel of land owned by the City of Billings Montana, (“Seller”). “Seller” & “Buyer” recognize that the transaction will require further documentation and approvals, including the preparation and approval of a formal “Purchase Agreement” setting forth the terms and conditions of the proposed sale in more detail (the “Buy/Sell Agreement”). Nevertheless, “Seller” & “Buyer” execute this letter to evidence their intention to proceed in mutual good faith to carry out the transactions substantially in the manner outlined herein. The buyer and their consultants, in review of this property would like to express the following: The property is usable for the construction purposes needed by Bannum Inc. as a proposed construction site. The proposed terms and conditions include, but are not limited to, the following:

1. Property to be Purchased: Legal: lots 4-6 and the east ½ of lots 1-3 of BLK 184
BOT
2. Contingencies: As part and parcel of a purchase agreement the buyers will be bidding on a United States Department of Justice, Bureau of Prisons contract to provide a 15 bed Community Corrections Center that serves as a male and female halfway house for individuals from the Billings area who have been released from Federal Institutions. This is approximately a 3000 square foot facility with an appropriate size lot to meet all CCR's.
3. Purchase: Buyer agrees to purchase the aforementioned property as the bid process dictates.
4. Closing: If all contingencies and feasibilities can be met, it is the intention of the “Buyers” to close in the spring of 2006.
5. Mission Statement: An information Exhibit will accompany this proposal.

It is understood that this letter sets forth an agreement in principle only, is not binding on the parties hereto, and may not be relied upon as a basis for a contract by estoppel. It is understood that no party shall be bound until a Purchase Agreement has been duly executed and delivered.

Date: _____

By: _____
“Buyer”

Date: _____

By: _____
“Seller”

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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Zone Change #760 Public Hearing and 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 Residential Manufactured Home to Highway Commercial on Tract 2 of Certificate of Survey 529. The subject property is located at 2202 Main Street and supports an existing manufactured home and a barber shop. The property owner is Terrance Luff and the agent is Jim Carroll of Downtown Realty. The City Council approved the zone change on 1st reading on July 25, 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 new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #760 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 commercial uses along existing arterial streets. 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 may increase the traffic generated from this site. The new traffic generated would vary depending on the chosen use for the existing barber shop. There is no current planned use for the property and any change to the existing drive approach would require city and state approval.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, has limits on the maximum percentage of lot that can be covered with structures. The Highway Commercial zone allows maximum lot coverage of 75 percent or 40,217 square feet on this 1.231 acre lot. The existing lot coverage of 5 percent could increase significantly with the construction of a highway commercial use. 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 Highway Commercial allows single-family and multifamily dwellings, based on minimum lot area. The lot could support up to nine (9) single family homes or an apartment building with up 33 dwelling units. 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 and sewer service to the property and has adequate facilities to serve this property. Any additional development of the property will require evaluation of the existing services.

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?*

The primary zoning in this area is Highway Commercial with Residential Manufactured Home neighborhoods to the west. The intensity of the commercial development has increased over the past decade and many properties in this area are re-developing. The manufactured home neighborhoods to the west are provided some screening from the Main Street activity by landscaping, fencing and an irrigation ditch that runs north and south through the area.

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. The existing manufactured home will become nonconforming but can be retained and replaced in the future.

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 Tract 2 of Certificate of Survey #529 a 1.231 acres parcel of
land. **THE SUBJECT PROPERTY IS LOCATED AT 2202**
MAIN STREET.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA, and Sections 27-302 and 27-1502, BMCC,* provide for amendment to the City Zoning Map from time to time. The City Zoning Commission and staff have reviewed the proposed zoning for the real property hereinafter described. The Zoning Commission and staff have considered the twelve (12) criteria required by Title 76, Chapter 2, Part 3, MCA. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the twelve (12) criteria required by state law.

2. **DESCRIPTION.** A tract of land known as Tract 2 of C/S #529 containing 1.231 acres of land, more or less and is presently zoned Residential Manufactured Home 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 Manufactured Home** to **Highway Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Highway Commercial** 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 July 25, 2005.

PASSED, ADOPTED AND APPROVED on second reading August 8, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#760

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W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Second Reading of an Ordinance expanding Ward IV
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: : On July 11, 2005, the City Council adopted Resolution No. 05-18305, annexing approximately 10.532 acres located near the intersection of 60th Street West and Grand Avenue (Annexation #05-04). The property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward IV was held on July 25, 2005. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council approve the second reading of this ordinance that adds property to City Ward IV.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

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. See Exhibit "A" Attached

(# 05-04)

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 25th day of July, 2005.

PASSED by the City Council on the second reading this 8th day of August, 2005.

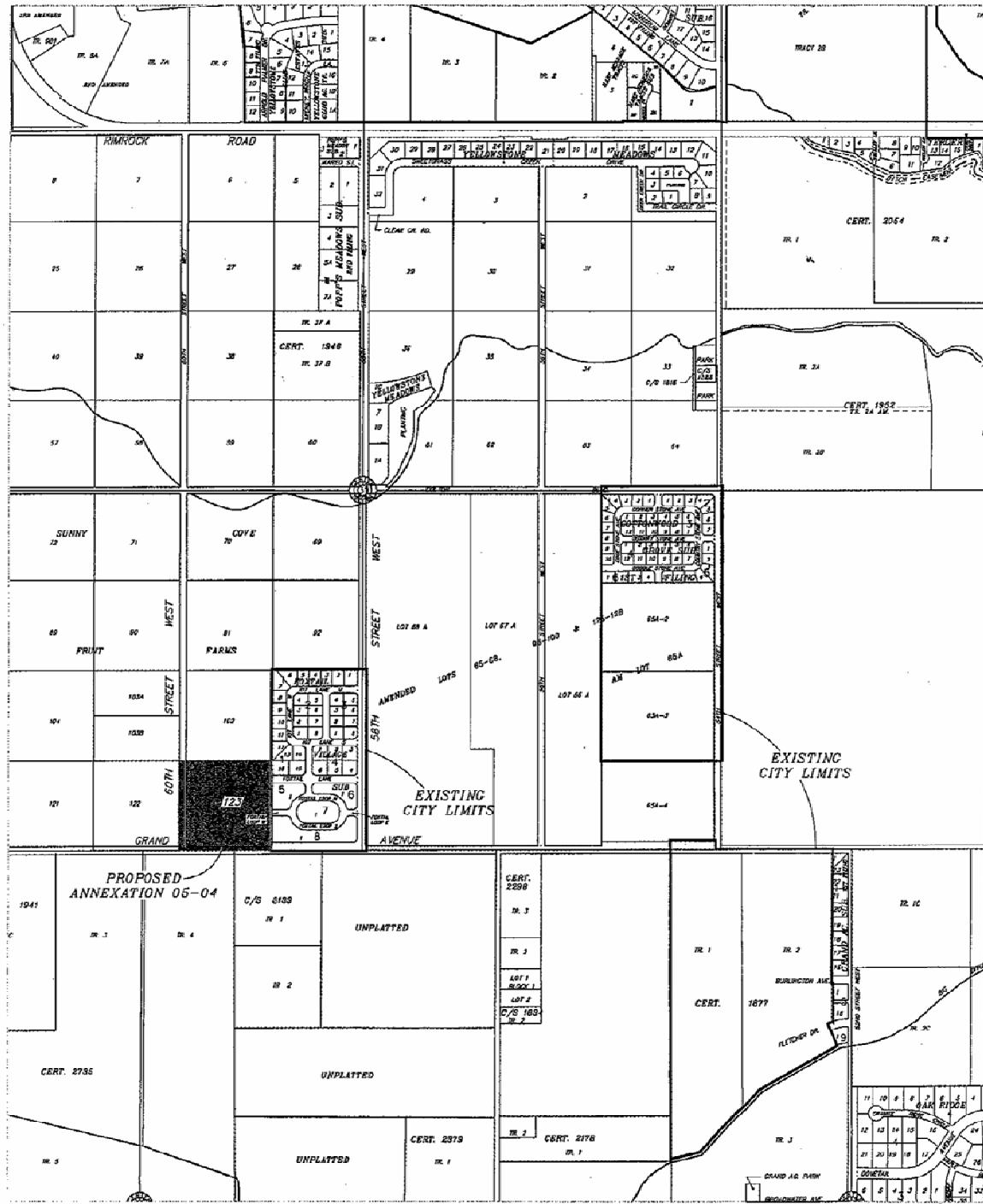
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Preliminary Plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting preliminary plat approval of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing, which was submitted on May 2, 2005. The owner is Avanta Federal Credit Union and Engineering, Inc. is the owner's representative. Pursuant to Section 23-404(c) of the Billings City Code, the City Council shall act on a preliminary minor plat within 35 working days of the application submittal. In this case, the previous filing for Amended Lot 3, Block 10, Parkland West Subdivision, 6th Filing had not received final approval when the application was submitted. As such, the applicant submitted a letter on June 3, 2005, requesting an extension of the proposed subdivision until such time that the previous final plat could be filed. The City Council will vote on the final plat for Amended Lot 3, Block 10, Parkland West Subdivision, 6th Filing on July 25, 2005.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to:

1. Approve
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property will further develop resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council conditionally approve the Preliminary Plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing, adopt the Findings of Fact and approve the variances, as presented in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A: Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact

INTRODUCTION

The proposed subdivision would create two (2) lots, one (1) containing 1.02 and one (1) containing 1.75 acres. The proposed lots are vacant with plans to construct offices or commercial retail. The subject property is located south of Central Avenue at the northeast intersection of South 32nd Street West. The subject property is bordered on the north by Avanta Federal Credit Union, on the south and west by vacant and developing land within the Parkland West Master Plan and on the east by developing property zoned Residential 9600.

PROCEDURAL HISTORY

- The final plat for Parkland West Subdivision, 6th Filing, which includes the subject property, was filed on April 12, 2004.
- The final plat for Amended Lot 3, Block 10, Parkland West Subdivision, Sixth Filing was approved by the City Council on July 25, 2005.
- The City Council will consider the preliminary plat application on August 8, 2005.

BACKGROUND

General location:	South of Central Avenue at the northeast intersection of South 32 nd Street West
Legal Description:	Amended Lot 3B, Block 10, Parkland West Subdivision 6 th Filing
Subdivider/Owner:	Avanta Federal Credit Union
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	PUD (Community Commercial)
Surrounding zoning:	North: R-9600 and CC; South: PUD; East: R-9600; West: PUD
Existing land use:	Vacant
Proposed land use:	Professional Office Building and Commercial Retail
Gross area:	2.777 acres
Lots:	Two (2): Lot 3-B-1 containing 1.024 acres Lot 3-B-2 containing 1.753 acres
Dedications:	Parkland dedication is not required for a minor subdivision. The parkland has been met by previous and future dedications for the entire Parkland West subdivision.

ALTERNATIVES ANALYSIS

One of the purposes of the subdivision review process is to identify potentially negative impacts of a subdivision on adjacent properties. When negative impacts are identified, it is the subdivider's responsibility to mitigate those impacts. Various City departments, utility companies and other agencies have reviewed this application and provided input on potential impacts and mitigation. The Findings of Fact, which are presented as Attachment D, discuss the potential negative impacts that have been identified by the reviewing agencies. The following conditions are recommended as a measure to mitigate any negative impacts:

RECOMMENDED CONDITIONS

1. Lot 3-B-1 and 3-B-2 will each require their own separate water and sanitary sewer services to the 24-inch water main and the 42-inch sanitary sewer within South 32nd Street West. *(Recommended by the Public Works Department)*
2. The 4-inch water service for Lot 3-B-2 will require a curb valve at the right-of-way line of South 32nd Street West. *(Recommended by the Public Works Department)*
3. The water service maintenance program will only maintain the water service to the right-of-way line of South 32nd Street West. *(Recommended by the Public Works Department)*
4. The manifold of a water service is required to be at the right-of-way line of South 32nd Street West with separate shutoff/curb valve at the right-of-way line. *(Recommended by the Public Works Department)*
5. The above information regarding water and sanitary sewer service shall be included in the SIA and the applicant shall be advised that the Public Works Department has approved only those configurations indicated within the conditions above. *(Recommended by the Public Works Department)*
6. Minor changes may be made to the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES

A variance from Section 23-602(a), BMCC, which specifies that an alley shall be provided in commercial and industrial districts. The City Council and/or Planning Board may waive this requirement, provided that other definite and assured provisions are made for adequate service access. Due to the restricted accesses onto Central Avenue and South 32nd Street West the construction of additional service roads or alleys for the development is precluded. Staff finds that adequate service access has been provided for the site through the reciprocal access agreement, which allows for two (2) controlled access points from South 32nd Street West and

Central Avenue. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

A variance from Section 23-605(a), BMCC, which specifies that lots in commercial and industrial districts shall have a minimum lot width frontage of 25-feet and Section 23-605(h), which specifies that all lots shall abut a public dedicated street. As depicted on the preliminary plat, Lot 3-B-2 does not have frontage on either Central Avenue or South 32nd Street. The Engineering Department and Planning staff finds that frontage for this lot is not necessary, as it does not satisfy the purpose and intent of the regulations which is to provide access to those lots that do not have public street frontage. In this case, access to the site is restricted to one (1) access point along the 32nd Street frontage, and one (1) on Central Avenue. Internal private roads provide for adequate site circulation for the existing and proposed lots. As required by the Fire Department, all of the structures within this portion of Parkland West will be required to be addressed from the internal private road, not 32nd Street West or Central Avenue. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Department has received no public comments or questions regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the 2000 Transportation Plan and the Heritage Trail Plan. Specific conformance is discussed within the Findings of Fact.

RECOMMENDATION

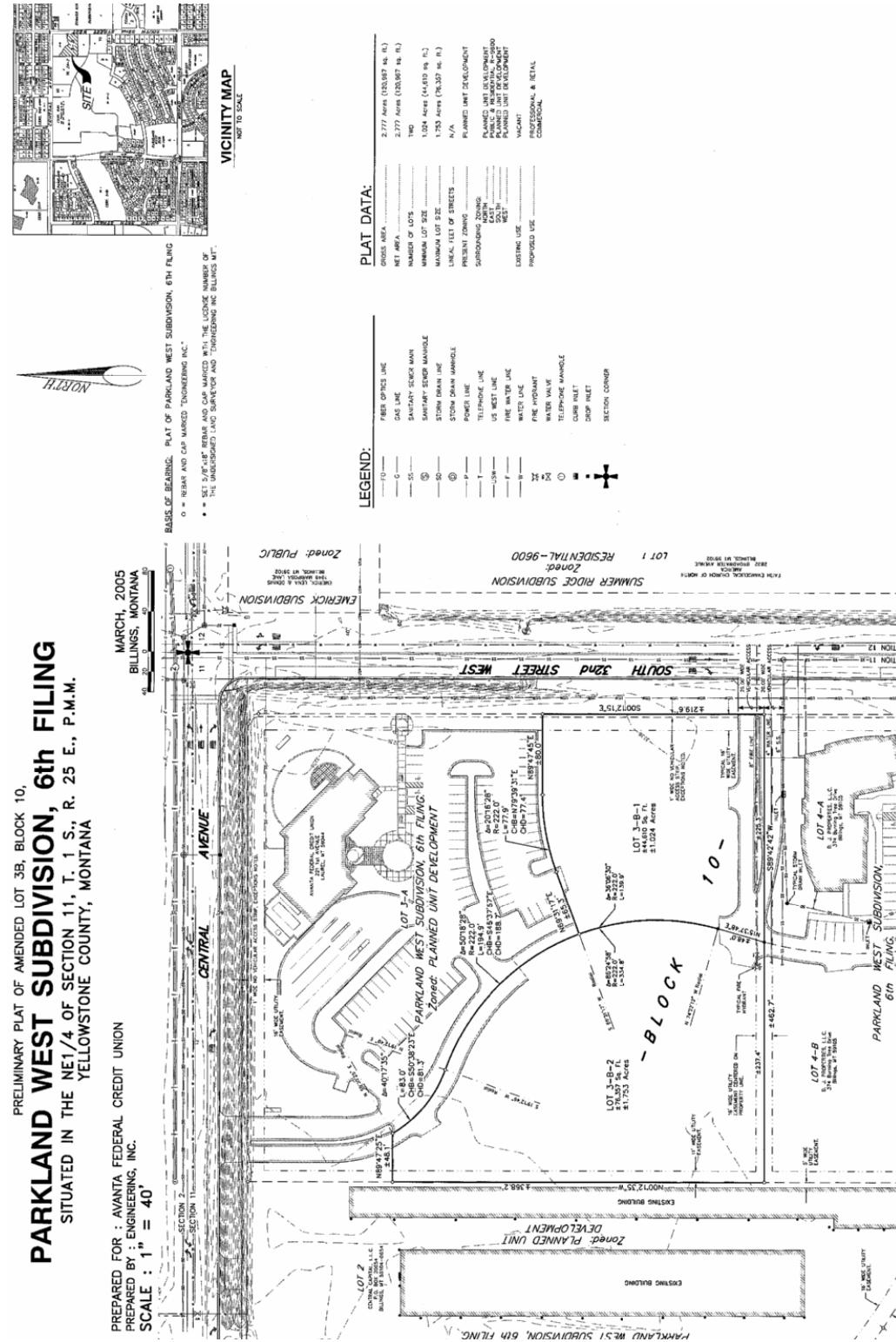
Staff recommends that the City Council conditionally approve the Preliminary Plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing, adopt the Findings of Fact and approve the variances, as presented in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Site Photographs
- C: Mayor's approval letter
- D: Findings of Fact

ATTACHMENT A

Preliminary plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing



ATTACHMENT B
Site Photographs



Figure 1: View west toward Avanta Federal Credit Union located on Lot 3-A.



Figure 2: View north along the private shared access off of Central Avenue for the proposed subdivision. The credit union is pictured on the east in the photo.



Figure 3: View southeast across proposed Lot 3-B-1.

ATTACHMENT C
Mayor's approval letter
Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing

August 8, 2005

Avanta Federal Credit Union
221 1st Avenue
Laurel, Montana 59044

Dear Property Owner:

On August 8, 2005, the Billings City Council approved the preliminary plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing, subject to the following conditions of approval:

1. Lot 3-B-1 and 3-B-2 will each require their own separate water and sanitary sewer services to the 24-inch water main and the 42-inch sanitary sewer within South 32nd Street West. *(Recommended by the Public Works Department)*
3. The 4-inch water service for Lot 3-B-2 will require a curb valve at the right-of-way line of South 32nd Street West. *(Recommended by the Public Works Department)*
4. The water service maintenance program will only maintain the water service to the right-of-way line of South 32nd Street West. *(Recommended by the Public Works Department)*
5. The manifold of a water service is required to be at the right-of-way line of South 32nd Street West with separate shutoff/curb valve at the right-of-way line. *(Recommended by the Public Works Department)*
6. The above information regarding water and sanitary sewer service shall be included in the SIA and the applicant shall be advised that the Public Works Department has approved only those configurations indicated within the conditions above. *(Recommended by the Public Works Department)*
7. Minor changes may be made to the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions regarding the conditions of approval, please contact Aura Lindstrand with Planning and Community Services at 247-8663 or by email at lindstranda@ci.billings.mt.us.

The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Charles F. Tooley, Mayor

Cc: Peter Knapp, Engineering, Inc.

ATTACHMENT D
Findings of Fact
Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMCC 23-304(c) (1) and MCA 76-3-608(3) (a)]

1. Effect on agriculture and agricultural water users' facilities

The proposed subdivision should have no effect on agriculture or agricultural water users' facilities. The subject property is not currently used for agriculture and no irrigation facilities are apparent on the subject property.

2. Effect on local services

- a. Utilities – A 42-inch sanitary sewer main and a 24-inch water main exist within South 32nd Street West. Separate connections to sanitary sewer and water are required for the proposed lots, as specified in Conditions #1 and #2.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for the additional waste.
- c. Streets – As part of the final plat for Parkland West Subdivision, 6th Filing, the subdivider was required to submit a Traffic Accessibility Study. Based upon the information contained within that study, necessary street improvements were identified and are currently under construction through a private contract. These improvements include the construction of South 32nd Street West along the eastern boundary of the proposed subdivision, modifications to the existing traffic signal at the intersection of South 32nd Street West and Central Avenue, and required boulevard sidewalks along the 32nd Street frontage.

Access to the proposed lots will be from Central Avenue via a 45-foot private drive located along the western boundary of Lot 3A, which contains the Avanta Federal Credit Union. There is an additional access from 32nd Street West through the private drive located along the southern boundary of proposed Lot 3-B-1. The private accesses are shared between the proposed lots and also provide access to Lots 4-A and 4-B to the south. There is a reciprocal access easement between the original Lots 3 and 4 of the Parkland West Subdivision 6th Filing for the use of this 45-foot private drive for ingress/egress and parking. This agreement has been amended with each subsequent filing of this subdivision. As submitted with this application, the reciprocal access easement has been amended to include Lots 3-B-1 and 3-B-2.

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West Drive (Station #5). The subdivision is located within the ambulance service area of American Medical Response.

- e. Schools – The proposed subdivision is located within School District #2. There will be no impact to schools as a result of this subdivision, as the intended use is commercial.
- f. Parks and Recreation – There is no parkland dedication requirement, as this is a minor plat. However, parkland dedications for the entire Parkland West Subdivision were identified in the Master Plan and those areas have been reserved for future parks.
- g. MET Transit – The subject property is serviced by MET transit (routes 6P and 7D). The proposed commercial development on this property and surrounding properties will positively impact MET service by increasing ridership.

3. Effect on the natural environment

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. However, the property is within an urbanized portion of the city and these effects should be minimal.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304(c) (1)]

An Environmental Assessment is not required, as this is a minor plat.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMCC 23-304(c) (3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns.

The proposed subdivision is consistent with the Parkland West Master Plan and previous filings of the subdivision.

- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.

The proposed subdivision is bordered on the south by properties located within the Parkland West PUD, which is intended for commercial and multi-family uses. The proposed office and commercial retail uses are compatible with the medical offices to the south, the existing mini storage units located to the west and the credit union to the north.

- c. Contiguous development focused in and around existing population centers separated by open space.

The proposed subdivision extends previously planned development and will utilize existing infrastructure. The subdivision may be considered infill and does not contribute to urban sprawl. There are no open space buffers planned as part of this subdivision; however there is an open space/parkland requirement for the entire Master Plan of Parkland West.

2. Urban Area Transportation Plan

South 32nd Street West and Central Avenue are principal arterial streets, which are undergoing substantial improvements under private contract at this time in order to accommodate increased traffic in this area with the proposed and existing construction.

3. Heritage Trail Plan

The Heritage Trail Plan identifies South 32nd Street West as an arterial trail. A connection for the trail system has been included within the private contract and will be included in the current construction for South 32nd Street West.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3) (b) and BMCC 23-304(c) (4)]

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]

The subject property is served by municipal water, sewer, storm drain and solid waste services, which will be extended from South 32nd Street West to the proposed lots. All services are approved and regulated by state and federal authorities.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304(c) (6)]

The subject property is located within the Planned Unit Development zoning district with an underlying zoning of Community Commercial and conforms to the requirements set forth by the Parkland West Master Plan.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 (c) (7)]

There is a 16-foot wide utility easement located along the eastern and southern boundary of Lot 3-B-1 and an 11-foot utility easement located along the western boundary of Lot 3-B-2. The Montana-Dakota Utilities Company stated that these easements are sufficient for the subdivision.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608(3) (d) and BMCC 23-304(c) (8)]

Legal and physical access will be provided via a private internal drive (already constructed) from Central Avenue and 32nd Street West.

CONCLUSIONS OF FINDING OF FACT

- Preliminary plat of Amended Lot 3B, Block 10, Parkland West Subdivision 6th Filing does not create any adverse impacts that warrant denial of the subdivision.
- There should be small effects on local services because this is an in-fill project and the subdivider will be responsible for most of the capital facilities that are needed to serve the property.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and doesn't conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, with the notes exceptions, meets sanitary, easement and zoning requirements and provides legal and physical access to each parcel.

Approved by the Billings City Council on August 8, 2005

Charles F. Tooley, Mayor

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

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: St. Thomas Subdivision Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On July 1, 2005, the owner of this property applied for preliminary plat approval for the St. Thomas Subdivision. This is a proposed subdivision of the St. Thomas Church parcel located on the south east corner of Colton Boulevard and Wood Drive. The proposal would create 2 lots from a 32.5 acre lot. The owner of the parcel is the Roman Catholic Bishop of Great Falls, MT. The City Council must act on the preliminary minor plat within 35 working days of its submittal.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using criteria that are set out in those laws. Those review criteria are found in Attachment C of this report. The City may not unreasonably restrict an owner's ability to develop his land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to approve, conditionally approve or deny the preliminary plat.

FINANCIAL IMPACT: If the City approves the preliminary plat there should be minimal financial impact to the City.

RECOMMENDATION

Planning staff recommends that the Billings City Council conditionally approve the preliminary plat of St. Thomas Subdivision, and adopt the findings of fact as stated in the staff report.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

- A: Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

INTRODUCTION

St. Thomas Subdivision is a preliminary minor plat that would create two lots of a 32.5-acre parcel. Lot 1 is approximately 5.2 acres in size and contains the St. Thomas Catholic Church, parking lot and church housing building. Lot 2 is the 25.5-acre remainder of the subject property and contains a track/football field, and open fields currently mowed for hay crop. The subject property is zoned R-9600, and is located on the south side of Colton Boulevard, between 21st St. West and Woody Drive. The subdividers are requesting this subdivision in order to isolate the church facility for fee purposes.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on July 1, 2005.
- The City Council will consider the application at its meeting on August 8, 2005

BACKGROUND

General location:	On the southeast corner of Colton Blvd. and Woody Drive
Legal Description:	Certificate of Survey 825
Subdivider/Owner	The Roman Catholic Bishop of Great Falls, MT, a Corporation Sole
Engineer and Surveyor:	HKM Engineering, Inc.
Existing Zoning:	R-9600
Surrounding zoning:	R-9600 (to the north and east); R-6000/Public (to the south); R-7000, RMR-R, R-6000 (to the west)
Existing land use:	St. Thomas Church/parking/football field/hay field
Proposed land use:	same
Gross area:	32.5 acres
Lots:	2
Dedications:	30' street dedication for 21 st Street West; 20' dedication for future pedestrian/bike trail along southern property line.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects from a subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments, utilities and other agencies have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as Attachment C, discuss the potential impacts that were identified by reviewers and the following conditions are recommended as measures that will mitigate them.

RECOMMENDED CONDITIONS

1. The following changes shall be made to the final Subdivision Improvements Agreement (SIA):
 - a. A table of contents shall be submitted with the final SIA.
 - b. A note shall be added to the final SIA stating that with this subdivision a 40-foot dedication is being made for the Heritage Trail corridor along the BBWA.
2. The following changes shall be made to the final plat:
 - a. 30 feet of street dedication shall be made for 21st Street West.
 - b. The 40-foot proposed street dedication for Solomon Avenue shall be shown as a 20-foot wide (minimum) dedication for a future pedestrian/bike trail way.
3. Utility easements shall be shown on the final plat as requested by MDU.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting but nearby property owners may attend the Council meeting. The Department received no public comments or questions about the subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the 2000 Transportation Plan and the Heritage Trail Plan. Specific conformance is discussed in the Findings of Fact.

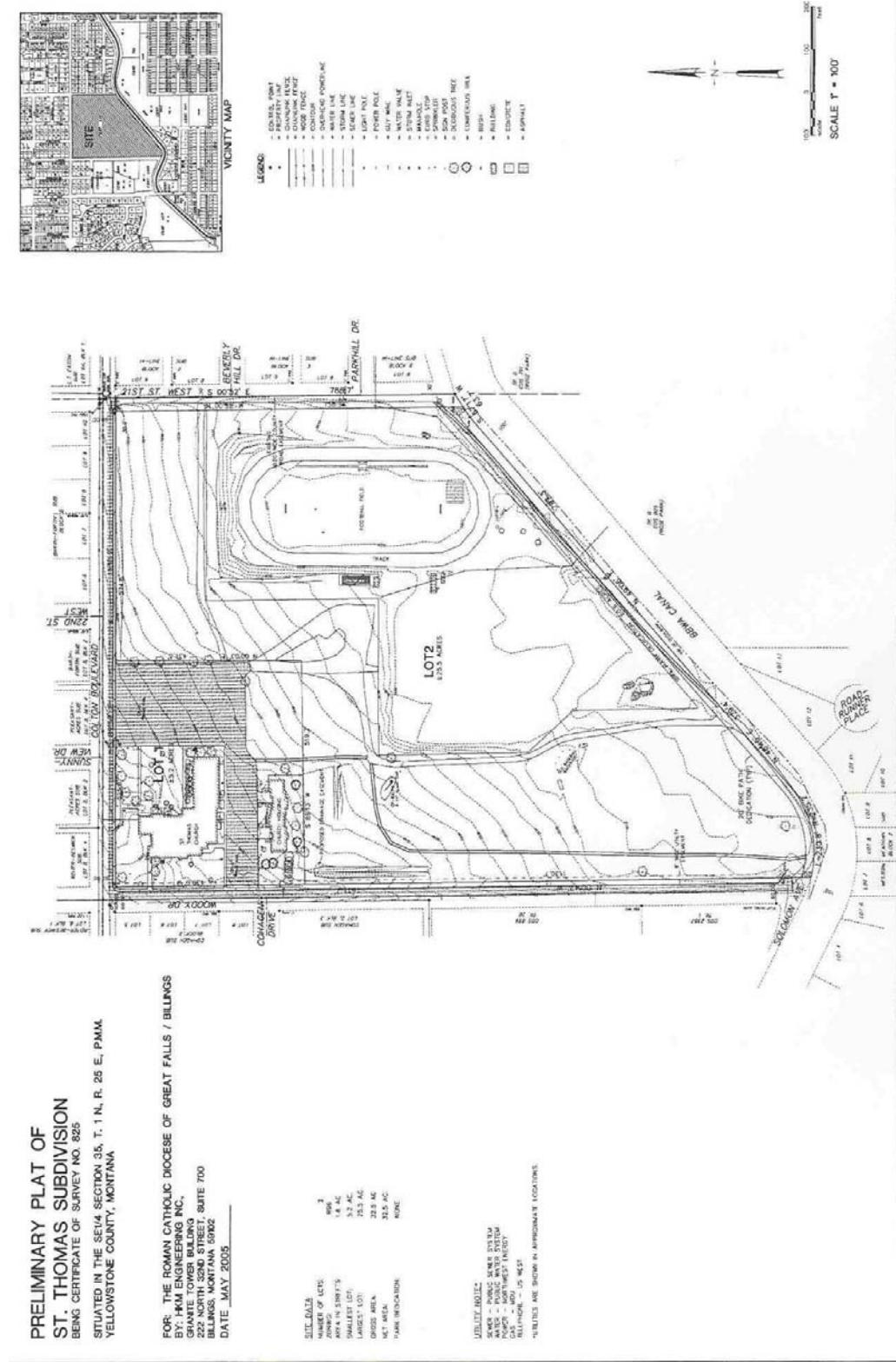
RECOMMENDATION

Planning staff recommends that the Billings City Council conditionally approve the preliminary plat of St. Thomas Subdivision, and adopt the findings of fact as stated in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

ATTACHMENT A
Preliminary plat of St. Thomas Subdivision



ATTACHMENT B
Mayor's approval letter

August 9, 2005

The Roman Catholic Bishop of Great Falls, MT, a corporation sole
P.O. Box 1399
Great Falls, MT 59403

Dear Sir:

On August 8, 2005 the Billings City Council conditionally approved the preliminary plat of the St. Thomas Subdivision. The conditions of approval are as follows:

1. The following changes shall be made to the final Subdivision Improvements Agreement (SIA):
 - a. A table of contents shall be submitted with the final SIA.
 - b. A note shall be added to the final SIA stating that with this subdivision a 40-foot dedication is being made for the Heritage Trail corridor along the BBWA.
2. The following changes shall be made to the final plat:
 - a. 30 feet of street dedication shall be made for 21st Street West.
 - b. The 40-foot proposed street dedication for Solomon Avenue shall be shown as a 20-foot wide (minimum) dedication for a future pedestrian/bike trail way.
3. Utility easements shall be shown on the final plat as requested by MDU.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

If you have questions about the conditions of approval, please contact Juliet Spalding in Planning and Community Services at 247-8684 or by email at spaldingj@ci.billings.mt.us.
The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Charles F. Tooley, Mayor
C: HKM Engineering, Inc.

ATTACHMENT C
Findings of Fact
St. Thomas Subdivision
August 8, 2005

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMCC 23-304(c)(1) and MCA 76-3-608(3)(a)]

1. Effect on agriculture and agricultural water users' facilities

This subdivision should have little or no effect on agriculture or agricultural water users' facilities. Though portions of the property are currently cut for hay crop, no change of use is proposed with this subdivision, and it is located in a urbanized setting. The BBWA Ditch runs along the southern property boundary within its own 100-foot right-of-way. This subdivision will not affect the ditch.

2. Effect on local services

- a. Utilities – Water and sewer lines are in place in Colton Boulevard and the church on Lot 1 is served by these lines. There are no immediate plans to extend services to Lot 2. Private utilities will provide service to the new lots under their operating procedures. MDU has requested an additional utility easement be shown on the final plat along the parcel's west side. This is recommended as a condition of approval (**Condition #3**).
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- c. Streets - Colton Boulevard fronts north side of the subject property, Woody Drive fronts its west side, and 21st St. West fronts its east side. At this time, no improvements have been required or proposed by the subdivider to any of these streets, but a note in the SIA requires that upon further development of either lot, any delinquent street improvements shall be made. Access to the subject property is off of Colton Boulevard via an existing driveway. No new approaches are proposed for the property.

Street right-of-way dedication is proposed for both 21st St. West and Solomon Drive. The west half of 21st St. West as it fronts the east side of the property is a 30-foot County road easement, and with this plat it shall become dedicated to the City (**Condition # 2**). Solomon Drive is currently a 40-foot County road easement fronting the south side of the property that is not constructed. It does have an informal walking trail within it. City Engineering is supportive of not requiring the dedication of the 40 feet as street right of way but maintaining it as a 20-foot wide (minimum) dedication for a future pedestrian and bikeway as is identified on the Heritage Trail Plan in this area. This change is recommended as a condition of approval (**Condition #2**).

- d. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #3 at 17th St. West and Parkhill. Both the Fire and Police Departments responded that they have no concerns with the

proposal. AMR provides medical care and transport and response would come from the west station on Grand Avenue.

- e. Schools – The subdivision is in the School District #2. Since this is church property, there should be no direct impact on the schools.
- f. Parks and Recreation – There is no parkland dedication requirement because this is a minor plat.
- g. MET Transit – There is a MET route that passes by this subdivision on Colton Boulevard. This subdivision should not significantly impact MET service.

3. Effect on the natural environment

This subdivision should have no negative effects on the natural environment. There is no new development proposed at this time.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat. There is no new development proposed at this time.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304(c)(1)]

An Environmental Assessment is not required because this is a minor plat.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMCC 23-304(c)(3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- d. Predictable land use decisions that are consistent with neighborhood character and land use patterns.
- e. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- c. Safe and sanitary properties.
- d. A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Colton Boulevard is identified as a collector street, and Woody Ave. and 21st St. West are local streets. As proposed there is adequate right of way adjacent to this property and any necessary improvements to the streets will be made upon further development of the lots in the future.

3. Heritage Trail Plan

The subdivision is also within the jurisdictional area of the Heritage Trail Plan. The plan identifies a greenway trail along the BBWA. Staff has recommended as a condition of approval that a 20-foot trail corridor dedication be provided on the final plat along the property's southern boundary in lieu of the Solomon Avenue street dedication (**Condition #2**). No improvements are required for this subdivision at this time.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3)(b) and BMCC 23-304(c)(4)]

This proposed subdivision meets the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]

The church on Lot 1 is currently served by City sewer and water lines. No new connections are proposed for either lot at this time, but they could be accommodated in the future.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304(c)(6)]

The property is in the R-9600 zoning district and the subdivision conforms to the zoning.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3)(c) and BMCC 23-304 (c)(7)]

MDU has indicated requested an additional utility easement be provided on the final plat along the parcel's west side. This is recommended as a condition of approval (**Condition #3**).

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608(3)(d) and BMCC 23-304(c)(8)]

Legal and physical access is provided to Lot 1 from Colton Boulevard and Woody Drive, and access to Lot 2 could be established off of Colton Boulevard or 21st St. West, upon review by City Engineering.

CONCLUSIONS OF FINDING OF FACT

- The proposed preliminary plat of St. Thomas Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- There should be little effect on the review criteria as there is no new development proposed at this time. The creation of the two proposed lots is for tax purposes.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with State and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

Approved by the Billings City Council on August 8, 2005.

Charles F. Tooley, Mayor

ATTACHMENT D
Site Photos—St. Thomas Subdivision



Figure 1: From corner of 21st St. W. and Colton Blvd. looking west across vacant Lot 2 toward Lot 1 with church building.



Figure 2: From SE corner of property looking west down Solomon Ave./trail easement. Rose Park on left across the BBWA ditch.



Figure 3: From corner of Colton and 21st St. West looking SW across hay field and football field on Lot 1.

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

Z

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Lincoln Subdivision Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On July 1, 2005, the owner of this property applied for preliminary plat approval for the Lincoln Subdivision. This is a proposed subdivision of an unplatte 3.4-acre parcel located on the east side of Lincoln Lane, north of Liberty Lane. The proposal would create 2 lots, one for the existing residence on the property, and one for a future condominium project. Hanser Construction Company is the subdivider. The City Council must act on the preliminary minor plat within 35 working days of its submittal.

ALTERNATIVES ANALYZED: State and City subdivision regulations require that preliminary plats be reviewed using criteria that are set out in those laws. Those review criteria are found in Attachment C of this report. The City may not unreasonably restrict an owner's ability to develop his land if the subdivider provides evidence that any identified adverse effects can be mitigated. The City Council is required to approve, conditionally approve or deny the preliminary plat.

FINANCIAL IMPACT: If the City approves the preliminary plat there should be minimal financial impact to the City.

RECOMMENDATION

Planning staff recommends that the Billings City Council conditionally approve the preliminary plat of Lincoln Subdivision, and adopt the findings of fact as stated in the staff report.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENTS

- A: Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

INTRODUCTION

Lincoln Subdivision is a preliminary minor plat that would create two lots from a 3.4-acre parcel. Lot 1 is 12,267 square feet in size and contains an existing house on it. Lot 2 is approximately 3.09 acres in size and is proposed to be used for a future condominium project containing 44 units in eleven 4-plex buildings. The condo development will be reviewed at a later date during the site development and building permit stage. The subject property is zoned Neighborhood Commercial, and is located on the east side of Lincoln Lane, north of Liberty Street.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on July 1, 2005.
- The City Council will consider the application at its meeting on August 8, 2005

BACKGROUND

General location:	On the east side of Lincoln Lane, at 605 Lincoln.
Legal Description:	unplatted parcel in NE ¼ of Section 27, T1N, R26E
Subdivider/Owner:	Hanser Construction Company
Engineer and Surveyor:	EEC, Inc.; Essex Surveying
Existing Zoning:	Neighborhood Commercial
Surrounding zoning:	Neighborhood Commercial (to north and south), R-7000 (to east), Highway Commercial (to west)
Existing land use:	Site of one house
Proposed land use:	existing house/condominium development
Gross area:	3.43 acres
Lots:	2
Dedications:	10 feet right-of-way dedication to Lincoln Lane

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potentially negative effects from a subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments, utilities and other agencies have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as Attachment C, discuss the potential impacts that were identified by reviewers and the following conditions are recommended as measures that will mitigate them.

RECOMMENDED CONDITIONS

2. The following changes shall be made to the final Subdivision Improvements Agreement (SIA):
 - a. The SIA shall be rewritten to reference the City, not the County, and to follow the standard template.
 - b. Section III. A. shall be rewritten to indicate the required improvements to Lincoln Lane. An additional statement shall be included that these improvements are not to be constructed at this time but will be included in the waiver of right to protest filed with the final plat.
 - c. Section V. must state that all improvements to this subdivision must meet the requirements of the City of Billings Storm Water Management Manual.
 - d. Section VI. shall be rewritten to the standard format, included that the property is subject to construction fees.
 - e. A note shall be added to the "Conditions that Run with the Land" stating that the water service line and all appurtenances inside of the property lines are the responsibility of the developer and, once created, the Homeowners' Association. Lincoln Subdivision will have a private water system.
 - f. A section shall be added to the final SIA called "Postal Service" and it shall state that mail delivery for Lot 1 shall be accommodated through the use of a central delivery site accessed from Lincoln Lane as approved by the United States Postal Service (USPS). The USPS will not enter the proposed private drive.
 - g. Section VII. shall be written to reflect the required parkland dedication and proposed cash in lieu for Lot 1.
 - h. The Waiver of Right to Protest must identify all improvements and also references to the County and RSID's shall be changed to reference the City and SID's.
3. The following changes shall be made to the final plat:
 - a. Lincoln Lane shall be labeled.
 - b. The vicinity map shall be redone to clearly depict the subject property and its surroundings.
3. Any existing ditch easements on the subject property shall be shown on the final plat. The ditch running north-south through Lot 1 shall be preserved in an easement unless a written agreement with all downstream users is provided as evidence that the ditch is

abandoned prior to final plat approval. (*Recommended by BBWA, City-County Planning; BMCC Section 23-603(b)*)

4. Utility easements shall be shown on the final plat as requested by MDU or Northwestern Energy. (*Recommended by MDU, City-County Planning; BMCC Section 23-603(a)*)
5. The subdivider shall provide 11% of the fair market value of Lot 1 as a cash contribution in lieu of parkland dedication prior to final plat approval. (*Recommended by City County Planning; BMCC Section 23-901(c)(4)*)
6. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting but nearby property/business owners may attend the Council meeting. The Department received no public comments or questions about the subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The subdivision is consistent with the 2003 Yellowstone County/City of Billings Growth Policy, the 2000 Transportation Plan and the Heritage Trail Plan. Specific conformance is discussed in the Findings of Fact.

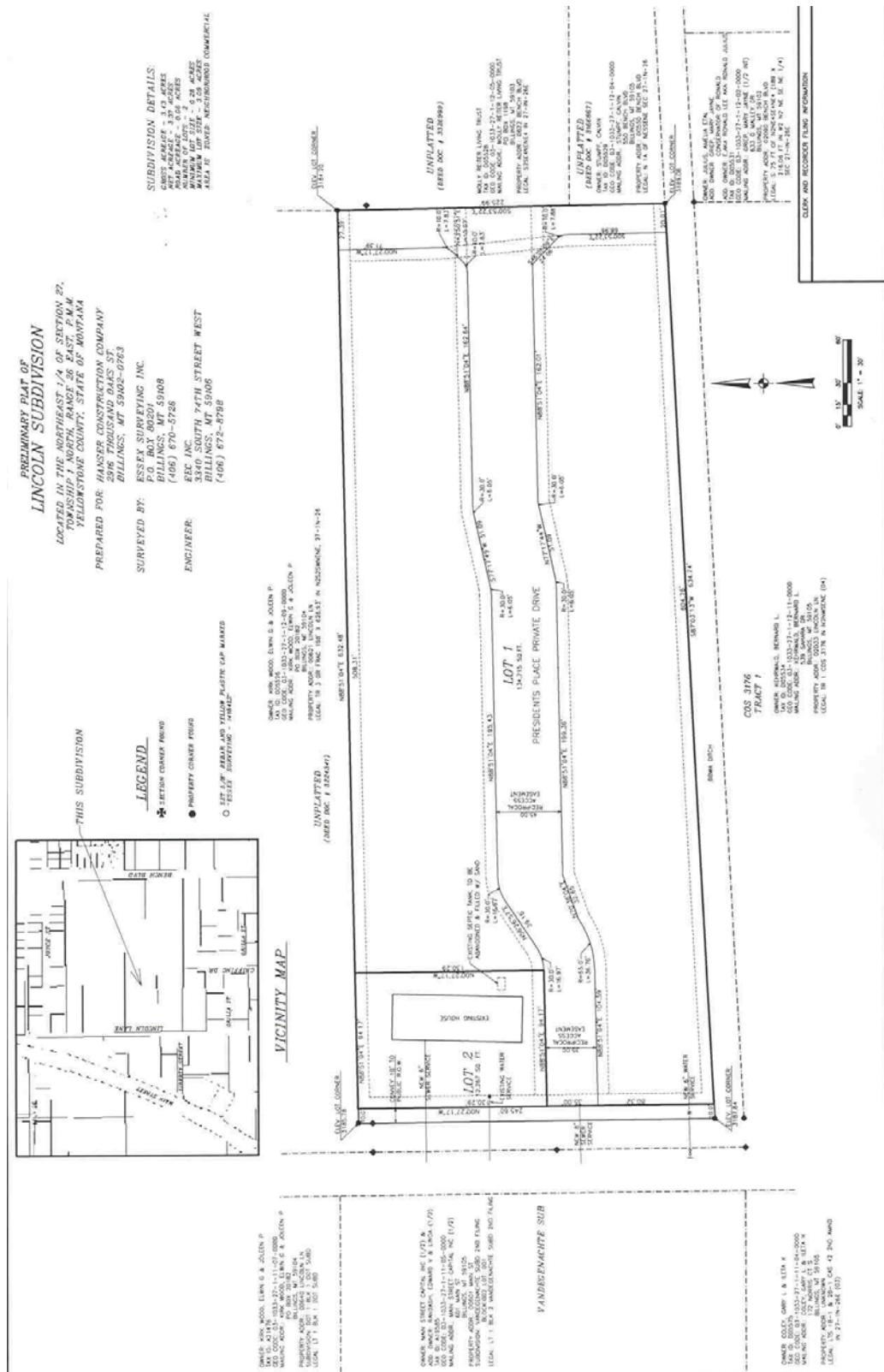
RECOMMENDATION

Planning staff recommends that the Billings City Council conditionally approve the preliminary plat of Lincoln Subdivision, and adopt the findings of fact as stated in the staff report.

ATTACHMENTS

- A: Preliminary Plat
- B: Mayor's approval letter
- C: Findings of Fact
- D: Site photos

ATTACHMENT A
Preliminary plat of Lincoln Subdivision



ATTACHMENT B
Mayor's approval letter

August 9, 2005

Hanser Construction Company
2916 Thousand Oaks St.
Billings, MT 59102

Dear Sir:

On August 8, 2005 the Billings City Council conditionally approved the preliminary plat of the Lincoln Subdivision. The conditions of approval are as follows:

1. The following changes shall be made to the final Subdivision Improvements Agreement (SIA):
 - a. The SIA shall be rewritten to reference the City, not the County, and to follow the standard template.
 - b. Section III. A. shall be rewritten to indicate the required improvements to Lincoln Lane. An additional statement shall be included that these improvements are not to be constructed at this time but will be included in the waiver of right to protest filed with the final plat.
 - c. Section V. must state that all improvements to this subdivision must meet the requirements of the City of Billings Storm Water Management Manual.
 - d. Section VI. shall be rewritten to the standard format, included that the property is subject to construction fees.
 - e. A note shall be added to the "Conditions that Run with the Land" stating that the water service line and all appurtenances inside of the property lines are the responsibility of the developer and, once created, the Homeowners' Association. Lincoln Subdivision will have a private water system.
 - f. A section shall be added to the final SIA called "Postal Service" and it shall state that mail delivery for Lot 1 shall be accommodated through the use of a central delivery site accessed from Lincoln Lane as approved by the United States Postal Service (USPS). The USPS will not enter the proposed private drive.
 - g. Section VII. shall be written to reflect the required parkland dedication and proposed cash in lieu for Lot 1.
 - h. The Waiver of Right to Protest must identify all improvements and also references to the County and RSID's shall be changed to reference the City and SID's.
2. The following changes shall be made to the final plat:
 - a. Lincoln Lane shall be labeled.
 - b. The vicinity map shall be redone to clearly depict the subject property and its surroundings.

3. Any existing ditch easements on the subject property shall be shown on the final plat. The ditch running north-south through Lot 1 shall be preserved in an easement unless a written agreement with all downstream users is provided as evidence that the ditch is abandoned prior to final plat approval. (*Recommended by BBWA, City-County Planning; BMCC Section 23-603(b)*)
4. Utility easements shall be shown on the final plat as requested by MDU or Northwestern Energy. (*Recommended by MDU, City-County Planning; BMCC Section 23-603(a)*)
5. The subdivider shall provide 11% of the fair market value of Lot 1 as a cash contribution in lieu of parkland dedication prior to final plat approval. (*Recommended by City County Planning; BMCC Section 23-901(c)(4)*)
6. Minor changes may be made in the SIA and final documents, as requested by the Planning and/or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
7. The final plat shall comply with all requirements of the City Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

If you have questions about the conditions of approval, please contact Juliet Spalding in Planning and Community Services at 247-8684 or by email at spaldingj@ci.billings.mt.us. The Governing Body's decision may be appealed within 30 days to the Montana District Court for Yellowstone County.

Sincerely,

Charles F. Tooley, Mayor

C: EEC, Inc.
Essex Surveying, Inc.

ATTACHMENT C
Findings of Fact
Lincoln Subdivision
August 8, 2005

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [BMCC 23-304(c)(1) and MCA 76-3-608(3)(a)]

1. Effect on agriculture and agricultural water users' facilities

This subdivision should have little effect on agriculture. The property currently is used for a horse pasture with three horses, but is in an area that is being developed for urban uses. The BBWA ditch runs off-site along the southern property boundary within a 20-foot easement and also a lateral serving one downstream user runs through proposed Lot 1 in a northeast direction. It is recommended as a condition of approval that this easement be shown on the final plat and the lateral ditch be preserved, unless a written agreement is reached with the downstream user to abandon the ditch lateral. (**Condition # 3**)

2. Effect on local services

- h. Utilities – Heights water and City sewer lines are in place in Lincoln Lane. Lot 2 currently has Heights water service, and it proposing to hook up to City sewer service. Sewer and water service to Lot 1 would also be installed from Lincoln Lane; however the internal lines and connections that will serve the future condominiums will use privately owned and maintained lines and services. Heights Water District and City Public Works-Collection & Distribution have recommended some of the language within the SIA be changed in order to clarify the most current requirements. This request has been added as a recommended condition of approval (**Condition #1**).

Private utilities will provide service to the new lots under their operating procedures. MDU has requested several 8-foot utility easements be shown on the final plat around the property perimeter. This request has been added as a recommended condition of approval (**Condition #4**).

- i. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- j. Streets - Lincoln Lane fronts west side of the subject property. At this time, no improvements have been required or proposed by the subdivider to Lincoln Lane, however future improvements may be required and a waiver of right to protest future SID's for such improvements will be filed with the final plat.
An internal private street will be reviewed and approved at the time of condominium development on Lot 1. All new dwellings will be accessed using this new street.
- k. Emergency services – Billings Police and Fire Departments will respond to emergencies in this subdivision. The nearest fire station is Station #6 at Wicks and St. Andrews. The Fire Department commented that they have no concerns with the subdivision proposal at

this time. They will review and approve the site plan for the future condominium development when that is proposed. The Police Department responded that they did not have concerns with the proposal. AMR provides medical care and transport and also commented that they did not have concerns.

1. Schools – The subdivision is in the School District #2. No comments were received from the district regarding this subdivision.
- m. Parks and Recreation – Normally there is no parkland dedication requirement for minor subdivisions; however because Lot 1 of the subdivision will be used for a condominium development, parkland dedication or cash in lieu of land dedication is required by the City Subdivision Regulations, Section 23-901(c)(4). Because no land dedication is proposed, it is recommended as a condition of approval that 11% of the fair market value of Lot 1 be provided as cash in lieu of parkland dedication (**Condition #5**).
- n. MET Transit – The nearest MET routes pass to the west on Main Street, and also to the south on Hilltop/Yellowstone River Road. This subdivision should not significantly impact MET service.

3. Effect on the natural environment

This subdivision should have little impact on the natural environment. With the use of public water and sanitary sewer lines in lieu of individual wells and septic systems, this development should not be a burden to the environment. Additionally it is considered infill development which reduces development pressure on more rural areas of the community.

4. Effect on wildlife and wildlife habitat

This subdivision should not adversely affect wildlife or habitat as it is within an urbanized area of the City.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and BMCC 23-304(c)(1)]

An Environmental Assessment is not required because this is a minor plat within the City.

C. Does the subdivision conform to the 2003 Growth Policy and the Urban Area 2000 Transportation Plan? [BMCC 23-304(c)(3)]

1. Growth Policy

The proposed subdivision conforms to the following land use goals of the *Yellowstone County – City of Billings 2003 Growth Policy*.

- f. Predictable land use decisions that are consistent with neighborhood character and land use patterns.

- g. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- c. Safe and sanitary properties.
- d. Contiguous development focused in and around existing population centers separated by open space.
- e. More housing and business choices within each neighborhood.

2. Urban area transportation plan

The subdivision is in the jurisdictional area of the Urban Area 2000 Transportation Plan. Lincoln Lane is a local street which requires a 60-foot right-of-way. With this subdivision plat, the owners are dedicating an additional ten feet of right of way so that the half-width right-of-way adjacent to the property is 30 feet.

3. Heritage Trail Plan

The subdivision is within the jurisdictional area of the Heritage Trail Plan however no potential trail corridors are identified on this property.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608(3)(b) and BMCC 23-304(c)(4)]

If the recommended conditions of approval are met, this proposed subdivision will meet the requirements of the Montana Subdivision and Platting Act and the local subdivision regulations. The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [BMCC 23-304 (c) (5)]

The existing structure on the property is currently served by Heights water district, and an individual septic system. The existing septic system is proposed to be abandoned and filled in with sand, and both lots would then be served by Heights water and City sanitary sewer services. All new systems will be reviewed and approved by the Montana Department of Environmental Quality.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [BMCC 23-304(c)(6)]

The property is in the Neighborhood Commercial zoning district and the subdivision conforms to the zoning.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3)(c) and BMCC 23-304 (c)(7)]

MDU has requested that additional utility easements are provided and shown on the final plat. These provisions are recommended as a condition of approval (**Condition #1**).

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608(3)(d) and BMCC 23-304(c)(8)]

Legal and physical access is provided to both lots from Lincoln Lane.

CONCLUSIONS OF FINDING OF FACT

- The proposed preliminary plat of Lincoln Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- Identified impacts to agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare can be mitigated through the recommended conditions of approval.
- The proposed subdivision conforms to several goals and policies of the 2003 Yellowstone County – City of Billings Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with State and local subdivision regulations, sanitary requirements, zoning and provides legal and physical access to each parcel.

Approved by the Billings City Council on August 8, 2005.

Charles F. Tooley, Mayor

ATTACHMENT D
Site Photos—Lincoln Subdivision



Figure 1: From Lincoln Lane looking NE across area of Lot 1.



Figure 2: From Lincoln Ln. looking at existing home on Lot 2.

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

AA

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Alkali Creek Subdivision, Fifth Filing Final Plat

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was conditionally approved by the Council on December 13, 2004. The subject property is zoned Residential 9,600 and is located on Tumbleweed Drive west of Alkali Creek Road. The subdivision will create 11 residential lots and \$8,376.47 has been contributed to the City Park Fund in lieu of parkland dedication. The subdivider has met the conditions for final plat approval. The City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: The creation of 11 residential lots will increase the City's tax revenue on this parcel. The cash in lieu of parkland dedication will go towards improving nearby parkland that will benefit this subdivision.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Alkali Creek Subdivision, Fifth Filing.

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

ATTACHMENT

A. Final Plat

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

BB1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 8, 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 \$1,184,117.57 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 14, 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

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

BB2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 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 \$890,033.17 have been audited and are presented for your approval for payment. A complete listing of the claims dated July 19, 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, August 8, 2005

TITLE: Public Service Report, Public Hearing and Resolution for Annexation 05-07, Tract 1, Certificate of Survey 3030

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: GSK Partners, LLP, is requesting approval of a petition to annex Tract 1 of Certificate of Survey 3030 to the City of Billings. The 172-acre property is located between Ironwood Subdivision and the rimrocks, north of Yellowstone Club Estates. The owner is requesting annexation in order to obtain municipal sewer and water for a proposed major residential subdivision in accordance with 7-2-4601 et. seq., MCA. This public service report describes the City's capacity to serve the proposed development.

ALTERNATIVES ANALYZED: The City Council may approve or deny a petition submitted by owners of 50% of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT: The City can provide service to this property. While the annexation will increase the City's tax base, in general, the costs of providing service to residential properties exceed the revenues generated from property tax.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation annexing Tract 1 of Certificate of Survey #3030 with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENT

A. Resolution

INTRODUCTION

A petition for annexation for a 172-acre parcel located north of Yellowstone Cub Estates and east of Ironwood Subdivision was submitted on June 24, 2004. The owner, GSK Partners, LLP, is requesting annexation to obtain City services for a future 184-lot residential subdivision. The property is currently zoned Residential-15000. Upon annexation the zoning of the property will automatically convert to Residential-9600. The property currently lies within the Urban Planning Area and the Limits of Annexation for years 2004 through 2011.

PROCEDURAL HISTORY

- Petition for annexation submitted June 24, 2005.
- City Council voted to acknowledge receipt of the petition for annexation and set a date for public hearing on July 25, 2005.
- If the Council approves the petition for annexation, it shall hold the First Reading and Public Hearing on a resolution to adjust the City Council Ward boundaries on August 22, 2005, and the Second Reading on September 12, 2005.

BACKGROUND

The Northwest Urban Planning Study that incorporates this property was previously approved by City Council in 2002. The approval of the Study and expansion of the Urban Planning Area is required prior to annexation of any property to the City of Billings. This petition for annexation is for a 172-acre parcel located north of Yellowstone Club Estates and east of Ironwood Subdivision, both of which lie within the City limits. There is a separate parcel located between this property and Yellowstone Club Estates that is not within the City limits. The property subject to this annexation is contiguous to the City limits to the west only.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns about how annexations may affect the City's ability to provide services to annexed property without diminishing the services provided to existing City residents. To address these concerns, Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation *complies* with the recently adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements meet City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
5. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
6. Residential densities will be approximately 4 dwelling units per acre.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will

be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. School District #2 and Yellowstone County were also notified of this annexation. All City departments responded favorably. No comments were received from School District #2 or Yellowstone County.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

Water: Water service will be extended from the west through Ironwood Subdivision, First Filing. The water service originates from a water main extended from 62nd Street West. A portion of this property will be acquired by the City of Billings for a water reservoir site.

Sewer: Sewer lines will also be extended from a sanitary sewer line located in Ironwood Subdivision, First Filing. The future subdivision will connect to City sewer and pay the required construction and system development fees. Individual services will be required to pay connection fees.

Stormwater: Stormwater runoff will be retained on-site. The stormwater collection facilities will be designed and constructed in accordance with City regulations at time of development.

Transportation: The study area adjoins Ironwood Drive, a collector, and Canyonwoods Drive, a local residential street to the west. Both streets were developed as part of the Ironwood Subdivision, First Filing. Currently, the only access to this property from an offsite street is Ironwood Drive. Ironwood Drive accesses directly onto Molt Road. 62nd Street West will be developed as an emergency access road as a requirement of future filings of Ironwood Subdivision. At the subdivision concept meeting with the petitioner and City staff, it was determined that a future subdivision on this property will require a second access constructed to City standards. Options for this second access include connecting to Ben Hogan Lane in the Yellowstone Club Estates or improving 62nd Street West to local street standards. The cost of constructing a second access would be the responsibility of the subdivider.

Fire Station: 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.

Parks: Parkland would be dedicated at the time of subdivision. The conceptual plan for the future development shows a network of linear parks providing access to the rimrocks and connecting with the dedicated parkland in Ironwood Subdivision. The developer will be required to create a Park Maintenance District as a condition of subdivision approval, and sign a waiver of right to protest the creation of a Special Improvements District that could be used to develop parkland.

Bicycle and pedestrian facilities: A proposed multi-use trail is shown in the Heritage Trail Plan generally following Cove Creek through Ironwood Subdivision and along the rim face to an on-street route located on Palisades Park Drive. Portions of this trail have been or are being constructed in Ironwood Subdivision.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

Transit: MET does not regularly serve this area, but paratransit services will be provided. MET had no problem with the petition to annex.

Fire: The property is currently within the Billings Urban Fire Service Area (BUFSA) and is served by the Billings Fire Department. After annexation, the Billings Fire Department will continue to serve this area. The Fire Department did not object to this annexation.

Police: The Police Department had no objection with this annexation request.

Ambulance Service: The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

Legal and Finance: General Fund services such as Legal and Finance have indicated that they will not be negatively impacted.

Other Departments: City/County services such as Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development if it is in the City or if it remains in the County.

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property and published in the Billings Gazette. The Planning Division has received no comments on this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The recently adopted Northwest Shiloh Land Use Plan 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).
- 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 also consistent with the West Billings Plan's policies.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation annexing Tract 1 of Certificate of Survey #3030 with the following conditions:

1. That prior to development of the site the following shall occur:
 - a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

ATTACHMENT

- A. Resolution

RESOLUTION NO. 05-

**A RESOLUTION OF THE CITY OF BILLINGS
APPROVING PETITIONS FOR ANNEXATION
AND ANNEXING TERRITORY TO THE CITY.**

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

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

1. **TERRITORY ANNEXED.** Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

A tract of land situated in the S1/2 of Section 19, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 3030, Tract 1, Recorded February 14, 2000, Under Document No. 3081121, Records of Yellowstone County, Montana; Containing 172.395 gross and net acres, more or less.

(# 05-07) See Exhibit "A" Attached

2. **CONDITIONS.** The annexation is approved subject to the following conditions:

That prior to development of the site the following shall occur:

- a. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
- b. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific

infrastructure improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

3. **PROCEDURE.** All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 8th day of August, 2005.

THE CITY OF BILLINGS:

BY: _____

Charles F. Tooley, MAYOR

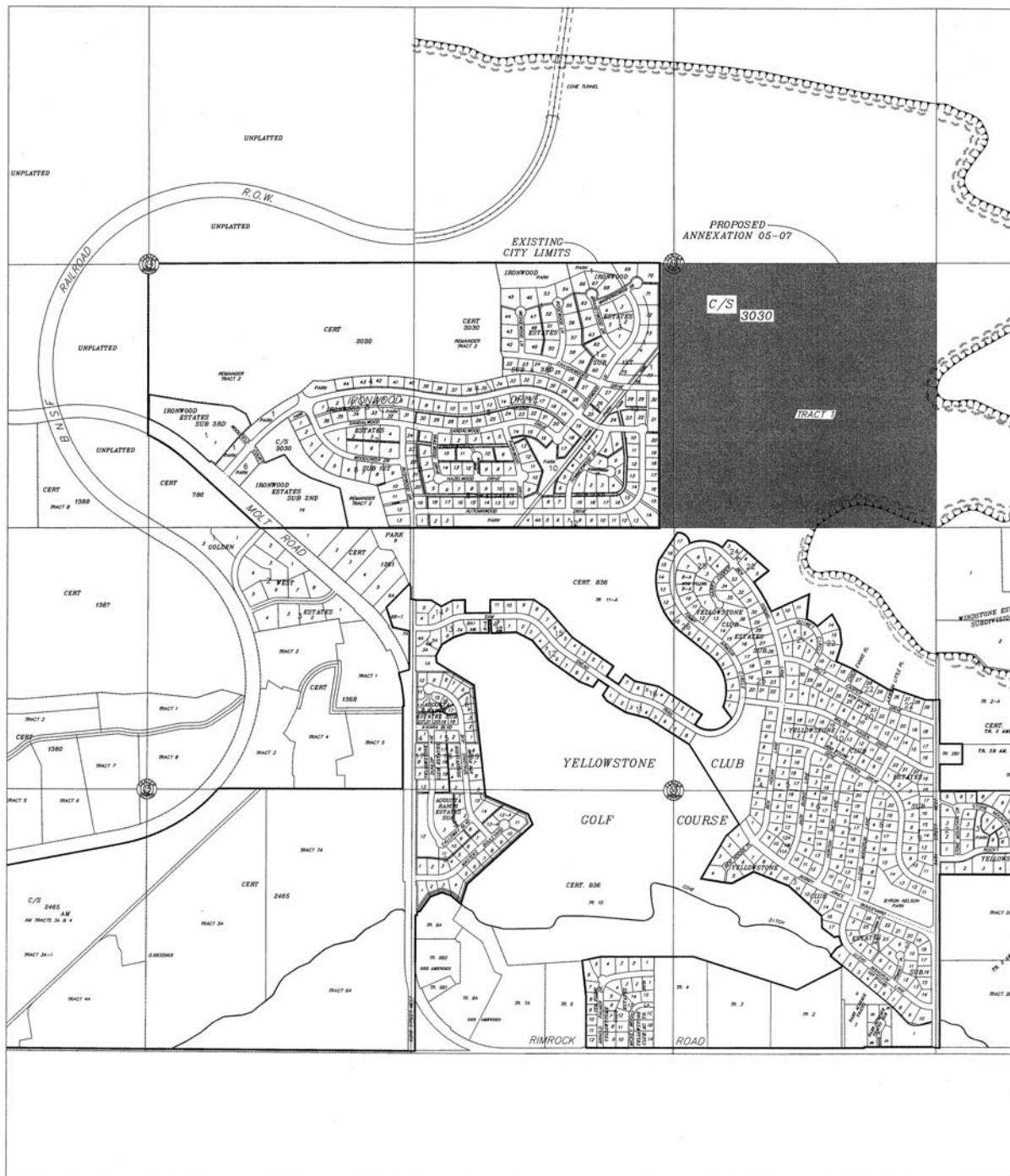
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 05-07)

EXHIBIT A



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

3A

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 8, 2005

TITLE: SID 1368 Annandale Road Resolution Creating District
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Ron Hill, owner of 51 of the 77 lots proposed in the SID district boundary, has the desire to construct public improvements on Annandale Road between Cherry Hills Road and Greenbriar Road. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Annandale Road as shown on the attached exhibit. This project has been approved in the CIP with a \$125,000 contribution from the City of Billings in FY'05 due to the fact that Annandale Road is classified as a minor arterial.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve the Resolution Creating SID 1368; or
2. After holding a public hearing, do not approve the Resolution Creating SID 1368.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$644,043.67. The costs of the Improvements are to be paid from the following sources: (1) \$227,000.00 of Special Improvement District bonds hereinafter described; and (2) \$292,043.67 of cash contribution by Ron Hill, the owner of 51 of the 77 lots in the District and \$125,000.00 of contribution by the City of Billings which is ENGP5 in the CIP.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1368.

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

ATTACHMENT

- A. Boundary of Proposed Special Improvement District
- B. Resolution to Create SID 1368

INTRODUCTION

Ron Hill, owner of 51 of the 77 lots within the proposed boundary of the SID, has a desire to develop lots on Annandale Road. In order to develop these lots, all the necessary street improvements need to be constructed on Annandale Road. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements. To complete the project, it is necessary to create a Special Improvement District.

PROCEDURAL HISTORY

- July 11, 2005 – Resolution of Intent to Create SID 1368.
- August 8, 2005 – Public Hearing and Resolution Creating SID 1368. Professional Services Contract Award.
- August 8, 2005 – Resolution Authorizing for Construction Bids and Construction Contract Award. (Proposed Schedule)

BACKGROUND

The boundary of this proposed special improvement district is as indicated on the attached map. The public improvements contemplated under the terms of this project include water, sanitary sewer, storm drain, curb and gutter, street improvements to Annandale Road. Ron Hill, owner of 51 of the 77 lots in the District, and the City of Billings will pay a cash contribution to the project. The total cash contribution is equal to \$417,043.67 and represents 64.75 percent of the construction and administrative costs of the Improvements. This condition is necessary to satisfy the City's Special Improvement District Policy regarding raw land subdivision.

If approved, it is anticipated that construction of SID 1368 will begin in the fall of 2005 and be completed by the spring of 2006.

RECOMMENDATION

Staff recommends that Council approve the Resolution Creating SID 1368.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. Resolution to Create SID 1368

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 05-_____, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1368**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on **August 8, 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 Councilmembers voted in favor thereof: _____

_____; voted against the same: _____
_____; abstained from voting thereon: _____
_____; or were absent: _____
_____.

WITNESS my hand officially this _____ day of _____.

Marita Herold, CMC/AAE CITY CLERK

RESOLUTION NO. 05-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. **1368**; CREATING THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND AND ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE.

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

Section 1. Passage of Resolution of Intention. This Council, on **July 11, 2005**, adopted Resolution No. **18302** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1368** of the City, under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the costs of certain local improvements described generally therein (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creating and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund").

Section 2. Notice and Public Hearing. Notice of passage of the Resolution of Intention was duly published and mailed in all respects in accordance with the law, and on **August 8, 2005**, this Council conducted a public hearing on the creation or extension of the District and the making of the Improvements. The meeting of this Council at which this resolution was adopted is the first regular meeting of the Council following the expiration of the period ended 15 days after the first date of publication of the notice of passage of the Resolution of Intention (the "Protest Period").

Section 3. Protests. Within the Protest Period, _____ protest was filed with the City Clerk and not withdrawn by the owners of property in the District subject to assessment for 100% of the total costs of the Improvements or representing 100% of the area of the District to be assessed for the cost of the Improvements. **The protest represents _____ % of the assessed cost.**

Section 4. Creation of the District; Insufficiency of Protests. The District is hereby created on the terms and conditions set forth in, and otherwise in accordance with, the Resolution of Intention. The protests against the creation or extension of the District or the making of the Improvements filed during the Protest Period, if any, are hereby found to be insufficient. The findings and determinations made in the Resolution of Intention are hereby ratified and confirmed.

Section 5. Reimbursement Expenditures.

5.01. **Regulations.** The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after

the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

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

5.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs for the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of **\$227,000** after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2 (d) (3) of the Regulations.

5.04. Budgetary Matters. As of the date hereof, there are not City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

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

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 8th day of August 2005.

THE CITY OF BILLINGS:

BY _____ MAYOR
Charles F. Tooley

ATTEST:

BY _____
Marita Herold, CMC/AAE CITY CLERK

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

3B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, August 8, 2004

TITLE: Professional Services Contract for SID 1368
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The SID 1368 Public Hearing is on the August 8th City Council Agenda. These improvements to be constructed with SID 1368 generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements to Annandale Road between Cherry Hills Road and Greenbriar Road. The City Engineer's Office sent out a Request for Proposals for engineering services for the design and contract administration for SID 1368. Engineering, Inc. was chosen by a committee which included Council Member Gaghen. The engineering contract is for \$96,781.71, which is reasonable for a project of this size.

ALTERNATIVES ANALYZED:

1. Approve the professional services contract for SID 1368 with Engineering, Inc. in the amount of \$96,781.71.
2. Do not approve the professional services contract for SID 1368 with Engineering, Inc.

FINANCIAL IMPACT: The total estimated costs of the Improvements, including the professional services contract, are \$644,043.67. The costs of the Improvements are to be paid from the following sources: (1) \$227,000.00 of Special Improvement District bonds hereinafter described; and (2) \$292,043.67 of cash contribution by Ron Hill, the owner of 51 of the 77 lots in the District and \$125,000.00 of contribution by the City of Billings which is ENGP5 in the CIP.

RECOMMENDATION

Staff recommends that Council approve the professional services contract for SID 1368 with Engineering, Inc. in the amount of \$96,781.71.

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

ATTACHMENT

A. Professional Services Contract

Contract for Professional Engineering Services

City of Billings Project – SID 1368

Annandale Road

Design and Construction Administration

In consideration of the mutual promises herein, City of Billings and Engineering, Inc. agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 10 Sections of General Provisions;

Appendix A consisting of 8 pages (Basic Services of Engineer);

Appendix B consisting of 2 pages (Methods and Times of Payment);

Appendix C consisting of 1 page (Additional Services of Engineer);

Appendix D consisting of 3 pages (Schedule of Professional Fees);

Appendix E consisting of 2 pages (Project Schedule);

Appendix F consisting of ____ page(s) (Certificates of Insurance).

PART I
SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Engineer" means Engineering, Inc.
- D. "Contractor" means the successful bidder awarded a construction contract by the Billings City Council for the completion of SID 1368 – Annandale Road improvements.

Section 2. Scope of Services.

- A. The Engineer shall perform professional services in accordance with Appendix B, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Engineer in accordance with the Schedule of Professional Fees attached as Appendix E and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section or as authorized pursuant to Appendix C. However, the Engineer may provide, at its own expense, any other services that are consistent with this Contract.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Engineer shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix F.
- C. This Contract shall terminate at midnight on **December 31, 2008**.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Engineer shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Engineer's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Engineer of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- B. The Engineer is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Engineer shall have paid all City taxes currently due and owing by the Engineer.

Section 5. Termination of the Engineer's Services.

The Engineer's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Engineer in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

Section 6. Duties Upon Termination

- A. If Billings terminates the Engineer's services for convenience, Billings shall pay the Engineer for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Engineer shall become the property of Billings.
- B. If the Engineer's services are terminated for cause, Billings shall pay the Engineer the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Engineer's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Engineer under this Contract shall become the property of Billings at its option.
- C. If the Engineer receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Engineer shall not be entitled to any compensation under this Section until the Engineer has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Engineer's services are terminated for whatever reason the Engineer shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Engineer's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Engineer's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Engineer shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Engineer shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Engineer shall provide the following insurance:
 1. Workers' compensation and employer's liability coverage as required by Montana law.
 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
 3. Commercial automobile liability -- \$500,000 per accident.

- 4. Professional liability in the amount of \$1,000,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Engineer of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Engineer to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Engineer under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright.
- B. Equipment purchased by the Engineer with Contract funds shall be the sole property of Billings, marked and inventoried as such with a copy of the inventory forwarded to Billings.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will not hold Engineer liable and will hold Engineer harmless for any damages resulting from Billings' reuse of work products for an unintended purpose. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Engineer's or sub-Engineer's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

Any notice required pertaining to the subject matter of this Contract shall be either sent via facsimile (FAX) or mailed by prepaid first class registered or certified mail, return receipt requested to the following addresses:

Billings:	City Engineer (Vern Heisler, P.E.) City of Billings Department Public Works 510 North Broadway – 4 th Floor Billings, Montana 59101	FAX: (406) 657-8252
Engineer:	Rick D. Leuthold, P.E. Engineering, Inc. 1300 North Transtech Way Billings, MT 59102	FAX: (406) 656-0967

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

In connection with its performance under this Contract, the Engineer shall not make expenditures other than as provided in line items in the Contract budget.

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
 2. Strikes or Work stoppages.
 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

The Engineer shall establish and maintain a financial management system that:

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Engineer's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Engineer;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

Section 14. Funding Requirements.

In the event that any funding source for this Contract should impose additional requirements upon Billings for the use of those funds, the Engineer agrees to abide by those additional requirements immediately upon receipt of written notice thereof from Billings.

Section 15. Subcontracts.

The Engineer may enter into subcontracts for the purchase of goods and services necessary for the performance of this Contract, provided:

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.

- B. Every subcontract under which the Engineer delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Engineer.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the sub-Engineer relating to the purchase of goods or services pursuant to the subcontract.

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

The Engineer shall perform its obligations hereunder as an independent Engineer of Billings. Billings may administer the Contract and monitor the Engineer's compliance with its obligations hereunder. Billings shall not supervise or direct the Engineer other than as provided in this Section.

Section 2. Nondiscrimination.

- A. The Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, or marital status or who is a "qualified individual with a disability" (as that phrase is defined in the Americans With Disabilities Act of 1990). The Engineer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, or mental or physical impairment/disability. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Engineer agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- B. The Engineer shall state, in all solicitations or advertisements for employees to Work on Contract jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.
- C. The Engineer shall comply with any and all reporting requirements that may apply to it which the City of Billings may establish by regulation.
- D. The Engineer shall include the provisions of Subsections A through C of this Section in every subcontract or purchase order under this Contract, so as to be binding upon every such sub-Engineer or vendor of the Engineer under this Contract.
- E. The Engineer shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

Section 3. Permits, Laws, and Taxes.

The Engineer shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Engineer under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Engineer shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

The failure of either party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

Section 5. Amendment.

- A. This Contract shall only be amended, modified or changed by a written agreement, executed by authorized representatives of the parties, with the same formality as this Contract was executed.
- B. For the purposes of any amendment modification or change to the terms and conditions of this Contract, the only authorized representatives of the parties are:

Engineer: Rick D. Leuthold, P.E.

Billings: City Council or Authorized Designee

- C. Any attempt to amend, modify, or change this Contract by either an unauthorized representative or unauthorized means shall be void.

Section 6. Jurisdiction; Choice of Law.

Any civil action rising from this Contract shall be brought in the District Court for the Thirteenth Judicial District of the State of Montana, Billings. The law of the State of Montana shall govern the rights and obligations of the parties under this Contract.

Section 7. Severability.

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

Section 8. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Contract shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

Section 9. Liability.

The Engineer shall indemnify, defend, save, and hold Billings harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Engineer or any sub-Engineer as a result of the Engineer's or any sub-Engineer's performance pursuant to this Contract.

- A. The Engineer shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Engineer, the Engineer shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Engineer's or any sub-Engineer's wrongful or negligent acts occurring as a result from the Engineer's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

The Engineer shall, at any time during normal business hours and as often as Billings may deem necessary, make available to Billings, for examination, all of its records with respect to all matters covered by this Contract for a period ending three years after the date the Engineer is to complete performance in accordance with Section 2 of the Special Provisions. Upon request, and within a reasonable time, the Engineer shall submit such other information and reports relating to its activities under this Contract, to Billings, in such form and at such times as Billings may reasonably require. The Engineer shall permit Billings to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Contract. Billings may, at its option, permit the Engineer to submit its records to Billings in lieu of the retention requirements of this Section.

IN WITNESS WHEREOF, the parties have executed this Contract on the date and at the place shown below.

City of Billings

Eng~~City~~ of Billings

Engineer

Mayor or Designee

Date: _____

ATTEST:

Marita Herold, CMC/AAE
City Clerk

Date: _____

APPROVED AS TO FORM:

Brent Brooks, City Attorney
Legal Department

Mayor or Designee

Name: _____

Title: _____

Date: _____

STATE OF MONTANA)
)
County of Yellowstone)

On Marita Herold day of CMC/AAE, 2005, before
City Clerk, the undersigned, A Notary Public for the
State of Montana, personally appeared
Brent Brooks, known to me to be the person whose name is
subscribed to the within instrument, and
acknowledged to me that he executed the same.
APPROVED AS TO FORM:

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my Notary Seal the day and
year first above written
Brent Brooks City Attorney
Legal Department

Name: _____

Title: _____

Date: _____

STATE OF _____

County of _____

On this _____
me, the undersigned,
State of Montana,
, known to me
subscribed to
acknowledged
the same.

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

Printed Name: _____
Notary Public in and for the State of Montana
Residing at _____
My Commission Expires: _____

Printed Name: _____
Notary Public _____

Residing at _____
My Commission Expires: _____

Note:

Final contract documents will require the Engineer's signature to be notarized.

Appendix A

Basic Services of Engineer

Section 1. Engineer's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and bi-weekly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- J. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project, the Task Director designated for the Engineer is Kurt Thomson, P.E.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Chris Hertz, P.E.

Section 3. Scope of Work.

The Engineer shall perform the work outlined within this agreement that includes the preparation of Special Improvement District (SID) creation documents, completion of design, bidding, and construction administration services for the installation of improvements for Annandale Road from Greenbriar Road to approximately Cherry Hills Road.

Completion of said scope of work shall include the following tasks:

- A. Preliminary Services (30% Design).
 1. Conduct Preliminary Field Review (PFR) to determine major design features, project-related issues, and any potential problems, insuring that the design considers all operational aspects relative to safety and efficiency.
 2. Research property ownership within the project limits to update and supplement existing records.
 3. Prepare and distribute a mailing to all affected property owners explaining the project, including points of contact for both the Engineer and Billings.
 4. Confirm locations of utilities, public and private, within project limits. Information to be obtained from review of available as-built drawings, field investigations, and the Montana One Call System. The Engineer is cautioned that all utilities are not on this system.
 5. Conduct a preliminary soils survey and geotechnical investigation to evaluate the soil conditions within the project limits. The investigation may include:
 - a. soil strata;
 - b. bearing capacity;
 - c. ground water;
 - d. pavement thickness design;
 - e. criteria for utility installations; and
 - f. Construction recommendations for the above.
 6. Review existing reports that include, but are not limited to hydrologic/hydraulic reports, subdivision plats, *Billings Urban Area Transportation Plan*, *Heritage Trail*, and other associated master plans relating to the project.
 7. Conduct preliminary surveys that may include but not be limited to:

- a. existing field conditions (topography, vegetation, existing structures, and road design features, etc.);
 - b. drainage features;
 - c. existing field landmarks;
 - d. existing utilities (above and below ground);
 - e. existing right-of-way markers and property lines; and
 - f. alignment and cross section of any existing intersecting roads and driveways within or adjacent to the project limits.
8. Prepare a Storm Water Management Design (SWMD) Report that includes an incorporation of the *Lake Hills Subdivision Storm Drain Infall Study* findings and proposals, hydrological calculations (both within and outside the project area), and recommendations for proposed improvements with this project.
9. Prepare preliminary plan/profile sheets for the project. As appropriate for the project, the plan and profile sheets may include:
 - a. all topographical data from the field survey;
 - b. all relevant existing on-the-ground survey information;
 - c. plan views of underground utilities;
 - d. in profile view, crossing elevations of underground utilities;
 - e. existing centerline elevations; and
 - f. ADA curb ramp location and orientation as well as any other design features for disabled access.
10. Prepare a Preliminary Engineering Report (PER) generally consisting of existing conditions and needs, proposed improvement, associated cost estimates, construction schedule, project funding, and design recommendations.
11. Provide to Billings two (2) copies of the SWMD Report, three (3) copies of the PER, and three (3) complete copies of the preliminary plan/profile sheets for review and approval.
12. Provide to the Yellowstone County Water District of Billings Heights (Heights Water) two (2) complete copies of the preliminary plan/profile sheets for review and approval.
13. Following receipt of written review comments from Billings and Heights Water, facilitate a 30% design review meeting, as required, with Billings staff to discuss review comments on these Preliminary Services.

B. Preliminary Design Services (70% Design).

1. Prepare detailed utility, storm water management, and road design plans. The detailed road design may include but not necessarily be limited to:

- a. generating the detailed cross section, including any utilities potentially in conflict with the road design;
 - b. presenting the necessary details on the typical sections;
 - c. presenting the necessary details on the plan and profile sheets (e.g., grade percents, vertical and horizontal curvature data, structure sizes, stationing);
 - d. developing the temporary erosion control plan; and
 - e. preparing special provisions for road design items.
2. Based on the detailed design plans, calculate the project quantities.
3. Prepare specifications and cost estimate.
4. Provide to Billings four (4) complete sets of a complete 70% Design Plans, Specifications, and Estimate (PS&E) package for review and approval.
5. Provide to Heights Water two (2) complete copies of a complete 70% Design PS&E package for review and approval.
6. Following receipt of written review comments from Billings and Heights Water, facilitate a 70% design review meeting, as required, with Billings staff to discuss review comments on these Preliminary Design Services.

C. SID Creation Services

The Engineer shall assist Billings in creating an SID as follows:

1. Coordinate the services of a qualified title company and furnish a certified property ownership report, including tax code numbers and the owners' last-known mailing addresses, on each parcel as of the last-completed assessment roll for state, county, and school district taxes, and other information necessary to secure proper notification and assessment procedures.
2. Prepare SID boundary exhibits and legal descriptions. The exhibit is to show tax code numbers and ownership lot lines in addition to platted lot lines, if different.
3. Furnish assessment area and/or front footage of all lots or tracts within the district in the format required by Billings.
4. Prepare and furnish SID creation documents in the format required by Billings including, but not limited to, the following:
 - a. Exhibit A – SID Boundary;
 - b. Exhibit B – SID Legal Description (metes and bounds);
 - c. Exhibit C – Estimated Construction Costs (including construction costs for each assessment item);
 - d. Exhibit D – Table of Assessment Items and Amounts
 - e. Exhibit E – Description of Improvements

- f. SID Bond Cost Analysis (estimated bond amount rounded to nearest thousand dollars);
- g. SID – Part II (required bond amount and total assessment items, quantities, and costs as well as other district financial information); and
- h. SID – Part III (individual assessments for each lot, tract, or parcel of land included in district).

D. Final Design Services (95% & Final Design).

- 1. Prepare and furnish to Billings four (4) copies of a complete 95% PS&E package for review and approval.
- 2. Provide to Heights Water two (2) complete copies of a complete 95% Design PS&E package for review and approval.
- 3. Following receipt of written review comments from Billings and Heights Water, facilitate a 95% design review meeting, as required, with Billings staff to discuss review comments on the 95% review documents.
- 4. Prepare and furnish to Billings three (3) hard copies accompanied by one (1) disk containing the appropriate computer files for the plan (AutoCAD format, *.dwg) and specification (Microsoft Word format, *.doc) information of a complete final PS&E package. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.
- 5. Prepare and furnish to Billings two (2) hard copies of a complete final plans and specifications package and appropriate processing fees for the water main and sewer main certified checklist submittals to the Montana Department of Environmental Quality. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.
- 6. Prepare and furnish to Heights Water one (1) hard copy of a complete final PS&E package. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge.

E. Bidding Services.

1. Prepare and furnish full size (24x36-inch) plans and specifications in sufficient number for bidding purposes.
2. Stamp and sign all plans and specifications with the seal of the Professional Engineer in responsible charge for the design.
3. Schedule and hold a pre-bid conference.
4. Prepare any required addenda to plans and specifications. Addenda shall be approved by Billings.
5. Attend construction bid opening.
6. Analyze bid proposals and make a recommendation on awarding a construction contract for the proposed work based upon the lowest responsive bid submitted by a responsible bidder as set forth in the specifications and final plans.
7. Prepare and provide to Billings a bid tabulation and recommendation package that includes a recommendation on award, bid tabulation sheet, and bid proposal sheets.

F. Construction Services.

1. Prepare and provide to Billings and the successful contractor for the project a notice of award and notice to proceed.
2. Schedule and hold a pre-construction conference.
3. Notify Billings before the work is started. The Engineer recognizes that all work is subject to Billings inspection and approval at any time.
4. Construction Layout and Control.
 - a. Provide personnel, equipment, and supplies for construction layout and control. Construction layout shall include, but not be limited to, measurements, lines, locations, and grades necessary for construction.
 - b. Reference and preserve all existing survey monuments and benchmarks. All monuments installed with the project shall be punched and elevations shown on record drawings.
5. Inspection and Testing.
 - a. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
 - b. Provide general review of construction to check the Contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Review of work shall be made on a full-time basis (to be based on the Contractor's work schedule) while any major item of work is in progress. Major items of work shall be water, sanitary sewer, storm drain, and irrigation utilities; subgrade preparation; gravel base course preparation;

concrete pouring and finishing; and paving. The Engineer shall provide a minimum of **48** hours notice for Billings personnel when specific inspections or testing require their presence on the project. Each daily review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the daily review reports shall be furnished to Billings as requested during construction. Engineer will notify Billings immediately of contract problems or deviation from approved plans.

- c. Provide the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality assurance testing and geotechnical engineering between the project engineer, field inspector, and a project construction materials engineer. Geotechnical and materials engineering shall include interpretation and recommendations for the Engineer and Billings based upon field observation. The services of a qualified geotechnical consultant will be utilized for all materials testing and geotechnical engineering for this Contract.

6. Submittal Review and Document Preparation.

- a. Review the construction operations and the traffic controls for construction, prior to the start of work. Engineer shall ascertain that the Contractor has all needed permits to accomplish his work during construction.
- b. Check shop drawings, samples, equipment, asphaltic concrete mix design, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- c. Prepare change orders that do not require additional engineering design or inspection. The Engineer will obtain prior written approval from Billings for all changes in specifications, addition of work, and significant changes in quantities.
- d. Prepare monthly pay estimates and final pay estimates for construction and prepare contract administration forms on a monthly basis. These will be submitted in Billings approved format. The pay estimates shall include the actual bid item quantities.
- e. Issue notice to the Contractor to suspend work in whole or in part when, in the opinion of the Engineer, work is not being, or cannot be performed in accordance with the contract documents and specifications.
- f. Contact Billings for any proposed plan or specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept. Plan and specification changes shall be prepared by the design engineer. The Engineer will obtain prior written approval from Billings for all changes in design.
- g. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction. The Engineer is not authorized to order additional work without the approval of Billings' Task Director. Any work resulting in contract overages will be processed by approved change orders using Billings' standard forms.

G. Final Services.

1. Prepare record drawings and furnish Billings with one (1) complete hard copy for review and comment.
2. Following receipt of review comments from Billings, make necessary changes and furnish Billings with two (2) sets of reproducible mylars accompanied by one (1) disk containing the appropriate computer files for the record drawings (AutoCAD format, *.dwg).
 - a. Record drawings to show offset distances from centerline of rights-of-way to all public storm drains, water mains, and sanitary sewers.
 - b. Also shown will be any invert elevations for manholes, structures, and connections thereto. Elevations shall be shown at each street or right-of-way crossing plus any additional locations requested by the City Engineer or authorized representative.
 - c. All above elevations shall be referenced to a permanent benchmark elevation – clearly shown on the plans.
 - d. Record drawings and traffic control submissions are due within 60 days of Contractor's final payment and before final payment to the Engineer.
3. Provide one (1) bound copy (may include multiple volumes) of a project manual through final completion to Billings within 90 days of final project acceptance. At a minimum, the project manual shall include: project specifications and contract documents, pay estimates, correspondence, any change orders, Contractor submittals, test reports, daily inspection reports, public involvement documentation, and other appropriate project records and documentation as determined by Billings.
4. Schedule and make final inspection with Billings and certify to Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
5. Provide certification of completion in accordance with the approved plans and record drawings as necessary for submittal to the Montana Department of Environmental Quality within 90 days of project completion.
6. Schedule and make an inspection with Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to Billings and Contractor and continue until acceptable.
7. For a period of three years after the certification of final acceptance furnished pursuant to the preceding paragraph, respond to requests and answer complaints for information concerning engineering aspects of the project, and provide engineering designs and plans if necessary to correct any design deficiencies.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

The work of the Engineer, as outlined in Appendix A – Basic Services of Engineer shall be accomplished for the fees as outlined herein and shall be due to Engineer upon receipt of Engineer's pay request each month, or at the conclusion of each phase of the work for which payment is due. Payments shall be made within 30 days of the receipt thereof.

For services rendered in accordance with Appendix A, the Engineer shall be paid for time and materials not to exceed **Ninety-six thousand and seven hundred and eighty-one dollars and seventy-one cents (\$96,781.71)**.

Payment to the Engineer shall not exceed ninety percent (90%) of the total compensation allowable under this Section until 95% plans, specifications, and cost estimate have been received and accepted by Billings. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

Section 2. Payments for Extra Services when Authorized by Billings.

- A. Field and laboratory testing and reports shall be paid for at the Engineer's invoiced cost plus fifteen percent (15%).
- B. Resetting lost or destroyed monuments after construction shall be paid for on an hourly basis at the applicable fee in Appendix D.
- C. Construction inspection in excess of basic services shall be paid for on an hourly basis at the applicable fee in Appendix D.
- D. Construction inspection after expiration of the construction contract completion time shall be paid for on an hourly basis at the applicable fee in Appendix D.
- E. Preparation of change orders, which do require additional engineering design or construction review, shall be paid for on an hourly basis at the applicable fee in Appendix D.
- F. Requests made or conditions identified by interested groups, which are in excess of basic services, shall be paid for on an hourly basis at the applicable fees in Appendix D.
- G. Revisions or additions when such revisions or additions are inconsistent with written approvals or instructions previously given, required by enactment or revisions of codes, laws, or regulations, or are due to other causes not solely within control of the Engineer shall be paid for on an hourly basis at the applicable fees in Appendix D.

- H. As may be requested by Billings, additional design services not included in the original scope of work as outlined in Appendix A shall be paid for on an hourly basis at the applicable fees in Appendix D.
- I. Additional time and/or services resulting from additional requirements imposed by any funding source for use of those funds, as outlined in Part I, Section 14 of this Contract, shall be negotiated and paid for on a per task basis.

Section 3. Corrections.

Costs of Billings' work that is required for corrections to the Engineer's work that requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

Appendix C

Additional Services of Engineer

Additional Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing and reports.
- B. Resetting lost or destroyed monuments after construction.
- C. Construction inspection in excess of basic services.
- D. Construction inspection after expiration of the construction contract completion time.
- E. Preparation of change orders, which do require additional engineering design or construction review.
- F. Requests made or conditions identified by interested groups, which are in excess of basic services.
- G. Revisions or additions when such revisions or additions are inconsistent with written approvals or instructions previously given, required by enactment or revisions of codes, laws, or regulations, or are due to other causes not solely within control of the Engineer.
- H. As may be requested by Billings, additional design services not included in the original scope of work as outlined in Appendix A.
- I. Additional time and/or services resulting from additional requirements imposed by any funding source for use of those funds, as outlined in Part I, Section 14 of this Contract.

Appendix D

Schedule of Professional Fees

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustments. Hourly rates for services effective on the date of this Agreement are included below.

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit.

1. *Survey Crew Services.*

2-man Survey Crew with Total Station	\$100.00 /hour
3-man Survey Crew with Total Station	\$125.00 /hour
1-man GPS Crew with GPS Station	\$100.00 /hour
2-man GPS Crew with GPS Station	\$125.00 /hour

Charge out rate for travel time to and from the site same as above.

Minimum of one-hour charge for field crew time.

2. *Staff Personnel Services.*

A. Expert Witness / Special Consultant	\$140.00 /hour
B. Principal-in-Charge	\$105.00 /hour
C. Senior Engineer II	\$88.00 /hour
D. Senior Engineer I	\$78.00 /hour
E. Staff Engineer	\$69.00 /hour
F. Engineering Technician	\$57.00 /hour
G. Inspector	\$51.00 /hour
H. Construction Manager	\$68.00 /hour
I. Professional Land Surveyor	\$81.00 /hour
J. Staff Surveyor	\$63.00 /hour
K. Computer Aided Design Technician	\$53.00 /hour
L. Administrative / Clerical	\$40.00 /hour
M. Project Administrator	\$58.00 /hour
N. Overtime is chargeable after 40 hours per week.	

O. Outside consultants:

At cost if independently billed direct to Billings.

Cost plus 5% if billed through Engineer.

P. Independent laboratories:

i. At cost if independently billed direct to Billings.

ii. Cost plus 5% if billed through Engineer.

3. *Expenses*

A. Vehicle Charges and Mileage:

i. Automobile or pickup	\$0.45 /mile
ii. Survey equipped 4-wheel drive vehicle	\$0.68 /mile
iii. ATV	\$100.00 /day

B. Long distance telephone, shipping charges,
photography, lodging, meals, and misc. expenses

Cost plus 5%

C. Traffic Counters

\$24.00 /day

4. *Materials*

A. Photocopies:

i. 8 1/2 x 11	\$0.18 /each
ii. 8 1/2 x 14	\$0.20 /each
iii. 11 x 17	\$0.36 /each

B. Blackline prints:

i. 24 x 36	\$1.45 /each
ii. 30 x 42	\$2.10 /each

C. Color prints:

i. 8 1/2 x 11	\$3.00 /each
ii. 11 x 17	\$5.00 /each
iii. 24 x 36	\$11.00 /each
iv. 30 x 42	\$15.00 /each

D. Transparencies

\$1.00 /each

E. Mylars

\$10.20 /each

F. Plastic Capped Rebar

\$1.50 /each

G. Aluminum Capped Rebar

\$3.00 /each

H. Fence Posts

\$3.00 /each

I. Brass Caps	\$25.00 /each
J. Lath, Brushes, Stakes, Nails, Etc.	\$0.50 /each

Direct project costs not listed in the hourly rate table herein shall be paid for at actual cost. Direct project costs are defined as those costs paid by the Engineer to an outside entity for services rendered, which can be identified specifically with this project and which can be directly assigned to such activities and with a high degree of accuracy. These costs include salaries and wages of personnel rendering specific services under the agreement, related staff-benefit expenses, as well as supplies, printing and copying, travel, materials, services, and equipment rental for specific use on the project.

Appendix E

Project Schedule

Section 1. Design Services.

Based on a written notice to proceed by Billings, the completion date, including agency reviews, for the Engineer's work through final design based on **working days** shall be:

- A. PFR – 10 days after notice to proceed.
- B. 30% Design Submittal (Appendix A, Sections 3.A.11-12) – 30 days after notice to proceed.
- C. 30% Design Review Meeting, as required – within 50 days after notice to proceed.
- D. 70% Design Submittal – within 30 days following receipt of written 30% approval from Billings.
- E. 70% Design Review Meeting, as required – within 50 days after receipt of written 30% approval from Billings.
- F. SID Creation Documents – within 50 days after receipt of written 30% approval from Billings.
- G. 95% PS&E Package – 30 days following receipt of written 70% approval from Billings.
- H. Final PS&E Package – 10 days following receipt of written 95% approval from Billings.

Section 2. Bidding Services.

Based on written notice from Billings of the advertisement for bids, the schedule for the Engineer's work for bidding services shall be:

- A. Pre-Bid Conference – Tuesday following the final posting of the advertisement for bids.
- B. Construction Bid Opening – second Tuesday following the final posting of the advertisement for bids.
- C. Bid Tabulation and Recommendation Package – 12:00 p.m. MST on Friday following construction bid opening.

Section 3. Construction Services.

Based on written notice of award as provided in Appendix B, Section 3.G.1, the schedule for the Engineer's work for construction services based on **working days** shall be:

- A. Pre-Construction Conference – within 10 days following notice of award.
- B. The schedule for construction services shall be dictated by the term of the construction contract for this project and completion of the scope of work contained in Appendix A.

Section 4. Delays in the Scope of Work.

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Engineer is behind on this Contract due to no fault of Billings, then the Engineer hereby acknowledges the right of Billings to withhold future Contracts to the Engineer in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

Appendix F

Certificates of Insurance

See attached Certificates of Insurance.

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3C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

TITLE: SID 1368 Annandale Road Resolution Authorizing for Construction Bids

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: As required by statute, the City Council must adopt Resolutions authorizing staff to advertise and receive bids for construction and the sale of SID bonds. The public hearing is later on the agenda for the August 8 Council Meeting. Approval of the resolution authorizing construction bids is contingent upon the approval of the resolution creating SID 1368.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$644,043.67. The costs of the Improvements are to be paid from the following sources: (1) \$227,000.00 of Special Improvement District bonds hereinafter described; and (2) \$292,043.67 of cash contribution by Ron Hill, the owner of 51 of the 77 lots in the District and \$125,000.00 of contribution by the City of Billings which is ENGP5 in the CIP.

RECOMMENDATION

Staff requests that Council pass a Resolution Authorizing Construction Bids for SID 1368.

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

ATTACHMENT

- A. Boundary of Proposed Special Improvement District
- B. Resolution to Authorizing Construction Bids

RESOLUTION NO. 05-_____

**A RESOLUTION PROVIDING FOR THE RECEIVING OF BIDS AND THE LETTING OF
A CONTRACT FOR THE CONSTRUCTION OF IMPROVEMENTS IN SPECIAL
IMPROVEMENT DISTRICT NO. 1368.**

WHEREAS, Special Improvement District No. **1368** has been duly created; and

WHEREAS, it is necessary to provide for the receiving of bids and the letting of a contract for the construction of improvements within said Special Improvement District;

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

1. **IMPROVEMENTS.** The improvements consist of the following: construction of curb and gutter, sidewalks, sanitary sewer, sanitary sewer services, water main, water services, and the necessary street improvements fronting lots on Annandale Road between Cherry Hills Road and Greenbriar Road within Lake Hills Subdivision.

2. **BID REJECTION.** The City Council shall and does hereby reserve the right to reject any or all bids.

3. **NOTICE OF CALL FOR BIDS.** The City Clerk is hereby authorized and directed to publish notice inviting bids, stating the time and place said bids must be submitted to the City Clerk, and the time they will be publicly opened. Said notice shall be published in the Billings Times, a newspaper published and circulated in the City of Billings, MT.

4. **OWNERS' RIGHT TO DO WORK.** The owners of over 75% of the frontage of lots and lands within said District, liable to be assessed or their agents, may elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same would be awarded, within (3) three days after the awarding of the contract in compliance with the statutes of the State of Montana.

5. **CONTRACT.** In the event the owners do not elect to do the work, then said successful bidder shall immediately make and execute with the City of Billings, a contract in accordance with the provisions of the notices, resolutions, plans and specifications concerning this Special Improvement District, and all ordinances of the City of Billings. Said contract on the part of the City of Billings shall be approved by the City Council, executed in the name of the City of Billings, by its Mayor and attested by the City Clerk.

6. **PERFORMANCE BOND.** Upon the execution and delivery of said contract, the successful bidder or contracting owners shall give to the City of Billings a good and sufficient bond in an amount not less than 100% of the amount of the contract, conditioned to the effect that such contract or contractors shall well and truly perform all the terms, conditions and provisions of said contract. In addition, said contractor or contractors shall provide insurance to protect the City and shall be responsible to save the City of Billings harmless from negligent or willful acts of said contractor and contractors.

7. **BID SECURITY.** Each bid shall be accompanied by lawful money of the United States, a cashier's check, certified check, bank money order, bank draft drawn and issued by a national banking association situated in the State of Montana, or a bid bond or bonds executed by a surety company authorized to do business in the State of Montana. Said money, check or bid bond to be in an amount equal to 10% of the amount of the bid. If

said bid is accepted and the bidder complies with the terms of this resolution as to making, executing and delivering to the City of Billings said contract and bonds as herein required, then said bid security shall be returned.

8. **PAYMENTS.** All payments for the construction of said improvements shall be made in warrants drawn on the fund of Special Improvement District **1368** after the bonds of said district have been sold on the estimate of the City Engineer and approved by the City Council; provided, however, that said contractor has paid for the labor performed and materials used on said improvements. Ten percent (10%) of the estimates shall be reserved until the final completion of said improvements, in a manner reasonably satisfactory to the City.

9. **INCIDENTAL COSTS.** Subsequent to the bond sale, the City Engineer shall cause to be paid such amounts as he shall estimate are necessary to cover the actual costs of engineering, inspection, legal expense, printing, preparation of assessment rolls and other incidental expenses properly a charge against the district, by an interfund transfer, and shall be drawn on the funds of the district, processed by the Finance Office and transferred to the appropriate fund of the City.

10. **WORKMENS' COMPENSATION.** Provisions shall be included in the contract to comply with the City's obligation of insuring payment of the premiums of the contractor to the State of Montana Workmens' Compensation Division and the provisions required in MCA, Title 18, Part 4.

PASSED BY THE CITY COUNCIL AND APPROVED this **8th day of August 2005.**

THE CITY OF BILLINGS

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Public Hearing and Resolution to Create - Park Maintenance District No. 4028, Vintage Estates Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: Vintage Estates Subdivision contains approximately 2.1 acres of dedicated park and public open space. It includes parkland, boulevard improvements, and a 20-foot wide trailway strip along the southern edge of the subdivision, which will provide a corridor for the Heritage Trail. As a condition of the Vintage Estates Subdivision final plat approval, the subdivision lots must establish a Park Maintenance District and Waivers of Protest are on file for all properties in the subdivision. The Resolution of Intent to Create the District was considered and approved at the July 11, 2005 meeting of the City Council. As required a Public Notice of Intention to create the district was published and Notice was mailed to the property owners of record regarding the intention to create the district allowing for a 15 day period for protest or comments to be filed with the City Clerk and notifying them of the Public Hearing and consideration of the Resolution to Create the District at the August 8, 2005 City Council meeting. A report of comments received will be provided the City Council by staff at the August 8 meeting.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$3,235.00 for the first year. The assessment rate for this amount is \$36.47 per lot in District 4028. The assessment for the lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4028 as proposed.

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

ATTACHMENTS

A: Resolution to Create Park Maintenance District No. 4028; and Exhibits A-D thereto attached.

INTRODUCTION

Approval of the Resolution to Create Park Maintenance District No. 4028 for the maintenance of Vintage Estates Subdivision public areas completes the process to create the Park Maintenance District as required.

PROCEDURAL HISTORY

- The Vintage Estates Subdivision final plat was approved at the April 11th, 2005, City Council meeting.
- The Resolution of Intent To Create the Park Maintenance District was approved at the July 11th, 2005, meeting of the City Council.
- The Public Notice of Intent was advertised July 14th and July 21st, 2005. A copy of the Public Notice of Intent was mailed to the property owners within the proposed district with a period for protest or comment from July 15th, 2005 to July 22nd, 2005.
- The Public Hearing and consideration of the Resolution to Create District 4028 at this meeting will complete the process if approved.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Vintage Estates Subdivision, Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed maintenance district includes all lots included in Blocks 1 through 9 of Vintage Estates Subdivision. Waivers of Protest for the formation of the park maintenance district are on file for all lots within Vintage Estates Subdivision.

Approval of the Resolution to Create Park Maintenance District No. 4028 for Vintage Estates Subdivision is the final step in the creation process.

ALTERNATIVES ANALYSIS

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

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Vintage Estates Subdivision.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

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

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

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4028 as proposed.

ATTACHMENT

Resolution to Create Park Maintenance District No. 4028; and Exhibits A-D thereto attached.

RESOLUTION NO. 05-
A RESOLUTION CREATING PARK MAINTENANCE
DISTRICT NO. 4028 FOR THE PURPOSE OF MAINTAINING EXISTING
AND FUTURE PUBLIC AREA IMPROVEMENTS IN
VINTAGE ESTATES SUBDIVISION,
CITY OF BILLINGS, MONTANA

WHEREAS, the City Council of Billings, Montana, hereby finds, determines and declares that:

1. The public interest and convenience require the creation of the above named district.
2. That said district is of more than local or ordinary public benefit.
3. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the costs and expenses of the district.

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

1. *Jurisdiction and Creation.* Park Maintenance District Number 4028 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the proposed improvement, and it does hereby create Park Maintenance District Number 4028. All lands included within Park Maintenance District Number 4028 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvement and Maintenance.* The general character of the improvements to be maintained is as follows: landscaping, trails, trees, irrigation systems, irrigation system water services, storm water detention facilities, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District. The purpose of said district is to provide perpetual maintenance of the above-mentioned items.
3. *Boundaries.* The Boundaries of the district are described and designated on Exhibit "B" attached hereto.
4. *Ownership.* The ownership records of all properties within the said district are described and designated in Exhibit "C" attached hereto.

5. *Maintenance Estimate.* The total estimated cost of the proposed maintenance for the first year will be \$4,085.00 as described in the Maintenance Estimate attached hereto in Exhibit "D".
6. *Assessment Method.* All properties within the District are to be assessed for a portion of the costs of maintaining the existing and future Vintage Estates Subdivision public area improvements, as specified herein. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the Vintage Estates 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.
7. *Payment of Assessment.* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute a fund to be known as Fund of Park Maintenance District Number 4028.
8. *Bonds for Improvement.* There will be no bonds sold for this district as it is for maintenance only.
9. *Engineering.* No engineering will be required.
10. *District Accounts.* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

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

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC, CITY CLERK

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Public Hearing & City Ordinance Variance #OE05-01

DEPARTMENT: Public Works/Engineering

PRESENTED BY: Dave Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: Rock Creek Coffee Company, LLC located at 124 North Broadway is seeking a variance to allow the placement of two separate A-frame signs. Rock Creek Coffee Company, LLC has two separate entrances on two separate streets and would like to have an A-frame sign in front of each entrance. This property is on Lot 6, Block 93, Billings Original Townsite, being generally located between First Avenue North and Second Avenue North and between North Broadway and North 29th Street. Rock Creek Coffee Company, LLC is seeking a variance from the City Ordinance, Section 22-407.1(4) which reads as follows:

A maximum of one (1) A-frame sign shall be allowed for each business. The sign must abut the business exterior wall within four (4) feet of the business entrance and be no closer than one (1) foot from the entrance. Two (2) or three (3) businesses may share a temporary sign. Alternative sign locations may be authorized by the encroachment permit.

ALTERNATIVES ANALYZED:

1. Approve the variance allowing two A-frame signs.
2. Do not approve the variance allowing two A-frame signs.

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

RECOMMENDATION

Staff recommends that Council approve the variance allowing two A-Frame signs.

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, AUGUST 8, 2005

SUBJECT: Public Hearing and Approval of Resolution Approving and Adopting Budget Amendments for Fiscal Year 2004/2005

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Budget adjustments are requested for Fiscal Year 2004/2005. Cash reserves are the revenue source for all adjustments; however the amendments for compensated absences are end-of-year accruals that do not require current cash outlay. Insurance proceeds received in fiscal year 2004 for the Rose Park facilities damages totaled \$66,642.

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the resolution approving and adopting the budget amendments for Fiscal Year 2004/2005 per attached.

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

ATTACHMENT

A-Resolution to Make Fiscal Year 2004/2005 Adjustment Appropriations (with Exhibit A)

Attachment A

RESOLUTION 05-

A RESOLUTION TO MAKE **FISCAL YEAR 05** ADJUSTMENTS APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a **Quarterly Budget Review (FY 2004/2005)**, it is necessary to alter and change said appropriations.

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

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT)

PASSED AND APPROVED by the City Council, this 8th day of August, 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMCC CITY CLERK

EXHIBIT A

BUDGET ADJUSTMENTS

Revenue Expenditure

630-1753-485	7310	\$	37,000	Compensation for damages
--------------	------	----	--------	--------------------------

To increase the Property/Liability Insurance Fund approved FY05 budget by \$37,000 in the compensation for damages line item. In fiscal year 2004, the fund was reimbursed \$66,642 for damages to the Rose Park facilities.

010-1220-412	2925	\$	1,200	Personal computers
--------------	------	----	-------	--------------------

To increase the General Fund/Municipal Court budget for personal computers.

010-1751-417	3440	\$	10,600	Natural gas
010-1751-417	3690	\$	8,800	Repairs and maintenance

To increase General Fund/City Hall Maintenance for natural gas and additional costs for HVAC repairs.

601-1551-481	3440	\$	25,000	Natural gas
601-1550-481	1510	\$	12,000	Compensated absences

To increase the Motor Pool Facilities fund for natural gas costs and for accrued compensated absences.

620-1911-482	1510	\$	18,200	Compensated absences
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To increase IT fund expenditures for accrued compensated absences.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8, 2005

TITLE: Public Hearing and First Reading on Amendment to the Ordinance Granting Montana Dakota Utilities Co. a Franchise to Provide Gas Distribution Services

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Acting City Administrator
Brent Brook, City Attorney

PROBLEM/ISSUE STATEMENT: Montana Dakota Utilities Co. ("MDU") was provided a franchise to operate a gas distribution system within the City of Billings by way of Ordinance 4232 in 1979. This franchise was scheduled to expire on October 25, 2004 but was extended through April, 2005, by Council action in August, 2004.

More recently, on April 11, 2005, and April 25, 2005, the Council conducted a first and second reading of a new ordinance granting MDU a franchise for an additional 15 years. This ordinance was updated through discussions between MDU and staff which produced a consensus document approved by the Council.

In late June, 2005, MDU officials contacted former City Administrator Kristoff Bauer suggesting a brief amendment to Section 7-1504 of the new ordinance and agreement. This new language simply reaffirms that MDU's acceptance of the franchise agreement granted through ordinance does not prevent MDU from challenging the lawfulness of any future fee imposed by the City upon MDU. This brief, additional language is shown by underline under Section 7-1504(c) within the Ordinance as attached to this memo. The proposed amendment does not affect the current franchise fee assessed upon MDU by the City. Rather, the amendment simply clarifies that MDU is not wanting a potential challenge to any future fee in a different form that may be imposed.

FINANCIAL IMPACT: None.

RECOMMENDATION

Staff recommends that Council adopt on first reading the proposed amended ordinance as provided in Section 7-1504(c).

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

ATTACHMENT

A – Amended Ordinance Granting MDU’s Gas Distribution Franchise

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BILLINGS, MONTANA,
PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE
AMENDED BY REVISING SECTION 7-1504; PROVIDING THAT THE
MDU FRANCHISE DOES NOT PRECLUDE MDU FROM
CHALLENGING ANY FEE OR TAX**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That Section 7-1504 of the Billings, Montana, City Code be amended so that such section shall read as follows:

“Sec. 7-1504. Fees or Taxes.

As a material term of this Franchise agreement, and in consideration of the right granted to Utility to occupy City rights-of-way for the purpose of operating a gas utility within the City, Utility agrees:

- (a) Subject to subsection (c) of this section, to timely pay all fees or taxes currently adopted, or as hereinafter may be adopted by the City pertaining to the Utility's operations within the City.
- (b) Proceeds of any fee or tax shall be distributed to the City in accordance with the terms of any adopting document or, if not specified in such document, no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).
- (c) Neither this ordinance nor the Utility's acceptance of the franchise granted by this ordinance precludes the Utility from challenging the lawfulness of any fee or tax imposed by the City upon the Utility. If the Utility successfully challenges the legality of a fee or tax adopted by the City or the City is otherwise prevented by judicial or legislative action from collecting a fee or tax adopted by the City or any portions thereof, then the Utility shall be excused from the collection and distribution of that portion of the fee or tax.”

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as

expressed herein prior to any finding of invalidity or unconstitutionality. 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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, August 8th, 2005

TITLE: Sale of City Property SAE Express

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Ramona Mattix, AICP, Director

PROBLEM/ISSUE STATEMENT: Last May City Council authorized the sale of City owned property to SAE Express for \$128,340.00. A portion of the sale included the value of a land trade, which was valued in the contract for \$93,672.00, but the value was subject to an appraisal of the trade property. The appraisal was received on May 27, 2005 and it came in at \$14,700.00. Staff is seeking Council direction as to how to proceed.

ALTERNATIVES ANALYZED:

1. Dismissal of contract for non-performance – return earnest money in the amount of \$14,210.00 less the cost of appraisal of \$1,750.00, or \$12,460.00
2. Dismissal of contract for non-performance and retention of the earnest money in the amount of \$14,210.00 as allowed under the contract.
3. Negotiation of revised sales price from \$128,340 to \$93,340.00, providing an additional \$35,000.00 credit for the existing SAE owned parcel.

FINANCIAL IMPACT: Dependent upon Council direction, the city could gain between \$12,460.00 at the low end and retain the property it sold or, at a maximum, require the full price of the existing contract of \$128,340.00.

RECOMMENDATION

Staff recommends that the City Council authorize staff to negotiate a revised sale for \$93,340.00 and provide an additional \$35,000 credit for the trade property.

Approved By: City Administrator City Attorney

ATTACHMENTS

1. Map of Appraised Property

INTRODUCTION

On May 24th, 2004 City Council authorized the sale of Lots 1-2 and fraction of Lots 3-10, Block 245 Sugar Factory Addition and Lots 11, 12, 20-21 and Fraction of Lots 3-10, Block 245, Billings Second Addition to SAE Express for \$128,340.00. A portion of the sale included the value of a land trade, which was valued in the contract for \$93,672.00, but the value was subject to an appraisal of the trade property. The appraisal was received on May 27, 2005 and it came in at \$14,700.00.

Community Services Manager, John Walsh, sent SAE Express a copy of the appraisal on June 17th, 2005, and asked for a response from the buyer. The City still had not heard from the buyer when Mr. Walsh left City employ on July 8th. Numerous messages were left with the company. On July 14th, Teri Blatter returned the City calls and claimed that the company had not received the June 17th letter until July 7, 2005. She stated she would not accept the value of \$14,700 for the trade property and wanted the earnest money returned. She did state she would be willing to negotiate the sale price in the current contract.

PROCEDURAL HISTORY

- On May 24, 2004 Council approved the sale of City property to SAE Express
- Appraisal authorized on March 28th, 2005
- Appraisal received on May 27th, 2005
- Buyer sent copy of appraisal
- On July 14, 2004 SAE responded to the appraisal

BACKGROUND

The property the City sold to SAE was donated to the City in 1996 for redevelopment purposes. The sale of the land occurred as part of a formal bid process for sale of City property. At the time of the bid, SAE was the only bidder for the property.

The value of the land in the trade was roughly arrived at with the past history of land in the Gateway Triangle selling at about \$1.50 a square foot. The trade parcel is about 1.38 acres and at that value would yield approximately \$90,168.00.

However, as the appraisal pointed out, the trade property has no utilities, the access is graveled, and the shape and easements on the property restricts both activity on and development of the site. The usable area of the site is estimated at 34,540 square feet or about 57% of the entire parcel. The property is located in the County and would not have access to water and sewer unless annexed. The two sales used as comparables occurred in 2004 and 2005 and the square foot sales value was \$0.36 and \$0.37 per square foot respectively. The appraisal valued the trade property at even less (\$0.25 per sq. ft.) because of the negative impacts of the encumbrances of the utility and access easements.

The value of the trade parcel to the City would only be to act as a future parking area, or trail head for the propose Heritage Trail corridor adjacent to the property. The City has not been able

to acquire those easements, which would extend the trail under the I-90 underpass to the area of the Post Office.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The sale and trade are consistent with the Gateway Triangle Plan, the Heritage Trail Plan and the adopted 2003 Growth Policy.

RECOMMENDATION

Staff recommends that the City Council authorize staff to negotiate a revised sale for \$93,340.00 and provide an additional \$35,000 credit for the trade property.

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, August 8, 2005

SUBJECT: Adopt Corrected FY 06 Budget Attachment (Exhibit A)
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: A formula error was contained in revenues in Exhibit A, an attachment to the FY 06 budget adoption resolution approved June 13, 2005. A \$765,000 repayment from the Supplemental Revolving Fund to the General Fund was shown under additions from 6/13/05, but not carried into the Final Budget, Total Debt Service Fund and Total All Funds lines. The repayment should be added to the line marked Special Improvement Debt Fund Final Budget, correcting it to \$4,350,399. That correction would bring the Total Debt Service Fund to \$8,318,426 and the Total All Funds to \$215,644,274. A corrected Exhibit A (labeled Corrected Spreadsheet) is attached to this memo, showing the revised numbers. Also attached is the incorrect Exhibit A (labeled Spreadsheet with Math Error), showing the numbers as originally adopted. Council is asked to approve the corrected Exhibit A (labeled Corrected Spreadsheet), so that the spreadsheet totals will match the budget book totals.

The Council still needs to set the mill levy rate for the voter-approved Public Safety levy of \$2.6 million, for Street General Obligation Bonds Debt Service and for PRPL General Obligation Bonds Debt Service. A resolution approving these items will be put on an agenda as soon as the City receives the Certified Value from the Department of Revenue (DOR). The DOR is experiencing problems with the County's new tax system, and so is the City, because the County's new system was not setup to interface tax data with other software. Therefore, the DOR can't get the correct property value information from the County to calculate the Certified Value.

RECOMMENDATION

Staff recommends that City Council approve corrected Exhibit A (labeled Corrected Spreadsheet) as the attachment to the resolution adopting the City of Billings FY 06 budget.

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

ATTACHMENTS:

A-Corrected FY 06 Budget Adoption Spreadsheet (Exhibit A) & Spreadsheet with original error

Attachment A					
		Original	Additions	Deletions	Final
Fund/Department		Proposal	6/13/2005	6/13/2005	Budget
General Operating Fund:					
Mayor & City Council		238,496	1,000		239,496
City Administrator		547,191			547,191
Human Resources		453,156	25,000		478,156
City Attorney		895,592			895,592
Municipal Court		953,726	32,000		985,726
Finance		1,186,538	32,250		1,218,788
Public Defender		292,177			292,177
Code Enforcement		224,773			224,773
Public Works		1,981,589			1,981,589
Parks, Recreation & Public Lands		3,906,335	306,000		4,212,335
Non-Departmental		17,051,023			17,051,023
Council Contingency		75,000			75,000
Total General Fund		27,805,596	396,250	-	28,201,846
Public Safety Fund:					
Police		13,995,425	18,686		14,014,111
Fire		11,283,570	56,000		11,339,570
Total Public Safety Fund		25,278,995	74,686	-	25,353,681
Special Revenue Fund:					
Tax Increment		3,504,796			3,504,796
Street Gas Tax		6,344,787	233,400		6,578,187
Building Inspection		1,512,054			1,512,054
Transportation Enhancement		501,000			501,000
Street & Traffic Operating		5,157,949			5,157,949
EOC 911 Grant		571,670			571,670
City/County Planning		1,171,060			1,171,060
City Attorney Grants		193,393			193,393
Municipal Drug Court Grant		228,361			228,361
Police Programs		875,122			875,122
City County Library		3,026,000			3,026,000
Development Services Grants		1,832,267			1,832,267
Park Programs		15,908	10,000		25,908
Downtown Revolving Loan Program		994,982			994,982
Cemetery Improvement		14,000			14,000
Animal Shelter Donations		12,000			12,000
Street Maint. Districts		3,985,552			3,985,552
Public Safety Water		1,287,893			1,287,893
Street Light Districts		1,827,455			1,827,455

Total Enterprise Fund		92,402,645	350,000	-	92,752,645
Internal Service Fund:					
Motor Pool		1,016,315			1,016,315
Central Services		99,353			99,353
Information Resources		1,407,973	25,600		1,433,573
Health/Life Insurance		9,113,299			9,113,299
Central Telephone		357,385			357,385
800 MHZ Radio		181,736			181,736
Property Insurance		1,724,463			1,724,463
Facilities Management		1,315,337			1,315,337
Total Internal Service Fund		15,215,861	25,600	-	15,241,461
Permanent Fund					
Cemetery Perpetual Care		14,028			14,028
Total Permanent Fund		14,028		-	14,028
Total All Funds		213,202,938	2,441,336	-	215,644,274

<i>Exhibit A</i>					
		Original	Additions	Deletions	Final
Fund/Department		<u>Proposal</u>	<u>6/13/2005</u>	<u>6/13/2005</u>	<u>Budget</u>
General Operating Fund:					
Mayor & City Council		238,496	1,000		239,496
City Administrator		547,191			547,191
Human Resources		453,156	25,000		478,156
City Attorney		895,592			895,592
Municipal Court		953,726	32,000		985,726
Finance		1,186,538	32,250		1,218,788
Public Defender		292,177			292,177
Code Enforcement		224,773			224,773
Public Works		1,981,589			1,981,589
Parks, Recreation & Public Lands		3,906,335	306,000		4,212,335
Non-Departmental		17,051,023			17,051,023
Council Contingency		75,000			75,000
Total General Fund		27,805,596	396,250	-	28,201,846
Public Safety Fund:					
Police		13,995,425	18,686		14,014,111
Fire		11,283,570	56,000		11,339,570
Total Public Safety Fund		25,278,995	74,686	-	25,353,681
Special Revenue Fund:					
Tax Increment		3,504,796			3,504,796
Street Gas Tax		6,344,787	233,400		6,578,187
Building Inspection		1,512,054			1,512,054
Transportation Enhancement		501,000			501,000
Street & Traffic Operating		5,157,949			5,157,949
EOC 911 Grant		571,670			571,670
City/County Planning		1,171,060			1,171,060
City Attorney Grants		193,393			193,393
Municipal Drug Court Grant		228,361			228,361
Police Programs		875,122			875,122
City County Library		3,026,000			3,026,000
Development Services Grants		1,832,267			1,832,267
Park Programs		15,908	10,000		25,908
Downtown Revolving Loan Program		994,982			994,982
Cemetery Improvement		14,000			14,000
Animal Shelter Donations		12,000			12,000
Street Maint. Districts		3,985,552			3,985,552
Public Safety Water		1,287,893			1,287,893

Street Light Districts		1,827,455		1,827,455
Storm Sewer Operating		3,255,602	199,400	3,455,002
Park Maintenance District		514,029		514,029
Street Arterial Operating		3,952,220		3,952,220
Amend Park Trust		5,233		5,233
Total Special Revenue Fund		40,783,333	442,800	- 41,226,133
Fund/Department		Original Proposal	Additions	Deletions
		6/13/2005	6/13/2005	Final Budget
Debt Service Fund:				
Fannie Mae Loan		60,151		60,151
Special Improvement Debt		3,585,399	765,000	4,350,399
Series 2000 Parks Debt		142,707		142,707
Series 2004A Street Debt		465,591		465,591
Tax Increment Debt		1,393,637		1,393,637
Storm Sewer Debt		995,618		995,618
Sidewalk, Curb & Gutter Debt		910,323		910,323
Total Debt Service Fund		7,553,426	-	- 7,553,426
Capital Projects Fund:				
Urban Renewal Land Development		102,067		102,067
Sidewalk Construction		877,848		877,848
Special Improvement Districts		2,175,438		2,175,438
2000 G.O. Bond Construction		306,992		306,992
Public Works Street GO Bond		4,366	81,000	85,366
Equipment Replacement		537,543		537,543
Other Capital Projects		144,800		144,800
Aquatics Construction			306,000	306,000
Total Capital Project Fund		4,149,054	387,000	- 4,536,054
Enterprise Fund:				
Water		31,812,576		31,812,576
Wastewater		13,022,457		13,022,457
Parking		10,421,551	50,000	10,471,551
Solid Waste		6,499,840	300,000	6,799,840
Golf Course		47,225		47,225
Airport		20,785,658		20,785,658

Transit		9,813,338			9,813,338
Total Enterprise Fund		92,402,645	350,000	-	92,752,645
Internal Service Fund:					
Motor Pool		1,016,315			1,016,315
Central Services		99,353			99,353
Information Resources		1,407,973	25,600		1,433,573
Health/Life Insurance		9,113,299			9,113,299
Central Telephone		357,385			357,385
800 MHZ Radio		181,736			181,736
Property Insurance		1,724,463			1,724,463
Facilities Management		1,315,337			1,315,337
Total Internal Service Fund		15,215,861	25,600	-	15,241,461
Permanent Fund					
Cemetery Perpetual Care		14,028			14,028
Total Permanent Fund		14,028		-	14,028
Total All Funds		213,202,938	2,441,336	-	214,879,274

RESOLUTION 05-_____

**A RESOLUTION CORRECTING RESOLUTION 05-18284
APPROVING AND ADOPTING THE BUDGET FOR THE CITY OF BILLINGS, MONTANA
FOR FISCAL YEAR 2005-2006 BY CORRECTING EXHIBIT "A"**

WHEREAS, the City Administrator of the City of Billings has regularly and lawfully submitted to the City Council of the City of Billings, Montana, the budget for Fiscal Year 2005-2006; and

WHEREAS, the proper notice was published stating that said City Council has completed the PRELIMINARY MUNICIPAL BUDGET for said Fiscal Year, and that said budget has been placed on file and is open to inspection in the office of the City Clerk; and that said City Council would meet for the purpose of annually determining, approving and adopting the budget, and any taxpayer might appear and be heard.

WHEREAS, the City Council adopted and approved the FY 2005-2006 budget on June 13th, 2005.

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

Section 1: That the Revenue Budget for Fiscal year 2005-2006, as detailed in the Budget Report, and as amended by the City Council, and the Expenditure Budget for Fiscal year 2005-2006 as detailed in the budget report and as amended by the City Council and further detailed on CORRECTED EXHIBIT "A", be, and the same is hereby finally determined, approved, and adopted.

Section 2: That the City Administrator is authorized to amend this budget for the expenditure of additional funds from the following: Debt Service Funds, Federal and State Grants accepted and approved by the City Council, special assessments and donations.

Section 3: Resolution 05-18284 is amended by correcting Exhibit "A". All other sections of the resolution remain unchanged.

PASSED AND APPROVED by the City Council this _____ day of _____, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

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