

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

September 12, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Dave Brown

ROLL CALL

MINUTES – August 18, 2005 and August 22, 2005

COURTESIES

PROCLAMATIONS

- **Sept 17: Community P.R.I.D.E (Personal Readiness in Disasters and Emergencies) Day**
- **Sept 16: Stepfamily Day**
- **Sept 17: Kids Day America/International**
- **Sept 14: National Anthem Project Day**
- **September: Library Card Sign-Up Month**
- **September: National Alcohol and Drug Addiction Recovery Month**

BOARD & COMMISSION REPORTS – Housing Authority

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #9-11 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. **Board & Commission Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Brent Nelson	Human Relations Commission	09/12/05	12/31/05
2	Stanley Hill	Aviation & Transit Board	09/12/05	12/31/08

1. Unexpired term of John Shuck
2. Unexpired term of William Huppert

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

B. Bid Awards:

(1) Medium Voltage Isolation Transformer Replacement for Water Treatment Plant. (Opened 8/23/05). Recommend ACE Electric, Inc., \$46,426.00.

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

(2) One (1) New 2006 Model ¾ Ton 2-Wheel Drive Pickup with Service Body. (Opened 8/23/05). Recommend Archie Cochran Ford, \$22,095.00.

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

(3) Laboratory Atomic Absorption Spectrometer with Zeeman Background Correction. (Opened 8/23/05). Recommend Teledyne Leeman Labs, \$46,470.00.

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

(4) Refuse Compactor Bodies, Solid Waste Division. (Opened 8/23/05). Recommend Kois Brothers Equipment, Schedule I, \$87,333.00; Solid Waste Systems, Schedule II, \$33,751.00; and Kois Brothers Equipment, Schedule III, \$47,829.00.

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

(5) Truck Chassis, Tilt Cabs for the Solid Waste Division. (Opened 8/23/05). Recommend Tri-State Truck & Equipment for Schedules I – III; Schedule I: \$109,141.00, Schedule II: \$107,353.00 and Schedule III: \$106,198.00.

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

(6) W.O. 04-13: Gerald D. Underwood Water Treatment Facility Filter Building Expansion and Improvements. (Opened 7/26/05). Delayed from 8/22/05. Recommend COP Construction, Schedule 1: \$16,400,000.00 and 790 calendar days; Williams Brother Construction, Schedule 2: \$922,200.00 and 365 calendar days.

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

(7) W.O. 05-03, Contract #3: 2005 Street Maintenance. (Opened 8/23/05). Recommend Hardrives Construction, Inc., \$97,118.90.

[\(Corresponding Staff Memo B7\)](#)

(8) W.O. 04-09: Parmly Billings Library Code Compliance Renovation. (Opened 8/30/05). Recommend Fisher Construction, \$358,200.00 and 70 calendar days.

[\(Corresponding Staff Memo B8\)](#)

(9) W.O. 04-18: Condition Audit Repair Park I, III & IV Garages. (Opened 8/30/05). Recommend Western Waterproofing, Inc., \$496,287.52 and 70 calendar days.

[\(Corresponding Staff Memo B9\)](#)

(10) Terminal Window Cleaning Services for Billings Logan International Airport. (Opened 8/23/05). Recommend rejecting all bids and rebidding at a later date.

[\(Corresponding Staff Memo B10\)](#)

C. W.O. 05-01: Amendment #3, Professional Services Contract, Morrison-Maierle, Inc., and HKM Engineering, \$972,600.00.

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

D. Professional Services Contract with Peaks to Plains Design P.C. for Castle Rock Park Spray Ground Facility, \$32,382.00.

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

E. Reimbursement Agreement for Private Contract #P-543: Cel Avenue, Tract 3 of Studer Acreage Tracts Sub., with Ted P. Godwin for water and sanitary sewer service, \$31,814.78.

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

F. Perpetual Right-of-Way Easements for Popelka Commerce Center Subdivision and Shiloh Business Park.

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

G. Williston Basin Interstate Pipeline Company Easements:

- (1) C/S 1031, Tract 3: Easement and Memorandum of Understanding
- (2) C/S 2649, Tract 2: Easement and Memorandum of Understanding
- (3) C/S 2648: Easement only

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

H. Allocation of HOME/CDBG Funds and a Housing Development Agreement with Real Estate Dynamics, Inc., for King's Green, Phase II, \$40,000.00 additional funds.

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

I. ADA Settlement Agreement with U.S. Dept. of Justice – Civil Rights Division, Disability Rights Section. (Delayed from 8/8/05).

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

J. Acknowledging receipt of Annexation petition #05-09: described as Grand Acre Park, an undeveloped parcel located on Broadwater Avenue, west of 52nd St. W, DC Capital Real Estate, LLC petitioner, and setting a public hearing date for 9/26/05.

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

K. Acceptance of Grant Award from the Montana Board of Crime Control for Domestic Violence training, \$11,600.00.

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

L. Declaration of Surplus Property and authorizing Staff to sell at a public auction on 9/24/05.

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

M. Subordination of First Time Homebuyer Loan (Kama Morast) to a First Interstate Bank loan to Jesse Arstein, 4228 Vaughn Lane, #2, \$5,000.00.

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

N. Approval of pledged collateral on Wells Fargo Bank Certificates of Deposits, US Bank Repurchase Account and US Bank Municipal Investor Account.

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

O. Approval of semi-annual Investment Report.

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

P. Authorization for a loan from the Solid Waste Fund for W.O. 03-02, #1 and W.O. 02-14, \$278,058.00.

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

Q. Street Closure: Bikenet's 5th Annual *Ales For Trails* Event, first lane of Montana Ave in front of Billings Depot, September 30, 2005.

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

R. Agreement with Yellowstone County to provide Law Enforcement data processing services, \$78,562.00; term: 7/1 05 to 6/30/06.

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

S. Resolution relating to \$17,300,000.00 Water System Revenue Bonds (DNRC Drinking Water Revolving Loan Program), Series 2005, authorizing the issuance and fixing the terms and conditions thereof.

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

T. Second/Final reading ordinance expanding the boundaries of Ward IV to include recently annexed properties in 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

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

U. Second/Final reading for Zone Change #761: a zone change from Residential 7,000 to Residential 5,000 on Tract 1A of C/S 1335, located at 1545 Hawthorne Lane and adoption of the 12 criteria. First Free Will Baptist Church, owner; Wesley Prouse, agent.

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

V. Second/Final reading for Zone Change #762: a zone change from Residential 9,600 to Neighborhood Commercial on Lots 3A and 4, Block 1, Missions United Subdivision, located at 2117 and 2223 Shiloh Rd. and adoption of the 12 criteria. St. Vincent's Healthcare, owner; Jim Shepard of CTA Architects and Engineers, agent.
[\(Corresponding Staff Memo V\)](#)

W. Second/Final reading for Zone Change #763: a zone change from Community Commercial to Highway Commercial on Lot 4, Block 1, North Pointe Square Subdivision, located at 2376 Main St., (former K-mart retail center site) and adoption of the 12 criteria. KMT DIL, LLC, owner; Michael Dockery, agent.
[\(Corresponding Staff Memo W\)](#)

X. Preliminary Plat of Foxtail Subdivision, 2nd Filing, generally located at the northeast corner of 60th St. W and Grand Avenue. Planning Board recommends conditional approval of the preliminary plat, approval of the variances and adoption of the Findings of Fact.
[\(Corresponding Staff Memo X\)](#)

Y. Preliminary Plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision, generally located at the northeast corner of the intersection of Alkali Creek Road and Indian Trail, north of Alkali Creek Elementary School. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo Y\)](#)

Z. Preliminary Plat of Tierra Yellowstone Industrial Park Subdivision, 2nd filing, generally located adjacent to the north of Hesper Rd between S. 30th St. W and s. 32nd St. W. Staff recommends conditional approval of the preliminary plat and adoption of the Findings of Fact.
[\(Corresponding Staff Memo Z\)](#)

AA. Final Plat of Copper Ridge Subdivision, 1st filing.
[\(Corresponding Staff Memo AA\)](#)

BB. Final Plat of Falcon Ridge Subdivision (fka Golden Acres Subdivision).
[\(Corresponding Staff Memo BB\)](#)

CC. Final Plat of Amended Lot 11, Weidler Acres Subdivision.
[\(Corresponding Staff Memo CC\)](#)

DD. Bills and Payroll.
(1) August 5, 2005
[\(Corresponding Staff Memo DD1\)](#)

(2) August 12, 2005
[\(Corresponding Staff Memo DD2\)](#)

(3) August 19, 2005.
[\(Corresponding Staff Memo DD3\)](#)

(**Action:** approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** creating SID 1372 for water, sanitary sewer, storm drain, curb, gutter and street improvements within Summerhill Sub. on Winter Green Dr., W. Antelope Tr. and Antelope Pl. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

3. **PUBLIC HEARING AND RESOLUTION** vacating a portion of Conrad Rd. between S. 30th St. W and S. 32nd St. W. Staff recommends approval of the vacation and the Council setting a price for the vacated land. (**Action:** approval or disapproval of Staff recommendation.)

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

4. **PUBLIC HEARING AND RESOLUTION** creating PMD #4030 for park land maintenance in King's Green Subdivision, Second and Third Filings. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

5. **C/S 3190, Tracts 1 and 2:**

(A) **PUBLIC HEARING AND RESOLUTION** annexing a 33.71 acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners. (#05-08). Staff recommends conditional approval. (**Action:** approval or disapproval of Staff recommendation.)

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

(B) **SECOND/FINAL READING ORDINANCE FOR ZONE CHANGE #765:** a zone change from Residential 7,000 to Residential 5,000 on Tracts 1 and 2 of C/S 3190, located at 120 Wicks Lane. Ernest and Francisca Shaw, owners; Engineering, Inc., agent. Zoning Commission recommends approval and adoption of the 12 criteria. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND RESOLUTION** determining and fixing the methods of assessment in each district, fixing the rate of assessment for costs of Street Maintenance within the City of Billings, providing for notice, hearing and adoption. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

7. **PUBLIC HEARING AND RESOLUTION** declaring an emergency, waiving competitive bidding requirements for replacement of the centrifuges at the Wastewater Treatment plant digester and authorizing use of a “three-quote” system. **(Action:** approval or disapproval of Staff recommendation.)

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

8. **DISPOSAL OF CITY-OWNED LAND:**

- (A) **PUBLIC HEARING AND RESOLUTION** authorizing the sale of City-owned land described as Lots 4-6 and the E2 of Lots 1-3, Block 184, O.T. and located on the northwest corner of South 26th. St. and 6th Ave. S. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

- (B) **BID AWARD ON PURCHASE OF SOUTH 27TH STREET LAND – 2005-3**, for City-owned land described as Lots 4-6 and the E2 of Lots 1-3, Block 184, O.T. and located on the northwest corner of South 26th. St. and 6th Ave. S. Recommendation to be made at meeting. **(Action:** approval or disapproval of Staff recommendation.)

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

9. **2006 UNIFIED PLANNING WORK PROGRAM (UPWP).** Staff recommends approval of the draft program and authorizing the Mayor to take the recommendation to the Policy Coordinating Committee (PCC). **(Action:** approval or disapproval of Staff recommendation.)

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

10. **PETITIONS FOR REDUCTIONS** of the Arterial Construction Fee Assessments. Staff recommends approval of a reduction of the fee on eight (8) commercially zoned parcels by capping the parcel square footage at 9,600 square feet and calculating the assessment based on R-9600 zoning instead of commercial zoning rates. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 10\)](#)

11. **W.O. 05-01A: MICHIGAN STREET RECONSTRUCTION (WATER AND SEWER REPLACEMENT) PROJECT.** (Opened 9/6/05). Recommendation to be made at meeting.

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

12. **PUBLIC HEARING AND EMERGENCY ORDINANCE** relating to RV and camper parking for the *Shrine Polka Festival* and *Moose State Convention*. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

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

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

COUNCIL INITIATIVES

ADJOURN



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, SEPTEMBER 12, 2005

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

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for Board and Commission positions that are vacant due to resignations.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tooley recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Human Relations	09/12/05	12/31/05
2		Aviation & Transit Board	09/12/05	12/31/08

3. Unexpired term of John Shuck
4. Unexpired term of William Huppert

Approved By: City Administrator ____ City Attorney ____

Attachment

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Bid Award - Medium Voltage Isolation Transformer Replacement
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: As part of the annual electrical maintenance program, the Public Works Department makes improvements and replacements to the electrical systems of the Water and Wastewater Plants. Many of these replacements are for aging or worn-out equipment. The current project will be replacing an isolation transformer that serves the High Service Pumping Station variable frequency drives.

FINANCIAL IMPACT: Bids were advertised on August 11 and 18. The proposed expenditure is budgeted for the FY 06 Water Capital Fund. Bids were opened on August 23, 2005 as follows:

ACE Electric, Inc.\$ 46,426.00
Colstrip Electric, Inc.\$ 47,890.00

RECOMMENDATION

Staff recommends that Council award the bid for the Medium Voltage Isolation Transformer Replacement to ACE Electric, Inc. in the amount of \$ 46,426.00.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Vehicle Bid Award – 2006 Model ¾-Ton Pickup
DEPARTMENT: Public Works Department
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Department received bids for replacement of an existing vehicle in accordance with the approved equipment replacement plan and is recommending award.

FINANCIAL IMPACT: The bid was advertised on August 11 and 18. There is sufficient money in the FY 06 budget to cover the award. One bid was received on August 23, 2005 as follows:

Archie Cochran Ford.....\$ 22,095.00

RECOMMENDATION

Staff recommends that Council award the bid for a 2006 ¾-ton pickup with service body to Archie Cochran Ford in the amount of \$ 22,095.00.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 12, 2005

TITLE: Laboratory Atomic Absorption Spectrophotometer Purchase
DEPARTMENT: Public Works
PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: The Public Works Water Treatment Laboratory uses a graphite furnace atomic absorption spectrophotometer to monitor the City's water supply for specific types of contaminant materials. The existing instrument is outdated and the manufacturer has indicated that it will no longer make repair parts for the instrument in 2006. The City's Technology Replacement Committee supported replacement of this unit in FY 2006.

FINANCIAL IMPACT: Adequate funding for this purchase is available in the Water Replacement / Depreciation Account. Bids were received on August 23, 2005. The bidding results are as follows:

Supplier	Total Bid
PerkinElmer	\$48,427.50
Teledyne Leeman Labs	\$46,470.00
Varian, Inc.	\$54,960.00

RECOMMENDATION

Staff recommends that Council approve purchase of the Laboratory Atomic Absorption Spectrophotometer from Teledyne Leeman Labs for \$46,470.00.

Approved By: City Administrator ____ City Attorney ____

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 12, 2005

TITLE: Approval of Award to Purchase Three Refuse Compactor Bodies for the Solid Waste Division

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The current Solid Waste Division FY06 Budget includes funds to replace three older garbage packers. All are included in the approved Equipment Replacement Plan and they are scheduled to be purchased this fiscal year.

Public Works bid the truck chassis separate from the compactor bodies. This is the bid recommendation for the packer bodies only. The truck chassis will be delivered to the compactor body manufacturer for installation of the packer body. The packer vendor is then required to deliver the completed truck to the City of Billings. Bids were advertised August 11 and 18.

Public Works is ordering three different packer bodies. Automated “side load” trucks are used to pick up 90 and 300-gallon residential containers, automated “front load” trucks are used to pick up commercial dumpsters, and “rear load” trucks are used to manually pick up residential and commercial refuse.

FINANCIAL IMPACT: The Solid Waste Division’s current FY06 budget includes adequate funds to purchase three garbage compactor bodies. Three bids were received August 23, 2005 as follows:

	<u>Kois Brothers Equipment</u>	<u>Solid Waste Systems</u>	<u>McNeilus Truck & Manufacturing</u>
Schedule I – 1 Side Loads	\$109,333	No Bid	No Bid
Less Trade	(22,000)		
Net Bid	\$87,333		
Schedule II – 1 Front Load	\$85,333	\$73,451	\$77,471
Less Trade	(50,000)	(39,700)	(0)
Net Bid	\$35,333	\$33,751	\$77,471
Schedule III – 1 Rear Load	\$61,329	\$60,169	\$63,533

Less Trade	(13,500)	(11,890)	(0)
Net Bid	\$47,829	\$48,279	\$63,533

The bid submitted by McNeilus Truck & Manufacturing is a non-responsive bid because they did not bid a trade allowance for the old units as required in the specifications.

RECOMMENDATION

Staff recommends that Council award the contract for purchase of three 2006 model garbage compactor bodies as follows:

Schedule I – One Unit – Kois Brothers Equipment	\$87,333
Schedule II – One Unit – Solid Waste Systems	\$33,751
Schedule III – One Unit – Kois Brothers Equipment	\$47,829

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

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CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 12, 2005

TITLE: Approval of Award to Purchase Three New 2006 Tilt Cabs and Chassis for the Solid Waste Division

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The current Solid Waste Division FY06 Budget includes funds to replace three older garbage trucks. All are included in the approved Equipment Replacement Plan and they are scheduled to be purchased this fiscal year.

Public Works bid the truck chassis separate from the compactor bodies. This bid recommendation is for the truck chassis only. The truck chassis will be delivered to the compactor manufacturer for installation of the packer body. That vendor is then required to deliver the completed truck to the City of Billings. Bids were advertised August 11 and 18.

Public Works is ordering three different styles of trucks. Automated “side load” trucks are used to pick up 90 and 300-gallon residential containers, automated “front load” trucks are used to pick up commercial dumpsters, and “rear load” trucks are used to manually pick up residential and commercial refuse.

FINANCIAL IMPACT: The Solid Waste Division budgeted adequate funds to purchase three truck chassis. Three bids were received August 23, 2005 as follows:

SCHEDULE I - 62,000 GVW CAB & CHASSIS WITH DUAL STEERING

	<u>Tri-State Equipment</u>	<u>I State Truck Center</u>	<u>Tri-State Equipment</u>
Brand	Auto Car	Freightliner	Mack
Total Bid-Each	\$109,141	\$103,431	No Bid

SCHEDULE II - 62,000 GVW CAB & CHASSIS

	<u>Tri-State Equipment</u>	<u>I-State Truck Center</u>	<u>Tri-State Equipment</u>
Brand	Auto Car	Freightliner	Mack
Total Bid-Each	\$107,353	\$101,501	\$106,500

SCHEDULE III - 58,000 GVW CAB & CHASSIS

	<u>Tri-State Equipment</u>	<u>I-State Truck Center</u>	<u>Tri-State Equipment</u>
Brand	Auto Car	Freightliner	Mack
Total Bid-Each	\$106,198	\$101,367	\$106,203

Two of the bids submitted did not meet all of the specifications. The bid submitted by I-State did not meet the specifications for the radiator and they exceed the maximum allowable cab width. Specifications also indicate that a previous history of poor performance will exclude a bidder from consideration. Two of the Freightliner trucks currently in the fleet have had many problems such as over-heating, steering, and cab structural problems. The bid submitted by Tri-State for the Mack truck also had several exceptions to specifications. The Auto Car meets all the specifications.

RECOMMENDATION

Staff recommends that Council award the contract for purchase of three 2006 model tilt cabs and chassis as follows:

Schedule I –One Unit – Tri State Truck & Equipment	\$109,141
Schedule II – One Unit – Tri State Truck & Equipment	\$107,353
Schedule III – One Unit – Tri State Truck & Equipment	\$106,198

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 12, 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 at the Water Treatment Plant. The project includes two work schedules—Schedule 1 covers four new filters, renovation of the existing Filter Building, conversion of the old Filter Building into an Operations Center, and all associated site work and miscellaneous improvements; Schedule 2 is for the addition of a new Maintenance Building and all of its associated site work. HDR Engineering, Inc designed the project. On June 13, 2005, Council approved an amendment to HDR's contract for professional services to include bidding and construction administration. Bids were opened July 26, 2005. Due to the bids being well above the Engineer's Estimate, the bids were reviewed and action was delayed at the August 8 and 22 Council meetings. State Revolving Fund (SRF) is providing funding, and loan approval was received August 15.

FINANCIAL IMPACT: The project will be funded by the 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: **\$21,105,041**
Spent (and obligated) to date: (\$ 1,004,232)
Funding available: **\$20,100,809**

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

Firm	COP Construction	Williams Brother Construction	Dick Anderson Construction	Engineer's Estimate
Bid Schedule 1	\$16,400,000	\$17,170,000	\$22,100,000	<i>\$12,720,100</i>
Bid Schedule 2	\$1,020,000	\$922,200	\$1,200,000	<i>\$740,100</i>

RECOMMENDATION

Staff recommends that Council award construction contracts for W.O. 04-13—Filter Building Expansion and Improvements to COP Construction for \$16,400,000 and 790 calendar days (Schedule 1), and to Williams Brother Construction for \$922,200 and 365 calendar days (Schedule 2).

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 12, 2005

TITLE: Work Order 05-03, 2005 Street Maintenance Contract No. 3
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Two bids were received and evaluated for the 2005 Street Maintenance Contract No. 3 on August 23, 2005. This project will crack seal approximately 20 miles of various streets within the city as shown on the attached maps. This project was advertised to bid on August 11 and August 18, 2005.

ALTERNATIVES ANALYZED:

1. Award Work Order 05-03, Contract No. 3, to Hardrives Construction, Inc. in the amount of \$97,118.90; or
2. Not award Work Order 05-03, Contract No. 3.

FINANCIAL IMPACT: Funding for the 2005 Street Maintenance Program, Contract No. 3, will be provided from Gas Tax and Street Maintenance Funds. We received two bids for this project as follows:

	<u>Bid Amount</u>
Engineer's Estimate	\$ 99,818.20
Hardrives Construction, Inc.	\$ 97,118.90
Blacktop, Inc.	\$ 115,720.30

<u>CIP Project #ENG98</u>	
CIP Budgeted Amount	\$1,325,000.00
Previous Encumbrances	\$776,615.62
Budget Fund Balance (after this award)	\$451,265.48

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Crack Seal Maintenance Project with Hardrives Construction, Inc. in the amount of \$97,118.90.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A. Maps of streets to be Crack Sealed

INTRODUCTION

Bids were received for the Street Maintenance Crack Seal Project on August 23, 2005. Hardrives Construction, Inc. is the apparent low bidder.

PROCEDURAL HISTORY

If City Council chooses to award the crack seal contract, the project will move forward and be completed by June 30, 2006.

BACKGROUND

This project is part of the ongoing Street Preventative Maintenance Program supported by the City Council since 1985. Annually, staff identifies streets proposed for preventative maintenance. Staff proposes to bid this work in three contracts. The first contract is for chip seal resurfacing, the second contract will be for overlay resurfacing, and the third contract will be for crack sealing. The Chip Seal contract was awarded on February 14, 2005, and has been completed. The Overlay contract was awarded on July 25, 2005, and will begin construction on September 12, 2005. This contract will provide crack sealing of approximately 20 miles of various streets throughout the city.

ALTERNATIVES ANALYSIS

Bids were received on August 23, 2005, with Hardrives Construction, Inc. being the low bidder in the amount of \$97,118.90. Hardrives Construction, Inc. was approximately 2.7% below the Engineer's Estimate.

RECOMMENDATION

Staff recommends that Council approve the construction contract for the Street Crack Seal Maintenance Project with Hardrives Construction, Inc. in the amount of \$97,118.90.

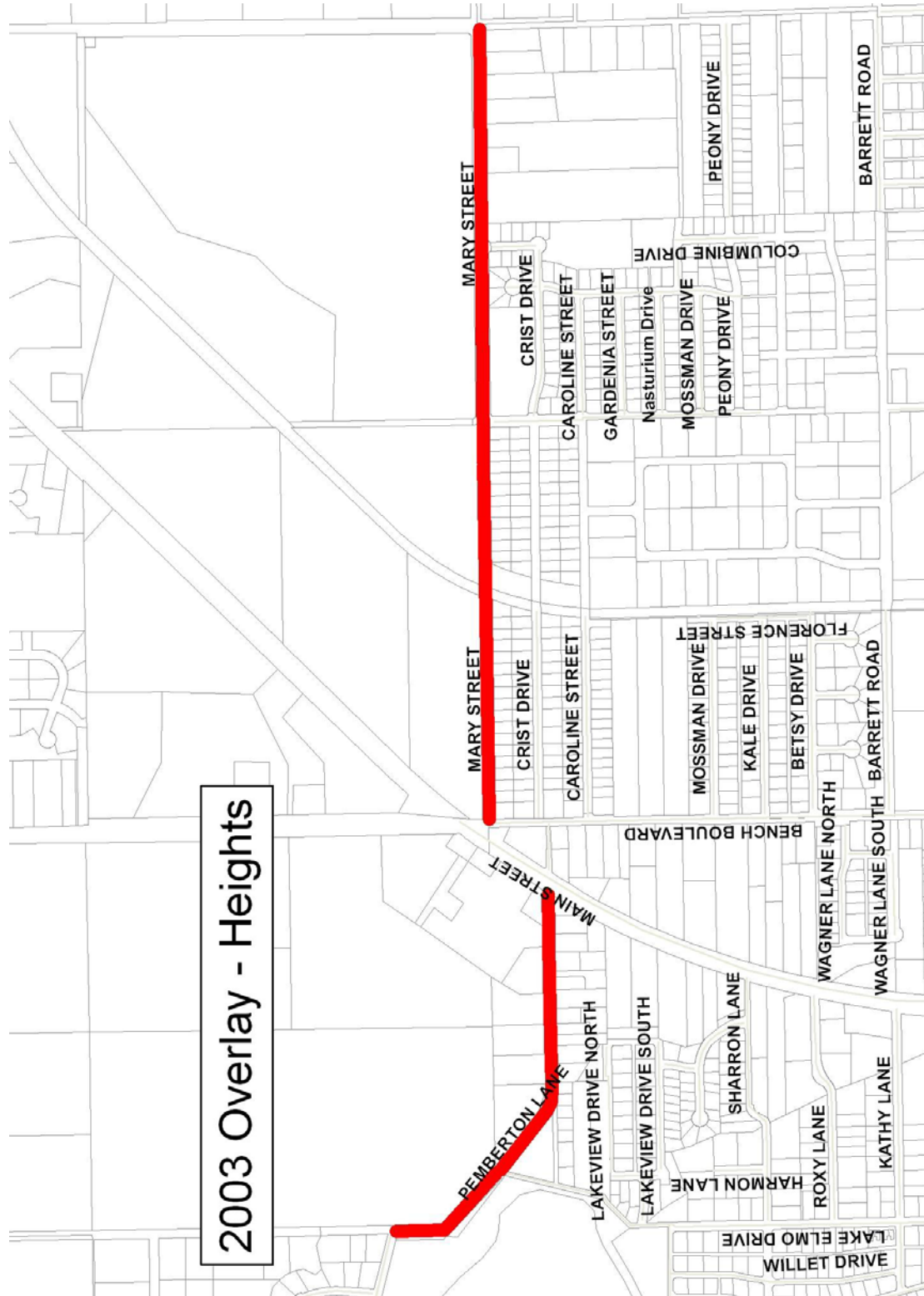
ATTACHMENT

- A. Maps of streets to be Crack Sealed

2003 Overlay - Downtown

Map showing the 2003 Overlay area in Downtown Minneapolis, Minnesota. The overlay area is highlighted in red, covering a large portion of the downtown grid, including streets from North 27th Street to North 34th Street and from Avenue B to Avenue E. The map also shows surrounding streets and the city grid.

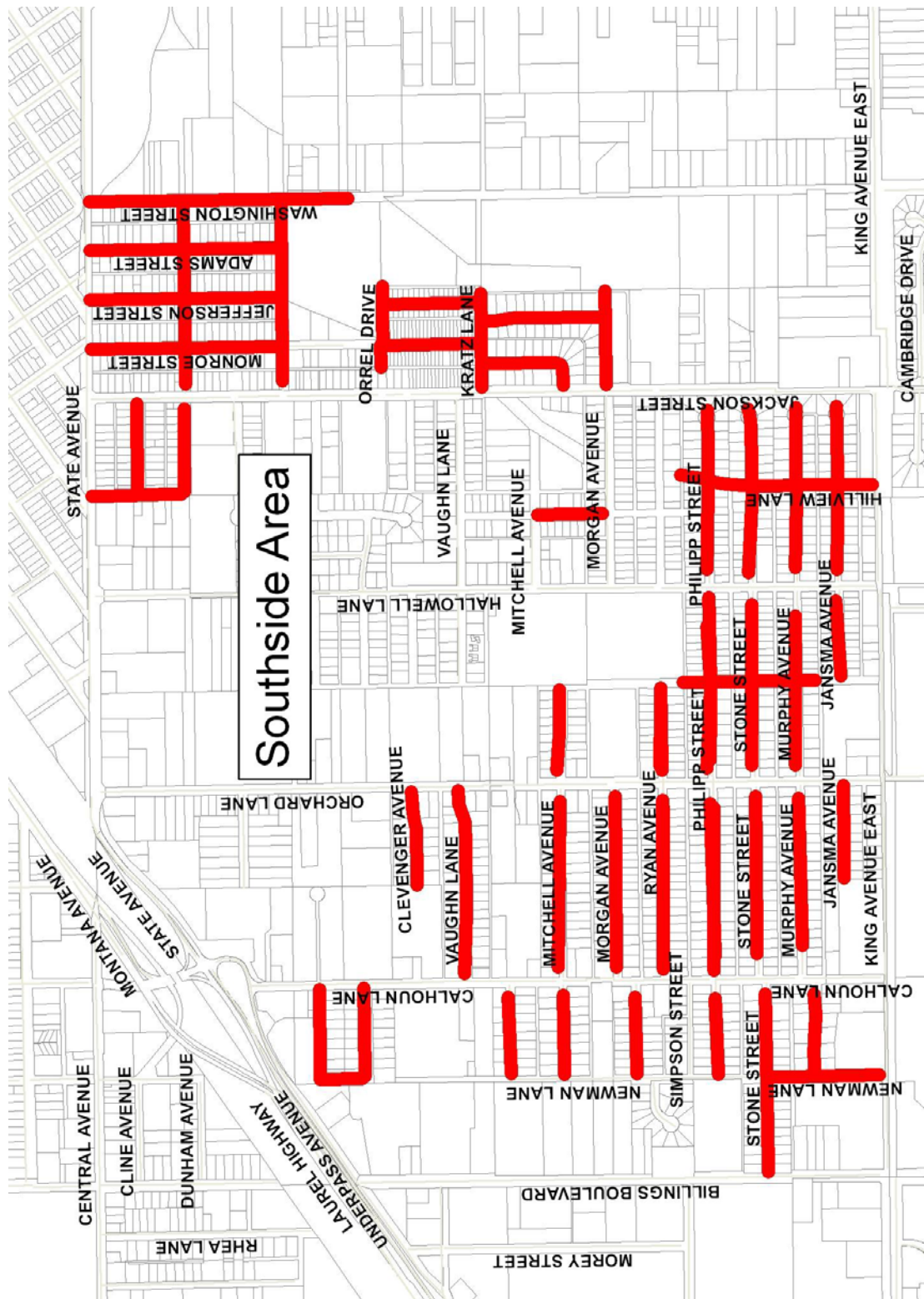
2003 Overlay - Heights

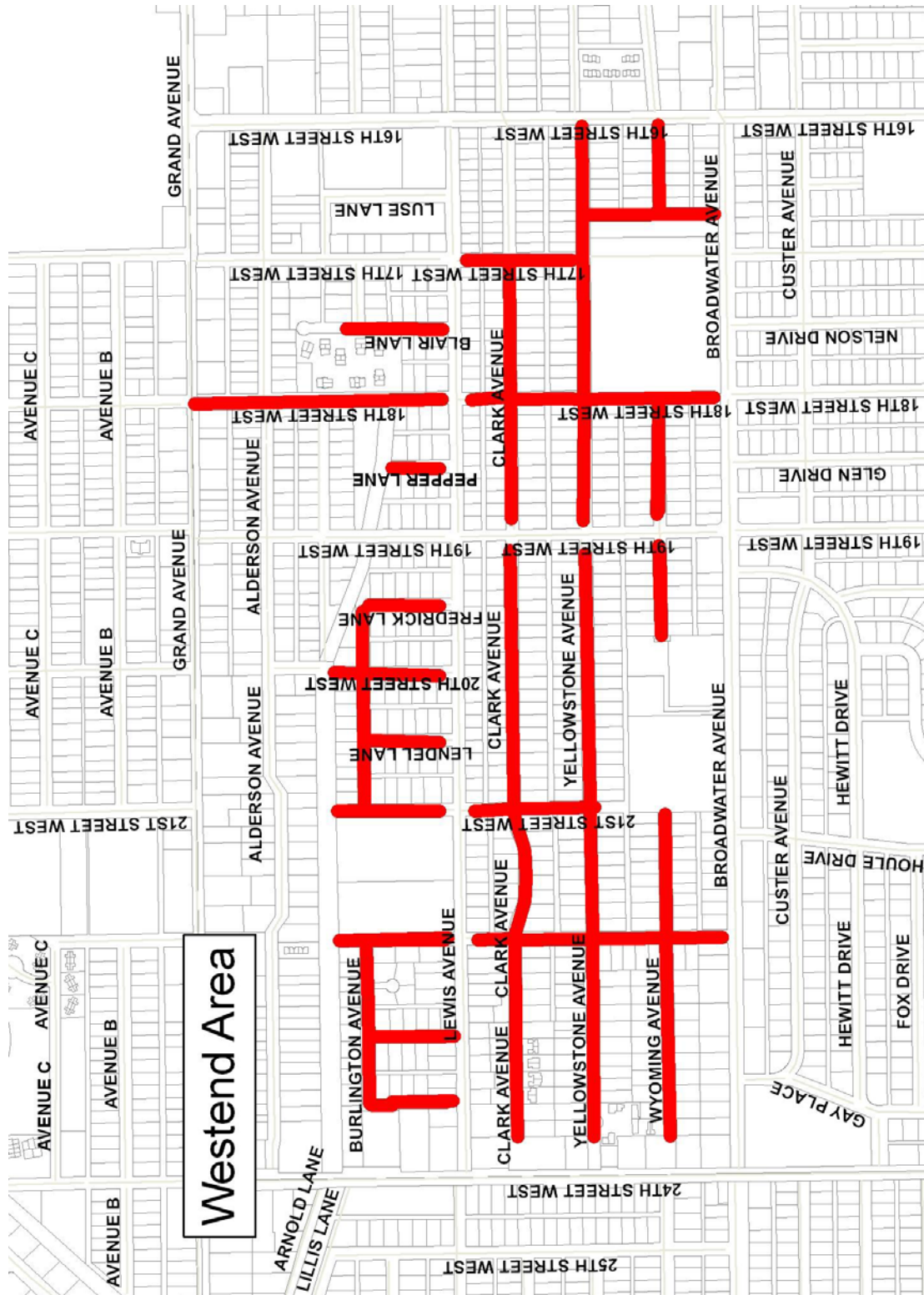


[illegible]

Rimrock Area







Westend Area

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: W.O. 04-09—Parmly Billings Library Code Compliance Renovation
DEPARTMENT: Public Works - Engineering
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project involves renovating the Library Building, thus addressing the Fire Code violations submitted to the City on January 6, 2003. Most of the work will be done in the basement and on First and Second Floors. The Third and Fourth Floors will receive minimal improvements. A&E Architects designed the project. A&E's contract for professional services was amended to include bidding and construction administration, which Council approved July 11, 2005. Bids were opened August 30, 2005, and by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: The project is being funded by the Library Department.

Location of Work: Parmly Billings Library

Funding Sources: C.I.P. #PLB-1, Library Cash Reserves

Approved Dollar Amount for Project (allotted in C.I.P.): \$ 360,500.00

Contribution from Library Cash Reserves (pending approval): \$ 35,000.00

Spent and obligated to date: \$ (15,795.08)

Funding available: \$ 379,704.92

Bids were opened August 30, 2005 with the following results:

Firm:	Fisher Construction	Hardy Construction	<i>Engineer's Estimate</i>
TOTAL BID:	\$358,200.00	\$374,900.00	\$ 360,000.00

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 04-09—Parmly Billings Library Code Compliance Renovation to Fisher Construction for \$358,200 and 70 calendar days.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 12, 2005

TITLE: W.O. 04-18—Condition Audit Repair of Park I, III, and IV Garages
DEPARTMENT: Public Works - Engineering
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project involves the repair of cracks, spalling, control joints, sealants, traffic membranes, coatings, and other miscellaneous items in Park I, III, and IV Garages as detected during a condition audit of the City's parking structures. Collaborative Design Architects, Inc., in conjunction with Carl Walker, Inc., has reviewed and verified the condition audit to create and complete a scope for the repair work. On May 9, 2005, Council approved a professional services contract with Collaborative Design to include this work along with the design and construction administration of the expansion and repair of Park II. Bids were opened August 30, 2005, and by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: The project is being funded by the Parking Division.

Location of Work: Park I, III, and IV Garages

Funding Sources: C.I.P. #PK-003, 004, 005; Parking Division Reserves

Approved Dollar Amount for Project (allotted in 2006 C.I.P.): \$ 426,830.00

Additional Dollar Amount for Project (projected in 2007 C.I.P.): \$ 200,000.00

Spent and obligated to date: \$ (0.00)

Funding available: \$ 626,830.00

Bids were opened August 30, 2005, with the following results:

Firm:	John Rohrer Construction	RAM Building Restoration	Western Waterproofing, Inc.	<i>Engineer's Estimate</i>
TOTAL BID:	\$691,028.00	\$524,000.00	\$496,287.52	\$ 627,120

The Parking Division currently has sufficient funds for this project.

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 04-18—Condition Audit Repair of Park I, III, and IV Garages to Western Waterproofing, Inc. for \$496,287.52 and 70 calendar days.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Reject All Bids Received to do Window Cleaning Services for the Airport Terminal Building

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: The Billings Logan International Airport currently uses a contractor to provide the weekly, monthly, and quarterly window cleaning services for the main Terminal Building. Due to the height and location of many of these windows, staff has found that a professional window-cleaning contractor can provide this service more efficiently. The current window-cleaning contract expires on October 31, 2005. A Request for Bids was recently issued to provide this service for a period of three years beginning November 1, 2005. The contractor is required to provide all supplies, materials, equipment, and personnel, and must be properly insured. The following bids were received August 23, 2005, on this project:

<u>CONTRACTOR</u>	<u>BID</u>
Sparkle Plenty Inc	\$72,000
Skyline Services	\$84,120
Estimate	\$53,000

FINANCIAL IMPACT:

The total cost of this project was estimated at \$53,000. Bids were substantially higher and will be rejected. There will be no financial impact at this time.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

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C

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: W.O. 05-01 - Professional Services Contract with Morrison-Maierle, Inc. and HKM Engineering - Amendment No. 3

DEPARTMENT: Public Works Department – Engineering Division

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

PROBLEM/ISSUE STATEMENT: The City of Billings is recommending an amendment to the Professional Services Contract with Morrison-Maierle, Inc. and HKM Engineering. The one-year engineering services contract, dated December 13, 2004, was approved by Council for the 2005 City of Billings Water and Sewer Line replacement project. The contract included the option of retaining Morrison-Maierle, Inc. and HKM Engineering an additional year for engineering services for the 2006 Water and Sewer Line replacement project. Amendment No. 3 represents the cost increase for the design of the 2006 City of Billings Water and Sewer Line replacement project.

FINANCIAL IMPACT: Amendment No. 3 represents an increase in the amount of the contract by \$972,600.00. Funds are available through Public Works funds.

		<u>% Of Contract</u>	<u>Cumulative % Of Contract</u>
Original Professional Service Contract	\$475,355.00		
Amendment No. 1	\$38,039.00	8.0%	8.0%
Amendment No. 2	\$38,500.00	8.1%	16.1%
Amendment No. 3	<u>\$972,600.00</u>	Second Year Contract	
Total to Date	\$1,049,139.00		

RECOMMENDATION

Staff recommends that Council approve Amendment No. 3 to the Professional Services Contract with Morrison-Maierle, Inc and HKM Engineering resulting in a net increase of \$972,600.00.

ATTACHMENT

A. Amendment No. 3 (3 copies)

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Castle Rock Park Spray Ground Facility
DEPARTMENT: Parks, Recreation, and Public Lands Department
PRESENTED BY: Gene Blackwell, Interim Director, PRPL Department

PROBLEM/ISSUE STATEMENT: The City Of Billings budgeted \$218,000 to be used to plan, engineer, design and construct a spray ground for Castle Rock Park. A portion of the funds appropriated for this project will be used to retain the services of a consultant to prepare plans, conduct public review, prepare specifications and bidding documents, call for bids, and award the construction contract, and then to provide project supervision and construction administration services to the completion and final acceptance of the spray ground facility. Requests for Proposals were sent out and 4 firms responded by the August 19th, 2005, deadline. On August 24th and August 26th the Selection Committee comprised of 2 Staff Members, 2 Park Board Members and 1 Council Member appointed by the Mayor met to review and discuss the submitted proposals. Based on discussion and a numerical rating system adopted by the City, the design firm Peaks to Plains Design P.C. of Billings was selected by the committee for recommendation to the City Council to perform the professional services. It is noted that Peaks to Plains Design has teamed with Interstate Engineering Inc. who is their sub-contractor for this project. The contract with the City will be with Peaks to Plains Design P.C.

FINANCIAL IMPACT: Funding for the project is through General Fund appropriation in the FY2006 Capital Improvement Program:

Location of Work: Castle Rock Park, Southwest corner of Wicks Lane and Nutter Blvd.

Funding Sources: City of Billings CIP General Fund - \$ 218,000.00

ALTERNATIVES ANALYZED:

- Award contract to the recommended finalist, or
- Award contract to another finalist, or
- Reject all proposals.

RECOMMENDATION

Staff recommends that Council approve the award of the consultant contract for the Castle Rock Park Spray Ground Facility to Peaks to Plains Design P.C. for the amount of \$ **32,382.00.**

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

Attachment A: Contract Document

ATTACHMENT A –

**CONTRACT FOR PROFESSIONAL SERVICES FOR
PLANNING, ENGINEERING, DESIGN, CONTRACT AND
BIDDING DOCUMENTS, PROJECT SUPERVISION, AND
CONTRACT ADMINISTRATION FOR PROJECTS AS
LISTED**

THIS CONTRACT, made and entered into September 12, 2005, by and between the following:

CITY OF BILLINGS, a Municipal Corporation, Billings Montana, 59103, hereinafter designated the **CITY**;

And, **PEAKS TO PLAINS DESIGN P.C.**, hereinafter designated the **CONSULTANT**.

W I T N E S S E T H:

WHEREAS, the **CITY** has need for a planning, design and engineering consultant and;

WHEREAS, the **CITY** has authority to contract for consulting design, planning and engineering services, and;

WHEREAS, the **CONSULTANT** represents that he is qualified to perform such services, is in compliance with the Montana Statutes relating to the registration of professional architects and engineers and is willing to furnish such services to the **CITY**;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated herein, the Parties hereto agree as follows:

1. CONSULTANT RIGHTS AND DUTIES: The **CONSULTANT'S** duties and responsibilities include the following:

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the **CONSULTANT'S** portion of the project as defined in the scope of services and to prepare and deliver to the **CITY** all plans, specifications, bid documents, exhibits and other material as designated herein.

- B. To ascertain such information as may have a bearing on the work from neighborhood concerns, utility companies and private organizations and shall be authorized to procure information from other authorities besides the **CITY**, but shall keep the **CITY** advised as to the extent of these contacts and the results thereof.
- C. To prepare and present such information as may be pertinent and necessary, in order for the **CITY** to pass critical judgment on the features of the work. The **CONSULTANT** shall make changes, amendments, or revisions in the detail of the work as may be required by the **CITY**. When alternates are being considered, the **CITY** shall have the right of final selection.
- D. To be in accordance with the standards of sound planning, design, engineering and conform to present **CITY**, State and National standards and policies currently in use.
- E. To 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. To perform professional services in connection with the project and will serve as the **CITY'S** representative in those phases of the project to which this agreement applies.
- G. Where federal funds are involved, to make the necessary provisions to comply with all requirements and make sure that the appropriate specifications and documents are secured and placed in the bidding documents as required.
- H. Meet the following timelines for accomplishing the work required in this contract:
 - 1. Bids awarded to contractors no later than the February 13, 2006, regular meeting of the Billings City Council.
 - 2. Bids opened for the project no later than Tuesday, January 24, 2006.
 - 3. Plans, specifications, and bid documents completed and advertisements of the Call for Bids ready to be published and distributed no later than January 13, 2006.
 - 4. Construction to be substantially completed by May 25, 2006.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the contractor work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the **CONSULTANT**. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. The CITY shall have the right of review and examination of the CONSULTANT'S services and records pertaining to this project accounting at all times, upon reasonable notice, during regular business hours.
- K. Name a Task Director who shall be the liaison between the CITY and the CONSULTANT. For this project the Task Director designated is **Jolene Rieck, Principal/Landscape Architect.**

2. CITY RIGHTS AND DUTIES: The CITY'S duties are set forth as follows:

- A. To furnish all labor, materials, equipment, supplies and incidentals necessary to conduct and complete the CITY'S portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the CONSULTANT and the CITY. For this project the Task Director designated is **Mark Jarvis, Park Planner.**
- C. The CITY will be responsible for bid advertising, opening and review.

3. SCOPE OF WORK: The CONSULTANT shall provide design, engineering, planning, specifications, bid proposal, and construction supervision for a "Sprayground" water facility at Castle Rock Park, which shall constitute the entire scope and purpose of this agreement:

4. OUTLINE OF SERVICES REQUIRED:

A. Preliminary Design Services:

- 1. Perform the planning and engineering surveys required for design of the project.
- 2. Coordinate site and subsurface soil investigation at Castle Rock Park and provide geo-technical engineering as required for design of the project utilizing the services of **Maxim Technologies.**
- 3. Prepare preliminary drawings for review by the CITY. Schedule, publicize, and conduct two (2) meetings for input from residents. Each shall take place in conjunction with the Heights Neighborhood Task Force Meetings at the Library in the Castle Rock Middle School to provide for comments to be received regarding this project. The first meeting shall take place when preliminary plans have been developed. The second meeting shall take place prior to the final plans being completed and advertisement for bids taking place.
- 4. Show how project designs will tie in with adjacent site developments including present and proposed irrigation installations.

5. Prepare engineering studies including drainage calculations for the Sprayground to determine sewer connection, type and size which will be submitted as part of the plan review.

B. Final Design and Bidding Services:

1. From the preliminary drawings reviewed by the **CITY, CONSULTANT** will prepare and furnish final drawings, specifications and other bidding documents in sufficient number for City building and engineering review, bidding and contracts.
2. Stamp and sign all plans and specifications with a seal of the Professional Engineer/Architect in charge.
3. Provide final estimates of design quantities and costs.
4. Schedule and hold a pre-bid conference.
5. Provide a bid tabulation sheet for the bids received by Wednesday noon following the Tuesday bid opening, with the tabulation sheet to show engineer's estimate.
6. Analyze bid proposals and make a recommendation on awarding a contract based on construction bids by Wednesday noon following the Tuesday bid opening.

C. Construction Phase Services:

1. Schedule and hold a pre-construction meeting.
2. Provide personnel, equipment and supplies for construction layout and control.
3. Review the construction operations, prior to the start of work on the project. Ascertain that the Contractor has all needed permits to accomplish work during construction.
4. Coordinate appropriate testing of materials intended for incorporation into the project and require documentation of testing results.
5. Provide general review of construction to check the Contractor's work for compliance with the drawings and specifications. Review of work shall be made as needed while any major item of work is in progress. Major items of work shall be site clearing and excavation, base installation, concrete forming and installation, plumbing and piping installation, water feature installation, safety surfacing installation, and site completions to include irrigation restoration. The Construction Inspector shall provide a minimum of 48 hours notice for City personnel when

specific inspections or construction activities require their presence on the project. Each review shall be documented in permanent reproducible form and kept in consecutive order in a project file. Copies of the reports shall be furnished the **CITY** as requested. **CONSULTANT** will notify the **CITY** of construction problems or deviation from approved plans.

6. Weekly meetings shall be scheduled and conducted between the **CONSULTANT**, the **CONTRACTOR**, and the **CITY** while construction of the project is in progress.
7. Coordinate the services of a qualified materials engineering technician who will observe construction and provide representative tests. Provide direct coordination of laboratory and field quality control 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 **CONSULTANT** and **CITY** based upon field observation. The services of Maxium Technologies will be utilized for all materials testing and geotechnical engineering for this contract.
8. Act as the **CITY'S** authorized representative in inspecting and coordinating the work of the contractor within the park for this project. The **CONSULTANT** shall cause necessary tests to be made to ensure compliance with project specifications or City Codes where faulty construction, excavation or backfill work may result in substandard improvements.
9. Review submittals, shop drawings, samples, equipment, portland and asphalt cement mix design, aggregate and other data submitted by the Contractor for compliance with contract documents.
10. Issue notice to the Contractor to suspend work in whole or in part when, in the opinion of the **CONSULTANT**, work is not being, or cannot be performed in accordance with the contract documents.
11. Prepare plan and specification changes when required due to initial design and engineering deficiencies in order to complete the project in its original concept, and after review by the **CITY** prepare change orders thereto.
12. Prepare and recommend Change Orders when necessary due to conditions encountered during construction. The **CONSULTANT** is not authorized to order additional work without the approval of the **CITY'S** Task Director. Any work resulting in contract overages will be processed by the **CITY** using approved forms.

D. Final Services:

1. Furnish the CITY with the following construction documents and record drawings:
 - a. One set of reproducible mylars of the construction drawings.
 - b. One set of electronic documents on CD or DVD format to include:
 1. CAD files in Auto CAD DWG file format. All files must be readable by the CITY, any files not readable or corrupted shall be resubmitted. Compressed files are not acceptable. Drawings using separate reference files, X-ref, shall be bound into one file prior to submission.
 2. Word processing files in Microsoft Word .doc format. Files must be readable by the CITY.
 - c. The **CONSULTANT** shall record the location of the facility installed, together with a representation of the general site around it. Survey and elevation information shall be referenced to the Montana state plane coordinate system NAD 83, in feet and decimals of a foot and clearly noted on drawings. A permanent bench mark elevation shall be clearly shown on the plans. Record drawings are due within 60 days of contractor's final payment and before final payment to the **CONSULTANT**.
 2. Make final inspection with the **CITY** and certify to the **CITY** all construction items were constructed according to plans and specifications and are acceptable to the **CONSULTANT**.
 3. Schedule and make an inspection with the **CITY** prior to expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to **CITY** and contractor and continue until acceptable.
- E. Extra services of the **CONSULTANT** will be paid only with written prior authorization by the **CITY**. They may include:
1. Extra field and laboratory testing of materials and reports.
 2. Provide construction review service in excess of the basic review specified in scope of work under construction services.
 3. Provide inspection services of major items of work after the expiration of the warranty period after the construction contract completion time.
 4. Prepare Change Orders that do require additional design or inspection under the scope of work under construction services.

5. **DESIGN PHASE COMPLETION:**

- A. The completion date for the **CONSULTANT'S** work through final design shall be:
1. Preliminary design by November 16, 2005.

2. Final design by January 10, 2006.

- B. The established completion dates shall not be extended because of any unwarranted delays attributed to the **CONSULTANT**, but may be extended by the **CITY** in the event of a delay attributed to the **CITY** or because of unavoidable delays due to severe weather, ground conditions, or by any natural catastrophe or governmental action or conditions beyond the control of the **CONSULTANT**.
- C. Delays affecting the completion of the work within the time specified for the completion by 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.
- D. If the **CONSULTANT** is behind on this Contract due to no fault of the **CITY**, then the **CONSULTANT** hereby acknowledges the right of the **CITY** to withhold future Contracts to the **CONSULTANT** in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

6. **PAYMENT:** The work of the **CONSULTANT**, as outlined in the scope of work, shall be accomplished for the fees as detailed below:

- A. The **CITY** shall pay the **CONSULTANT** for basic services performed under this Agreement, a total basic lump sum of: \$ 32,382.00 with breakdown and progress payments as herein described:
 - 1. For services rendered prior to construction, the **CONSULTANT** shall be paid: \$ 23,812.00.
 - 2. Partial Payment shall be paid to the **CONSULTANT** monthly upon receipt of the **CONSULTANT'S** pay estimate, said estimate being proportioned to the work completed by the **CONSULTANT**. Payment shall be made within 30 days of the receipt of the statement.
 - 3. For services rendered during construction, the **CONSULTANT** shall be paid: \$ 8,570.00. Partial payment shall be made to the **CONSULTANT** upon receipt of the **CONSULTANT'S** pay estimate, said estimate being proportioned to the amount of work completed by the **CONTRACTOR**.
 - 4. The **CITY** shall deduct five percent (5%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final plan documents by the **CITY** and determination that the Scope of Work has been satisfactorily completed.
 - 5. Final payment shall be the above stated basic fee less all previous payments.

6. No deductions shall be made from the **CONSULTANT'S** compensation on account of penalty, liquidated damages or other amounts withheld from payments to **CONTRACTOR**.
- B. Payments for extra services of the CONSULTANT will be paid only with written prior authorization by the **CITY**.
1. Field and laboratory testing and reports shall be paid for at the **CONSULTANT'S** invoiced cost.
 2. Resetting lost or destroyed monuments after construction shall be paid for on an hourly basis at the applicable fee in **TABLE A**.
 3. Construction inspection in excess of basic services shall be paid for on an hourly basis at the applicable fee in **TABLE A**.
 4. Construction inspection after expiration of the construction contract completion time shall be paid for on an hourly basis at the applicable fee in **TABLE A**.
 5. Preparation of Change Orders which are not required due to design and engineering deficiencies but which do require additional design or construction review shall be paid for on an hourly basis at the applicable fee in **TABLE A** below:
 6. Table A:

TABLE A

Hourly Fee Schedule

Licensed Landscape Architect	\$70.00
Professional Engineer	\$115.00
Landscape Architect in Training	\$50.00
Project Engineer	\$87.00
Architect/Engineer Technician	\$57.00
2-Man Survey Party	\$102.00 + Mileage and Materials
3-Man Survey Party	\$137.00 + Mileage and Materials
Inspector	\$57.00
Draftsman (Landscape Architect)	\$50.00
Draftsman (Engineer)	\$57.00
Clerical	\$45.00

The aforementioned itemized schedule includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally

required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

- C. Costs of **CITY** work that is required for corrections to the **CONSULTANT'S** designs, contract documents, or progress estimate work which requires redoing by **CITY** shall be deducted from any payments due the **CONSULTANT**.

7. **EMPLOYMENT:** The **CONSULTANT** warrants that he has not employed or retained any company or persons, other than a bona fide employee, working solely for the **CONSULTANT**, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the **CONSULTANT**, any commission, percentage, brokerage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the **CITY** shall have the right to annul this Contract without liability, or at its discretion to deduct from the consultant fee, or otherwise recover the full amount of such commission, percentage, brokerage fee, gift or contingent fee.

- A. The **CONSULTANT** is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the **CONSULTANT** and the City during the period of the services shall be that of an independent contractor, not employee. The **CONSULTANT**, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the **CONSULTANT** shall have no obligation to work any particular hours or particular schedule and shall retain the right to designate the means of performing the services covered by this Agreement, and the **CONSULTANT** shall be entitled to employ other workers at such compensation and on such other conditions as **CONSULTANT** may deem proper, provided, however, that any contract so made by the **CONSULTANT** is to be paid by **CONSULTANT** alone, and that employing such workers, **CONSULTANT** is acting individually and not as an agent for the City.
- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to **CONSULTANT** or any employee of the **CONSULTANT**.
- C. The **CONSULTANT** shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 23, United States Code, and all regulations promulgated thereunder.
- D. **NO DISCRIMINATION.** In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide

occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.

E. The **CONSULTANT** shall comply with all provisions of Equal Employment Opportunity (EEO) and Disadvantaged Business Act (DBA - Minority and Women's Business Enterprises), and the **CITY'S** implementation plan of this act.

8. **DECLARATION OF NO FINANCIAL INTEREST:** The **CONSULTANT** hereby declares that the **CONSULTANT'S** partners, principal shareholders, officers and professional engineers assigned to or otherwise working on the projects or in any way associated with **CONSULTANT** does not own any equitable or legal rights to property within the project, whether public or private, or have any interest either directly or indirectly in the project except for the remuneration provided herein.
9. **SUCCESSORS AND ASSIGNS:** This agreement and all of the covenants hereof shall insure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns and legal representatives. Neither the **CITY** or the **CONSULTANT** shall have the right to assign, transfer or sublet his interest or obligations hereunder without written consent of the other party.
10. **CHANGES IN WORK:** The **CONSULTANT** shall make such revisions in the reports, plans, and specifications which have been completed, approved and accepted by the **CITY** as are necessary to correct the **CONSULTANT'S** errors or omissions when required to do so by the **CITY**, without additional compensation therefor. Any change in the scope of work as stated in this Contract for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT**, and an amendment to the Contract will be issued with the appropriate change of work and Contract fee noted.
11. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State and local laws and ordinances applicable to the work to be done.
12. **INSURANCE:** The **CONSULTANT** shall secure and furnish to the **CITY** Certificate of Liability Insurance, therein, naming the **CITY** as an additional named insured, to include thirty (30) days notice of cancellation or non-renewal. In case of joint ventures, all entities must be named. The limit of liability for Bodily Injury and Property Damage to be One Million Five Hundred Thousand Dollars (\$1,500,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate, with any insurance company authorized to do business in the State of Montana. The **CONSULTANT** shall also furnish the **CITY** proof of Error and Omission Insurance Coverage of One Million Five Hundred Thousand Dollars (\$1,500,000) per occurrence.

- 13. TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this Contract at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.
- A. In the event this Contract is terminated by the **CITY**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the Contract fee.
- B. In the event this Contract is terminated prior to completion, the originals of all plans shall remain the property of the **CONSULTANT**. All information relating to the project and prepared under the terms of this Contract, including schedules, reports, data, recommendations, exhibits, analyses, plans, and specifications, shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, plans, and specifications shall be made available at the **CITY'S** request.
- 14. ENDORSEMENTS:** The **CONSULTANT** shall furnish professional stamps, statements, or other suitable means to signify responsible endorsement of services, on all drawings and reports furnished by him.
- 15. OWNERSHIP OF DOCUMENTS:** The original tracings of all plans shall remain the property of the **CONSULTANT**. All information relating to the project and prepared under the terms of this Contract, including schedules, reports, data, recommendations, exhibits, analyses, plans, and specifications, shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, plans, and specifications shall be made available at the **CITY'S** request.
- 16. PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases or information for public dissemination without prior approval of the **CITY**.
- 17. PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from the services required herein. All intellectual property of **CONSULTANT**, including, but not limited to any computer software (in object code and source code form), tools, systems, equipment or other information used by **CONSULTANT** or its suppliers in the course of delivering the services hereunder, and any know-how, methodologies or processes used by **CONSULTANT** to provide the services or Project deliverables to **CITY**, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of **CONSULTANT** or its suppliers.
- 18. RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the Contract term and for three (3) years from the date of final payment. Such accounting records and other evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.

19. **THIRD PARTY BENEFICIARIES.** This Agreement and attachments hereto are not intended to confer any rights to any person or entity not party hereto.
20. **ATTORNEY'S FEES AND COSTS:** That in the event it becomes necessary for either Party to this Contract to retain an attorney to enforce any of the terms or conditions of this Contract or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.
21. **JURISDICTION, APPLICABLE LAW, AND VENUE.** This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. Venue of any suit between the parties arising out of this Agreement shall be the Thirteenth Judicial District Court for the State of Montana sitting in Yellowstone County, Montana.
22. **MEDIATION:** Disputes concerning the **CONSULTANT'S** performance of the services between the **CONSULTANT** and the **CITY** shall first be referred for informal resolution to the City Administrator before commencing any legal action to resolve the same. Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution of the dispute by arbitration in accordance with the Construction Industry Arbitration Rules of American Arbitration Association; provided however, in the event the parties are unable to reach agreement to arbitrate under terms reasonable acceptable to both parties, either party may pursue resolution in court proceedings. During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations hereunder.
22. **MODIFICATION AND AMENDMENTS:** That any amendment or modifications of this Contract or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this contract.
- A. The **CONSULTANT** shall only be liable for professional services stated specifically under the scope of this Agreement. The **CONSULTANT** shall be indemnified and held harmless for any claims, damages, or liabilities arising from any act, neglect, default or mismanagement by the **CITY**, its Contractors, and their agents or employees.
- B. The **CONSULTANT** hereby agrees to indemnify and hold the City harmless from all claims and liability due to the activities of the **CONSULTANT**, their agents, employees, or both, in performing the work required.

CONSULTANT

NAME: _____

BY: _____

TITLE: _____

DATE: _____

CITY OF BILLINGS, MONTANA

BY: _____
Mayor

DATE: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Reimbursement Agreement for Private Contract No. 543--
 Cel Avenue--Tract 3 of Studer Acreage Tracts Subdivision

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to obtain city water and sanitary sewer service for his property, the Developer, Ted P. Godwin, is extending water and sewer mains across his frontage in Cel Avenue. City water and sewer service is not desired by the property owner on the other side of Cel Ave. at the present time; so, the Developer is paying the entire cost of the project. At such time that the owner across the street requests to connect services to these mains, the Developer desires to be reimbursed a portion of his construction costs. The Public Works Department (PWD) proposes that such reimbursement be accomplished through the attached Agreement.

FINANCIAL IMPACT: Based on the Engineer's estimate of probable cost for P-543, the PWD has determined that half of the cost attributable to the utilities portion of the contract--\$31,814.78--is eligible to be recovered by the Developer. In accordance with the PWD standard Reimbursement Agreement, reimbursement fees paid to the City are accumulated and paid to the Developer annually on each November 1st following acceptance of the constructed utilities. Payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Reimbursement fees collected by the City shall be based on actual water and sewer utility construction costs.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

Attachment A--Reimbursement Agreement (3 pp.)

BACKGROUND

An interior (12-inch) city water main exists in Cel Avenue as far west as the east property line (EPL) of Tract 3, Studer Acreage Tracts Subdivision. Under current City policies, the Developer must extend this main west across his entire property frontage in Cell Ave. to obtain water service. An interior (8-inch) city sanitary sewer main exists in Cel Avenue as far west as approximately 285 feet east of the EPL of the subdivision; similarly, the Developer must extend the sewer main west across his entire frontage.

Under the City Utilities Fees Practice (A.O. 84), Developers desiring interior main extensions are responsible for the cost of their fair share portion of improvements that front the development or are necessary to get service to the development. In the case of the subject project, the non-participating property on the other side of the street will likely obtain future service by tapping individual service connections off the new mains. The PWD has been utilizing a standard Reimbursement Agreement as the mechanism by which Developers may be paid back over time as additional properties connect directly to utility mains constructed by the original Developer.

Under Item 3.B. in the attached Reimbursement Agreement, reimbursement fees paid to the City are to be accumulated and paid-back to the Developer annually on each November 1st following acceptance of the utility installation; in addition, payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

Based on the Engineer's estimate of probable cost for P-543, the PWD has determined that half of the cost attributable to the utilities portion of the contract--\$31,814.78--is eligible to be recovered by the Developer. Actual final project costs will determine the exact compensation amount.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Reimbursement fees collected by the City shall be paid back to the Developer according to the schedule stipulated in the Agreement.

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ATTACHMENT

Attachment A--Reimbursement Agreement (3 pp.)

REIMBURSEMENT AGREEMENT
(Billings, Montana City Code Article 26-500)

THIS AGREEMENT entered into this _____ day of _____, 20____
between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the “CITY”,
and _____ of _____
_____, hereinafter referred to as “DEVELOPER”.

W I T N E S S E T H

WHEREAS, Article 26-500 Billings, Montana City Code provides a procedure for certain developers to be reimbursed for a portion of the costs constructing special benefit facilities under certain circumstances; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement or Article 26-500 BMCC; and

WHEREAS, DEVELOPER has agreed to extend a special benefit facility for the purpose of providing water and/or wastewater service through plans and specifications approved by the City on the _____ day of _____, 20____. Said plans and specifications generally provide for the construction of special benefit facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining reimbursement for a portion of the special benefit facilities hereafter described; and

WHEREAS, the CITY is desirous of reimbursing the DEVELOPER for a portion of such special benefit facilities.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The special benefit facilities which are eligible for reimbursement to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER’S entitlement to reimbursement, the CITY and DEVELOPER agree that the conditions specified in Section 26-504 BMCC, and the further conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive

any reimbursement. Said conditions are:

- (a) Special benefit facilities, off-site or perimeter, which front and abut property not owned by the DEVELOPER, must be extended by the DEVELOPER at his expense. Costs of special benefit facilities which are financed through special improvement districts shall not be reimbursed.
- (b) The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the City. Costs of extension of special benefit facilities to serve property outside the City limits shall not be reimbursed.
- (c) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00).
- (d) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under Section 26-503 BMCC within thirty (30) days of final inspection of the special benefit facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (e) DEVELOPER shall enter into a standard reimbursement agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of special benefit facilities.
- (f) Upon completion of the extension of the special benefit facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (g) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing reimbursement payments to DEVELOPER.
- (h) Extension of special benefit facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the City, including but not limited to standards for design and construction of the facilities.

DEVELOPER agrees that it will not be entitled to any reimbursement whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein or in Article 26-500, Billings, Montana City Code may, at the option of the City, result in denial of any and all reimbursement to the DEVELOPER.

3. In addition, it is expressly agreed that any reimbursement payment is conditioned upon the following:

- (a) Reimbursements are payable solely from revenues derived from payment of

reimbursement fees as established in Article 26-500 BMCC. Reimbursement payments are limited to reimbursement fees actually collected for connections with the special benefit facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will reimbursement payments exceed the actual cost to the DEVELOPER of extending the special benefit facilities.

- (b) Reimbursement fees paid to the CITY shall be accumulated and paid to the DEVELOPER annually on each November 1st following acceptance of the special benefit facilities by the CITY beginning on November 1, 20____, and ending on November 1, 20____.
- (c) Reimbursement payments shall not include any interest charges.
- (d) Reimbursement payments to the DEVELOPER shall be limited to reimbursement fees paid to the CITY on or before the seventh anniversary of the date of acceptance by the CITY of the special benefit facilities described in Exhibit 1 attached hereto. Any reimbursement fees paid to the CITY after said anniversary date shall be retained by the CITY and used for construction of additional water and/or wastewater system facilities.

Acceptance of the special benefit facilities for purposes of reimbursement as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the city and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY agrees that it will require prospective customers owning property located outside a DEVELOPER'S subdivision and desiring to connect a service line or lines to any special benefit facilities which has been extended at the DEVELOPER'S expense to pay a reimbursement fee to the CITY in compliance with Section 26-503 BMCC.

5. The CITY, by this agreement, is not guaranteeing that reimbursement fees in a sufficient amount to fund full reimbursement to the DEVELOPER will be collected within the seven-year period. The CITY is only agreeing that it will develop a plan under Section 26-503 BMCC that will assure that prospective customers owning property located outside a DEVELOPER'S subdivision and desiring to connect a service line or liens to the special benefit facility described in Exhibit 1, which has been extended at the DEVELOPER'S expense, shall pay a fee and said fee shall be distributed as set forth herein. This fee applies only to connections and does not apply to additional extensions of the special benefit facility. The fee to be charged said prospective customers shall be based upon the final total project costs and _____

_____.
(basis for assessment – square foot or lineal footage)

6. The address for mailing the reimbursement payment to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 30958, Billings, MT 59111. The designation of a new address shall be accompanied by a copy of this agreement.

7. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this _____ day of _____, 20____.

DEVELOPER

By _____
CITY OF BILLINGS

By _____
Mayor

ATTEST:

City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Perpetual Right-of-Way Easements for Popelka Commerce Center Subdivision and Shiloh Business Park

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The developers of Popelka Commerce Center Subdivision and Shiloh Business Park are extending public improvements, which include water, sanitary sewer, and storm drain mains and services, within private streets located within city limits. A Perpetual Right-of-Way Easement is needed in each case so the City has the ability to maintain the public utilities being installed. The Right-of-Way Easement allows the developers to construct public improvements; however the private streets must meet city standards and be dedicated as right-of-way, at no cost to the city, once the areas are fully developed.

FINANCIAL IMPACT: There is no financial impact with acceptance of these easements

RECOMMENDATION

Staff requests that Council accept the Perpetual Right-of-Way Easements for Popelka Commerce Center Subdivision and Shiloh Business Park.

ATTACHMENT

A. Perpetual Right-of-Way Easements

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Williston Basin Interstate Pipeline Company Easements
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The Engineering Division is recommending that easements be executed by the City of Billings for the Williston Basin Interstate Pipeline Company across three properties owned by the City. Each easement is 25 feet in width. The first easement is located west of the water treatment plant and north of Belknap Ave. The second easement is located east of South Billings Boulevard just north of Riverfront Park, and it crosses a short section of City property. The third easement is located west of South Billings Boulevard and east of Riverfront Park. The council action for this item will include authorizing the Mayor to sign all three easements, three Corporate Land and Land Rights Receipt forms, which allow payment to the City for each of the easements, and Memorandums of Understanding (MOUs) describing the method of payment.

FINANCIAL IMPACT: The Williston Basin Interstate Pipeline Company proposes to pay the City \$0.75/square foot for the easements as shown below:

Location	Area of Easement	Length	Amount
In Tract 3, C.O.S. #1031	Near Water Treatment Plant	1,154.6'	\$21,650.41
In Tract 2, C.O.S. #2649	Near Riverfront Park	2,424.6'	\$45,463.39
In C.O.S. #2648	Near Riverfront Park	42.1'	\$ 788.92

Note that this cost is the same cost per square foot that was paid to Riverfront Pointe Subdivision from the Williston Basin Interstate Pipeline Company for a similar easement earlier this year.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to sign all three easements, three Corporate Land and Land Rights Receipt forms, which allow payment to the City for each of the easements, and Memorandums of Understanding (MOUs) describing the method of payment. This will allow the Williston Basin Interstate Pipeline Company to construct their pipeline across the three city properties.

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

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 AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Staff Recommendation for King's Green Phase II RFP

DEPARTMENT: Community Development Division

PRESENTED BY: Ramona Mattix, Planning & Community Development Director
 Vicki Lapp, CD Program Coordinator

PROBLEM/ISSUE STATEMENT: The Community Development Division received a proposal from Real Estate Dynamics, Inc. (RED) in response a Request for Proposals issued by the Department for Phase II, King's Green. Only one response was received. They are proposing to build 14 homes similar in construction and design to the previous Phase, with the addition of a 2 bedroom design. They are proposing 70% of the 14 houses, or 10 homes, will be targeted for families at or below 80% of Area Median Income.

ALTERNATIVES ANALYZED: Alternatives would be (1) to approve the Development Agreement with Real Estate Dynamics, Inc. (2) To not approve the Development Agreement with Real Estate Dynamics, Inc.

FINANCIAL IMPACT: CDBG and HOME funds are provided by HUD to the City for affordable housing projects. HOME funds have previously been allocated for the infrastructure in this project. The current balance of the already allocated funds is \$272,554. Engineer's estimated infrastructure cost, as of March 2005 is \$310,415. That makes a shortfall of \$40,000 of the HOME funds setaside for this project. Funds from the Affordable Housing Fund would be allocated to make up this shortfall.

Affordable Housing Fund Balance	\$ 281,441
This Request	<u>40,000</u>
Final Affordable Housing Fund Balance	\$ 241,441

RECOMMENDATION

CD Board and Staff recommend City Council approve allocating available HOME/CDBG funds and additional funds and a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase II.

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

INTRODUCTION

The City of Billings conducted a Housing Needs Analysis in December 2004 in which the combination of the household forecast and housing needs surveys were the basis for the housing needs assessment and the determination of the priorities to meet those needs. The report lists the critical concerns identified related to housing.

Affordable single family homes for purchase was perceived as the highest need, with 44.4% of respondents selecting this type of housing. The Housing Needs Analysis also has data on housing costs, which is collected from newspaper classified advertisements. The average advertised price of a 3 bedroom house in Billings in 2004 was \$169,736. The average sales price of a new home in 2003 was \$203,152, the median price was \$182,020. All these prices are well above the estimated sales price of the homes in the RED proposal.

In addition to mailing surveys, interviews were conducted with individuals in Billings who are knowledgeable about the housing market. These included builders, realtors, property managers, public housing authorities, human resource development councils, and social service agencies serving the elderly, disabled, special needs, low-income and other at-risk populations.

Interviewees were first asked about the greatest unmet housing need in Billings related to homeownership. 80% responded that affordable single-family homes for purchase were the greatest need, especially for low and middle income households. Many said there were not any quality homes available for purchase under \$100,000, and few under \$120,000. Concern about income levels compared to housing costs was frequently mentioned.

Barriers identified in the 2005 Housing Needs Analysis to building new affordable housing were the increasing cost of construction and materials, and the increasing cost of infrastructure. Other barriers to homeownership were the lack of down payment assistance and a lack of knowledge regarding the home buying process and available assistance. This project addresses all of those issues, directly or indirectly.

PROCEDURAL HISTORY

The King's Green housing project has a long and complicated history. It has taken 10 years to reach the second phase.

- February 1995- Yellowstone County in February 1995 donated 14.5 acres of tax-deed property to the City of Billings. This land was donated by the County on the condition that it was used for the creation of affordable housing.
- June 12, 1995- a public hearing was held by the City Council on the proposed sale of the land. Many neighbors expressed concern over the development of the property. In response, the City Council placed four criteria on the development of the land to assure a quality development that would compliment the existing neighborhood. These criteria were:
 1. Property is to be used solely for affordable housing projects;
 2. Access must be provided to the adjacent park property;
 3. Development must mitigate negative impacts on the surrounding neighborhood;
and
 4. All conditions will be enforced by a Development Agreement.

- June 1995-City Council received request for zone change. The Billings Area Housing Association project required a zone change from R5000 to R6000 which was opposed by the neighbors and the zone change was denied by the City Council.
- August 1995- City staff issued Request for Proposals (RFP) for the use of the land from area developers, builders and non-profit organizations with proposals due on October 13, 1995
- October 1995- Staff received proposal from Yellowstone Construction. Chuck Platt and Jerry Neumann were partners in Yellowstone Construction. The partnership is now dissolved and the new proposal was from Chuck Platt & Tim Hudson of Diamond Realtors and Laughlin Construction.
- December 1995- Public Hearing held on selection of developer. Yellowstone Construction's proposal accepted by City Council to build 68 homes.
- May 1996- major plat accepted by City Council
- August 1996- Development agreement approved and signed by Mayor Tooley.
- January 1997- City received preliminary contract for infrastructure cost of phase I & II.
- May 1997- City quit claimed first two lots to Yellowstone Construction to begin first phase.
- June 1997- June 2000 City experienced flooding problems in the area causing the footings of the first two homes to flood, halting project. City received letter from Chuck Platt & Jerry Neumann stating that project at present is not feasible as currently designed. Expressed interest in finding solution stating that storm drain concerns must be addressed for project and existing neighbors for a successful project. City hired Engineer to evaluate solutions to storm drain problems in the area. Yellowstone construction quit claimed parcels back to City. City staff met with developer and Southwest Corridor Task Force chairman to discuss preliminary storm drain report. 27 different alternatives explored and narrowed down to two alternatives for final analysis by engineer. City received a grant of \$300,000.00 to combine with other local resources to provide storm water-retention facility for area. Retention facility reviewed and closed out by State CDBG.
- December 2001- New RFP issued with due date on January 18, 2002.
- January 18, 2002- one proposal submitted by Diamond Realtors and Laughlin Construction.
- March 2002- Neighborhood meeting held to discuss project and obtain feedback from people attending. Flood mitigation performed at site questioned as to its intended success.
- March 2002- Community Development Staff met with Public Works staff to discuss concerns.
- April 2002- second neighborhood meeting held so that City Engineer could address storm drain concerns.
- June 2002- third meeting held to discuss housing plans and to obtain feedback. No concerns were expressed regarding housing but Task Force still concerned about storm drain issues.
- August 2002- Developer, City staff and Task Force Chairman met at Kings Green site to discuss concerns and possible resolutions.
- August 22, 2002- Resolutions to further mitigate fears discussed and received support from task force to proceed.

- September 3, 2002- CD Board recommended approval of the project and entering into new development agreement.
- October 2002- Staff, developer and Engineering Inc staff work on revising plat and submitting for approval
- December 2002- revised plat submitted.
- December 2003 – Housing Development Agreement signed with Real Estate Dynamics, Inc.
- December 2004 – Final home in King’s Green, Phase I is purchased
- June 2005 – RFP Phase II King’s Green
- August 2005 – Staff Recommendation to CD Board for Phase II King’s Green

BACKGROUND

This project shows a strong partnership and commitment in achieving affordable housing opportunities for the City of Billings. The developer has been involved with this project since its inception and is very familiar with all of the history and challenges associated with the project. The Developer has also contributed a significant amount of time in working with staff and the Southwest Corridor Task Force to assure that the existing neighborhood has had an ample opportunity for input and participation in the proposed project.

HOME Requirements Review

The HOME 25% match requirement will be met through the mortgages secured by the purchasers of the houses. Other sources of funds RED is proposing to complete the project include acquiring a construction loan through First Interstate Bank. The HOME program Federal Regulations require at least 51% of the units be targeted to 80% or less AMI. The developers are proposing to target 70% of the houses for 80% or less AMI. Any homebuyers that use City of Billings First Time Homebuyers funds are eligible to use the Montana Board of Housing Setaside at 5% interest for their primary mortgage; which will further reduce their monthly payment.

HOME funds invested in the property are in the form of a development subsidy; therefore, recapture provisions don’t apply. Resale restrictions will be enforced through a Deed Restriction Agreement and Trust Indenture which are signed by the purchasers at closing. These documents ensure that for the first 10 years, if the owner sells the home, they must sell it to another HOME income eligible buyer; who must comply with the resale restrictions for the balance of the initial 10 year period. For those purchasers that are not HOME assisted, the City’s funds are recaptured at closing. The estimated cost per lot is \$22,172.

Staff evaluation of the Selection Criteria of the RFP is presented below.

Quality of Response to the RFP and meeting the project goal: A total of 40 points was awarded to RED.

Proposed quality & price are similar to Phase I, with the addition of another floor plan; 2 BR, 1 BA for estimated sales price of \$95,000(without the cost of land and infrastructure). The addition of another choice of bedroom size house will provide a variety of houses in the subdivision. Plans are to change the orientation of the houses, as well as offer differing garage choices in order to fit the lot size and create an illusion of differing houses. The proposed phase

is compatible with the surrounding neighborhood, and there is neighborhood acceptance and support for the proposed design.

Developer Experience: A total of 40 points was awarded RED:

Real Estate Dynamics has experience with Phase I, which included HOME Program funding for the infrastructure as well as First Time Homebuyers assistance through the City. King's Green, Phase I has been extremely successful. All houses were sold within 6 months of being built, and some of the last houses were sold before they were built. Changing orientation of the houses on the lot gives the impression of many differing floor plans. Phase I was on time and within budget. Past experience with this joint venture has been effective and the lines of responsibility between the 3 partners are clearly drawn and identified in the application.

Management/ Marketing Experience A total of 20 points was awarded RED:

Real Estate Dynamics has experience in developing, marketing and selling mixed income housing, as was evidenced by the phenomenal success of Phase I. RED is proposing 10 of the 14 homes be sold to low to moderate income buyers. Two of the partners of Real Estate Dynamics are realtors, and are familiar with, and knowledgeable of affirmative marketing requirements. Their plans are to continue to market the project on the Multiple Listings, through highway & site signs and through the printed media. The project is also included, for informational purposes only, in the Homebuyer Education class offered monthly by homeWORD and the City of Billings.

ALTERNATIVES ANALYSIS

Alternatives would be (1) to approve the Development Agreement with Real Estate Dynamics, Inc. (2) To not approve the Development Agreement with Real Estate Dynamics, Inc. This would result in delaying the project, and increasing the cost of construction as well as the final purchase price of the houses.

STAKEHOLDERS

Stakeholders include:

- Those potential homebuyers in the community at or below 80% AMI
- Surrounding property owners, whose property values may increase with the addition of this new housing development

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.
- Promote New Affordable Housing Opportunities.
- Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs.
- Improve the economic conditions of lower income households in the community.

SUMMARY

This project, as proposed, is consistent with four of the strategies in the City's Consolidated Plan. Phase I of this project was extremely successful, with all 10 of the houses being sold within 6 months of construction. This project meets Billings' greatest housing need as identified in the 2005 Housing Needs Analysis, both by the respondents and the housing professionals interviewed. The HOME cost per unit is well below the maximum subsidy required by Federal Regulation. The developers have experience in building, marketing, and selling the homes, as well as experience in working with federal programs. This project is offering brand new, affordable homes to people that might not otherwise be able to achieve the dream of homeownership. It is also developing a vacant parcel of land into a vibrant, family friendly neighborhood.

RECOMMENDATION

CD Board and Staff recommend City Council approve allocating available HOME/CDBG funds and additional funds and a Housing Development Agreement with Real Estate Dynamics, Inc. for King's Green, Phase II.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

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

PROBLEM/ISSUE STATEMENT: This item was delayed from the August 8, 2005 Council meeting due to some discomfort with the language regarding the sidewalk program and other timelines affecting the Park Department. 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 audited for compliance with the Americans with Disabilities Act (ADA). This audit included all City facilities except the Airport and MET, which are under enforcement by the U.S. Dept. of Transportation. The inspection identified a number of facilities and services that do not 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 five years, unless there is reason to seek written permission to extend those timelines. 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. On some of the items with more significant cost, the DOJ discussed temporary measures that can be put in place with little cost to temporarily comply, allowing the City to work these into budgets over time. The financial impacts were discussed when the 2002 Report and findings were published. This Agreement sets a more finite time line; although the budget impacts allow the City to stretch the timelines, as long as progress is being made. Some examples of financial impacts on some sample Parks and City Hall are attached to this packet.

RECOMMENDATION

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

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

ATTACHMENTS*

- A: 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
 - E. Polling Places
 - F. Polling Place Checklist
 - G. Emergency Shelters
 - H. Websites
 - 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.

- B: Fiscal analysis

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 which 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 audited and have 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 the 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.

This item was delayed from the August 8 Council meeting. The issues causing delay of this item were addressed by a conference call with the City and the DOJ which resulted in extensions of time lines for the compliance of alterations made after January, 1992. In addition, the report on the sidewalk program required within three months will be a preliminary one, with the final due in one year. The Parks revisions were made and Gene Blackwell had an opportunity to look at each item and talk about options for compliance. The language in the Agreement which allows the City to modify the Agreement at any time for any reason gives good assurance that the DOJ wants to work with the City on timelines, but will still be looking for progress over time.

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. In some circumstances where larger investments are needed to fully comply, some temporary measures that cost little may be appropriate on an interim basis until full compliance can be achieved.

RECOMMENDATION

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

ATTACHMENTS*

- A: 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
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- B: Fiscal analysis

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:

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;

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;

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);

to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);

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:

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,

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.

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;

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;

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;

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

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, 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.

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 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).
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.
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.
4. The parties to this Agreement are the United States of America and the City of Billings, Montana.
5. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
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.

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

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.
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.).

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

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.
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.
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.
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

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].
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).
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:

will not discriminate on the basis of disability in its hiring or employment practices.

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.

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.

will maintain any employee's medical records separate from personnel files and keep them confidential.

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

1. 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.
2. 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).

3. 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. 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. 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).
6. 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.
7. 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.

8. 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.
9. 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

10. 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.
11. 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 five 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.
12. 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.
13. 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 five 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.

14. 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

15. 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).
16. 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

17. 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.

18. The City will comply with the cited provisions of the Standards when taking the actions required by this Agreement.
19. 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.
20. 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.
21. 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.
22. 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

23. 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

24. 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.
25. 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).

26. 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.
27. 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

28. 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.
29. 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.
30. 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.
31. 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.

32. 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.
33. 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.
34. This Agreement will remain in effect for four years.
35. The person signing for the City represents that he or she is authorized to bind the City to this Agreement.
36. The effective date of this Agreement is the date of the last signature below.

For the City:

For the United States:

BRADLEY J. SCHLOZMAN

Acting Assistant Attorney General for Civil Rights

By: _____
CHUCK TOOLEY, Mayor

By: _____

Date: _____

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

Date: _____

Attachment E: Program Access Modifications at Polling Places

Does Not Apply.

Attachment F: Polling Checklist

Does Not Apply.

Attachment G: Program Access Modifications at Emergency Shelters

Does Not Apply.

Attachment I: Modifications to Newly Constructed Facilities

Please Note: Paragraph 40 of the Settlement Agreement requires that within three months of the effective date of this Agreement, the City will provide 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.

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 following actions:

1. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to the **Operations Center**:
 - a. Exterior Entrance and Doors: The push buttons on the automatic exterior and interior doors are inaccessible because they require 10 and 9 pounds of force, respectively, to operate. Provide push buttons with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards §§ 4.1.3(13), 4.27.4.
 - b. Lobby Counter: The reception counter in the lobby is inaccessible because it is 43 inches above the finished floor. Provide a counter on an accessible route such that a portion of the counter is at least 36 inches wide and no more than 36 inches above the finished floor, or provide an auxiliary counter with a maximum height of 36 inches in close proximity to the main counter, or provide equivalent facilitation. Equivalent facilitation may be provided in the form of a folding shelf attached to the main counter, an auxiliary table nearby, a clip board made available to the public, or other means. Standards §§ 4.1.1(2), 7.2(2), 4.1.3(1), 4.3.
 - c. Drinking Fountain: Although a lower drinking fountain is provided, there is no drinking fountain provided for people who have difficulty bending or stooping. Provide a drinking fountain that is accessible to people who have difficulty bending or stooping. This can be accommodated by the use of a “hi-lo” fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible to people who use wheelchairs and a cup dispenser, or by such other means as would achieve the required accessibility for each group of people. Standards § 4.1.3(10)(a).

- d. Fire Extinguisher Cabinet: The hardware on the door to the fire extinguisher cabinet requires tight grasping and pinching to operate. Where provided, ensure that doors to fire extinguisher cabinets have mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards §§ 4.1.3(13), 4.1.6(1)(b), 4.27.4.
- e. Hallway Door: The main hallway door from the kitchen to the locker room is inaccessible because the pressure required to open the door is 16 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).
- f. Women's Locker Room
 - i. The locker room sign is inaccessible. Provide a locker room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
 - ii. The locker room door is inaccessible because the pressure required to open the door is 9 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).
 - iii. In the toilet stall for persons with disabilities, the toilet seat cover dispenser is inaccessible because the controls are mounted 48 inches above the finished floor, 10 inches above the back grab bar over the toilet, and require a forward reach above the toilet. Provide a seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
 - iv. The tampon dispenser is inaccessible because the controls require tight grasping and twisting of the wrist to operate. Provide a tampon dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Ensure that the controls are a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that it is

accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.27.4, 4.2.4, 4.2.5, 4.2.6.

- v. The paper towel dispenser is inaccessible because the controls require tight grasping, pinching or twisting of the wrist to operate. Provide a paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Ensure that the controls are a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.27.4, 4.2.4, 4.2.5, 4.2.6.
- vi. The transfer shower stall is too deep and the transfer bench does not extend the full depth of the stall. Within 18 months, provide a shower in this room that is exactly 36 inches wide and 36 inches deep with a 48 inch long and 36 inch wide clear floor space alongside the shower opening, and an L-shaped shower seat mounted on the wall opposite the controls and extending the full depth of the stall; OR a shower that is at least 30 inches deep and 60 inches wide with no curb or threshold and with a 36 inch deep and 60 inch wide clear floor space at the shower opening. Ensure that the shower has grab bars, controls, a shower spray unit, and a seat, curb, and enclosure, if provided, that comply fully with the Standards and with Figs. 35, 36, and 37, as applicable. Standards § 4.21, Figs. 35, 36, 37.
- vii. Although required in all dressing and locker rooms, no bench is provided. Provide a 24 inch by 48 inch bench fixed to the wall along the bench's longer dimension. Ensure that the bench has sufficient structural strength and is mounted with its surface between 17 inches and 19 inches above the finished floor. Provide clear floor space alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. Standards §§ 4.1.3(21), 4.35.4, 4.26.3.

g. Men's Locker Room

- i. The room sign is inaccessible. Provide a locker room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.

- ii. The locker room door is inaccessible because the pressure required to open the door is 16 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).
- iii. In the toilet stall for persons with disabilities, the toilet seat cover dispenser is inaccessible because the controls are mounted above the back grab bar over the toilet and require a forward reach over the toilet. Provide a seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
- iv. The paper towel dispenser is inaccessible because the controls require tight grasping, pinching or twisting of the wrist to operate. Provide a paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs).
- v. Although there are 6 or more toilet stalls, none is configured for ambulatory persons with disabilities. Within 18 months, provide at least one stall that is exactly 36 inches wide with an outward swinging, self-closing door and parallel grab bars complying with Fig 30(d). Standards §§ 4.1.3(11), 4.22.4, Fig. 30(d).
- vi. The transfer shower stall is too deep and the transfer bench does not extend the full depth of the stall. Provide a shower in this room that is exactly 36 inches wide and 36 inches deep with a 48 inch long and 36 inch wide clear floor space alongside the shower opening, and an L-shaped shower seat mounted on the wall opposite the controls and extending the full depth of the stall; OR a shower that is at least 30 inches deep and 60 inches wide with no curb or threshold and with a 36 inch deep and 60 inch wide clear floor space at the shower opening. Ensure that the shower has grab bars, controls, a shower spray unit, and a seat, curb, and enclosure, if provided, that comply fully with the Standards and with Figs. 35, 36, and 37, as applicable. Standards § 4.21, Figs. 35, 36, 37.
- vii. Although required in all dressing and locker rooms, no bench is provided. Provide a 24 inch by 48 inch bench fixed to the wall along the bench's longer dimension. Ensure that the bench has sufficient structural strength and is mounted with its surface between 17 inches and 19 inches above the finished floor. Provide clear floor space alongside the bench to allow a

person using a wheelchair to make a parallel transfer onto the bench.
Standards §§ 4.1.3(21), 4.35.4, 4.26.3.

- h. Motor Pool - Offices and Counters: The emergency shower pull cords are inaccessible because they are mounted at 69 inches above the finished floor. Provide an emergency shower such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
- i. Drinking Fountain Near Solid Waste and Motor Pool Locker Room: Although a lower fountain is provided, there is no higher fountain for persons who have difficulty bending or stooping. For each accessible drinking fountain, provide a drinking fountain that is accessible to people who have difficulty bending or stooping. This can be accommodated by the use of a “hi-lo” fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible to people who use wheelchairs and a cup dispenser, or by such other means as would achieve the required accessibility for each group of people. Standards § 4.1.3(10)(a).
- j. Single User Unisex Toilet Room Near Solid Waste Truck Bay
 - i. The toilet room sign is inaccessible. Provide a toilet room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
 - ii. The door is inaccessible because the pressure required to open the door is 15 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards §§ 4.1.3(7)(b), 4.13.11(2)(b).
 - iii. The door swings into the required clear floor space at the lavatory. Within 18 months, ensure that no door swings into the required clear floor space at any accessible fixture. Standards §§ 4.1.3(11), 4.22.2.
 - iv. Although an audible alarm is provided, there is no visual alarm appliance in this room. Within 18 months, provide a visual alarm appliance in the toilet room. Standards §§ 4.1.3(14), 4.28.1, 4.28.3.
 - v. The paper towel dispenser is inaccessible because the controls require tight grasping, pinching or twisting of the wrist to operate. Provide a

paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs).

- vi. The toilet paper dispenser is not within reach of a seated person on the toilet. Provide a toilet paper dispenser that is mounted within reach, with its top at least 1½ inches under the side grab bar, and centered at least 19 inches above the finished floor. Standards §§ 4.1.3(11), 4.22.4, 4.16.6, Fig. 29(b).
- vii. The toilet seat cover dispenser is inaccessible because the controls are mounted above the back grab bar over the toilet and require a forward reach above the toilet. Provide a seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
- viii. The side grab bar at the toilet is inaccessible because the distance of the farther end of the side grab bar is 49 inches to the rear wall. Provide a side grab bar that is at least 42 inches in overall length, with the far end mounted at least 54 inches from the rear wall and the closer end 12 inches or less from the rear wall. Standards §§ 4.1.3(11), 4.22.4, 4.16.4, Fig. 29(b).

2. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to the **Billings Animal Shelter Center**:

- a. The hallways throughout the facility are inaccessible because the shelves located at the service windows protrude into the main walkway and would not be detectable to a blind person using a cane. Provide an accessible route through the hallways such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards §§ 4.1.2(3), 4.4.
- b. Unisex Single User Toilet Room
 - i. The toilet room sign is mounted on the door. Provide a toilet room sign with raised and Braille characters. The sign shall be mounted on the wall

adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6.

- ii. The toilet is inaccessible because the flush control is on the closed side. Provide a flush control mounted on the “open” side of the toilet’s clear floor space; 44 inches or less above the finished floor; and requiring a maximum of 5 pounds of force to operate; or provide an automatic flush device. Standards §§ 4.1.3(11), 4.22.4, 4.16.5, 4.27.4.

3. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to **Fire Station Number 4:**

- a. Parking Lot: Although the parking lot has a total of 10 parking spaces and one parking space designated for people with disabilities, there is no access aisle, no space designated as “van accessible,” and the designated parking space is not on the shortest accessible route to the accessible entrance. On the shortest accessible route to the accessible entrance to the Fire Station or the adjacent Terry Park, provide one van accessible space designated as reserved for people with disabilities. Ensure that the van accessible space is a minimum of 96 inches wide and served by an access aisle at least 96 inches wide. At all spaces designated as reserved for persons with disabilities, provide vertical signs with the International Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. At van accessible spaces, provide an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Ensure that all spaces and access aisles for persons with disabilities are flat and level, with slopes and cross-slopes not exceeding 1:50 in all directions, and that their surfaces are firm, stable, and slip-resistant. Standards §§ 4.1.2(5), 4.1.6(1)(b), 4.6, 4.30.7(1).
- b. Exterior Entrance and Doors: In this three story facility, the main level has two entrances and they are accessible; the lower level has one exterior entrance and it is not accessible. There is no directional signage provided. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible entrances directing users to the accessible entrance, and provide accessible signage with the International Symbol of Accessibility at all permanent accessible entrances. Standards §§ 4.1.3(8)(d), 4.1.3(16)(b), 4.13, 4.30.
- c. Exterior Stairs Leading to Lower Level: Handrails are not provided on both sides of the stairs. Within 24 months, provide stairs with closed risers, uniform tread width and riser height, a tread depth of at least 11 inches measured from riser to riser, and nosings, treads, and risers that otherwise comply fully with the Standards. Provide handrails on both sides of the stairs such that the inside

handrail on switchbacks or doglegs is continuous; handrails that are not continuous beyond the top and bottom of the stairs extend at least 12 inches beyond the top riser and at least 12 inches plus the width of one tread beyond the bottom riser; there is a clear space between the handrails and the wall of 1½ inches; gripping surfaces are uninterrupted by newel posts, other construction elements, or obstructions; the handrails are mounted between 34 and 38 inches above stair nosings; the ends of the handrails are either rounded or returned smoothly to the floor, wall, or post; and the handrails do not rotate within their fittings. Standards §§ 4.1.3(4), 4.1.6(1)(b), 4.9.

- d. Access Among Levels (Interior): Handrails are not provided on both sides of the stairs leading to the upper level dormitory and handrails are not provided on both sides of the stairs leading to the lower level work-out room. Within 24 months, provide stairs with closed risers, uniform tread width and riser height, a tread depth of at least 11 inches measured from riser to riser, and nosings, treads, and risers that otherwise comply fully with the Standards. Provide handrails on both sides of the stairs such that the inside handrail on switchbacks or doglegs is continuous; handrails that are not continuous beyond the top and bottom of the stairs extend at least 12 inches beyond the top riser and at least 12 inches plus the width of one tread beyond the bottom riser; there is a clear space between the handrails and the wall of 1½ inches; gripping surfaces are uninterrupted by newel posts, other construction elements, or obstructions; the handrails are mounted between 34 and 38 inches above stair nosings; the ends of the handrails are either rounded or returned smoothly to the floor, wall, or post; and the handrails do not rotate within their fittings. Standards §§ 4.1.3(4), 4.1.6(1)(b), 4.9.
- e. Main Level Unisex Toilet Room
 - i. No accessible toilet room sign is provided. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
 - ii. The door swings into the required clear floor space at the lavatory. Ensure that no door swings into the required clear floor space at any accessible fixture. Standards §§ 4.1.3(11), 4.22.2.
 - iii. The paper towel dispenser is inaccessible because the controls require tight grasping, pinching or twisting of the wrist to operate. Provide a paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-

type, and electronically controlled mechanisms are examples of acceptable designs).

4. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to the **Country Manor Park**:
 - a. There is no accessible route to the pavilion or the trash cans. Provide at least one accessible route within the boundary of the site connecting these elements that, to the maximum extent feasible, coincides with the route for the general public. The accessible route must have a minimum clear width of 36 inches, or a minimum clear width of 42 inches if there is a turn around an obstruction less than 48 inches wide; have passing spaces at least 60 inches by 60 inches at least every 200 feet; have a minimum clear headroom of 80 inches; have a surface that is firm, stable, and slip resistant; have, in the absence of a curb ramp, ramp, elevator, or platform lift, no level changes in excess of ½ inch vertically; and have a running slope of less than 1:20 (5%) (or have been constructed as a fully accessible ramp) and a cross slope of less than 1:50 (2%). Standards §§ 4.1.3(1), 4.3, 4.5, Fig. 7.
 - b. There are no accessible picnic tables for people who use wheelchairs. Provide at least one picnic table on an accessible route such that there is knee space at the table at least 27 inches high, 30 inches wide, and 19 inches deep, and such that the height of the top of the table is between 28 inches and 34 inches above the ground. Standards §§ 4.1.3(18), 4.32.3, 4.32.4.
5. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to **Amend Park**: (note: this park, including the parking lots, is still under construction):
 - a. At the time of this review, Amend Park parking was still under construction. The parking lots were not fully completed. There was an inadequate number of parking spaces designated for people with disabilities. Many parking spaces designated for people with disabilities did not contain signage or access aisles. The plans and observations indicate there will be a total of four parking lots.
 - i. Although the north parking lot will have 258 parking spaces, only 5 are planned to be designated as reserved for persons with disabilities. On the shortest accessible route to the accessible entrance, provide one van accessible space and 6 standard spaces designated as reserved for people with disabilities. Standard accessible spaces shall be a minimum of 96 inches wide and served by access aisles at least 60 inches wide. Van accessible spaces shall be a minimum of 96 inches wide and served by access aisles at least 96 inches wide. All spaces designated as reserved for people with disabilities shall have vertical signs with the International

Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. Van accessible spaces shall have an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Standards §§ 4.1.2(5), 4.6, 4.30.7(1).

- ii. In the southern lots, some of the parking spaces designated as reserved for persons with disabilities do not have vertical signs with the International Symbol of Accessibility. At all spaces designated as reserved for persons with disabilities, provide vertical signs with the International Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. At van accessible spaces, provide an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Standards §§ 4.1.2(5), 4.6.4, 4.30.7(1).
- b. Drinking Fountains: The higher drinking fountain protrudes more than 4 inches into an accessible route and is not cane detectable. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- c. Concessions: The concession counters are inaccessible because the counters are 40 inches high. Provide a portion of the main counter on an accessible route such that the counter is 60 inches minimum in length and between 28 and 34 inches in height, or provide service at accessible tables within the same area of the facility. Standards § 5.2.
- d. There are no accessible picnic tables for people who use wheelchairs. Provide at least one picnic table on an accessible route such that there is knee space at the table at least 27 inches high, 30 inches wide, and 19 inches deep, and such that the height of the top of the table is between 28 inches and 34 inches above the ground. Standards §§ 4.1.3(18), 4.32.3, 4.32.4.
- e. Pavilion: No accessible route is provided to the pavilion. Provide at least one accessible route within the boundary of the site connecting elements that, to the maximum extent feasible, coincides with the route for the general public. The accessible route must have a minimum clear width of 36 inches, or a minimum clear width of 42 inches if there is a turn around an obstruction less than 48 inches wide; have passing spaces at least 60 inches by 60 inches at least every 200 feet; have a minimum clear headroom of 80 inches; have a surface that is firm, stable, and slip resistant; have, in the absence of a curb ramp, ramp, elevator, or platform lift, no level changes in excess of ½ inch vertically; and have a running slope of less than 1:20 (5%) (or have been constructed as a fully accessible ramp) and a cross slope of less than 1:50 (2%). Standards §§ 4.1.3(1), 4.3, 4.5, Fig. 7.

- f. Toilet Rooms with Stalls: The paper towel dispensers in both the Men's and Women's toilet rooms require tight grasping or pinching to advance the towels. In each, provide paper towel dispensers with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards §§ 4.1.3(13), 4.27.4.
6. Within twelve months of the effective date of this Agreement, the City shall complete the following modifications to the **Billings Skate Park**:
- a. Parking: The parking reserved for persons with disabilities is not located on the shortest accessible route to the accessible park entrance. Provide fully accessible parking that is located on the shortest accessible route to an accessible pedestrian entrance to the park. Standards §§ 4.1.2(5)(a), 4.1.2(5)(b), 4.6.2.
 - b. Drinking Fountain: The lower drinking fountain of the "high/low" fountain is not detectable to a blind person using a cane. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.

Attachment J: Modifications to Altered Facilities

Please Note: Paragraph 40 of the Settlement Agreement requires that within three months of the effective date of this Agreement, the City provide 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.

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 following actions:

1. Within 18 months of the effective date of this Agreement, the City shall complete the following modifications to the **Billings Parks & Recreation / Senior Center**:
 - a. Parking: None of the parking spaces designated as reserved for persons with disabilities are served by access aisles, most of the reserved spaces do not have vertical signs with the International Symbol of Accessibility. On the shortest accessible route to the accessible entrance, provide 1 van accessible space and 3 standard spaces designated as reserved for people with disabilities. Ensure that standard accessible spaces are a minimum of 96 inches wide and served by access aisles at least 60 inches wide. Ensure that van accessible spaces are a minimum of 96 inches wide and served by access aisles at least 96 inches wide. At all spaces designated as reserved for persons with disabilities, provide vertical signs with the International Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. At van accessible spaces, provide an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Ensure that all spaces and access aisles for persons with disabilities are flat and level, with slopes and cross-slopes not exceeding 1:50 in all directions, and that their surfaces are firm, stable, and slip-resistant. Standards §§ 4.1.2(5), 4.6, 4.30.7(1).
 - b. Accessible Route: Although the steep ramp located on the side of the building is no longer used as part of the accessible route, there is no directional signage pointing users with disabilities to an accessible route. Provide accessible directional signage with the International Symbol of Accessibility at this ramp directing users to the accessible route. Standards §§ 4.1.3(8)(d), 4.1.3(16)(b), 4.1.6(1)(b), 4.13, 4.30.
 - c. Men’s and Women’s Toilet Rooms at the Front of the Senior Center: These toilet rooms are inaccessible. There is no signage directing people with disabilities to the accessible toilet rooms. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible toilet rooms indicating the location of the nearest accessible toilet room, and provide accessible signage with the International Symbol of Accessibility at all accessible toilet rooms. Standards

§§ 4.1.2(7)(d), 4.1.6(3)(e)(iii), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.

d. Women's Toilet Room with Stalls Located at the Rear of the Senior Center

- i. The toilet room sign is mounted on the door. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.1.6(1)(b), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
- ii. Although an audible alarm is provided in this facility, there is no visual alarm appliance in the toilet room. Provide a visual alarm appliance in the toilet room. Standards §§ 4.1.3(14), 4.1.6(1)(b), 4.28.1, 4.28.3.
- iii. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.6, 4.19.4.
- iv. The paper towel dispensers and lavatory counters are protruding objects that are not cane-detectable. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- v. Toilet Stall for Persons with Disabilities
 - (1) The toilet stall is improperly configured, with the stall door opposite the toilet, rather than opposite the "open" side of the stall. Within 24 months, provide clear floor space that complies with Fig. 30 at the toilet. Standards §§ 4.1.3(11), 4.22.4, 4.17.3, Fig. 30.
 - (2) The toilet is inaccessible because its centerline measures 21 inches from the side wall. Within 24 months, provide a toilet with a centerline that measures 18 inches from the near side wall. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.16.2, Fig. 28.

- (3) The toilet is inaccessible because the flush control is on the closed side. Within 24 months, provide a flush control mounted on the “open” side of the toilet’s clear floor space; 44 inches or less above the finished floor; and requiring a maximum of 5 pounds of force to operate; or provide an automatic flush device. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.16.5, 4.27.4.
- (4) No accessible coat hook has been provided. Provide a coat hook at a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(12)(a), 4.1.6(1)(b), 4.25.2, 4.25.3, 4.2.4, 4.2.5, 4.2.6.
- (5) The toilet paper dispenser is mounted above the side grab bar and interferes with its use. Provide a side grab bar that has at least 1½ inches between the grab bar and any other object, such as the toilet paper dispenser. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.17.6, 4.26.2, Fig. 39.
- (6) The rear grab bar at the toilet is inaccessible because it is mounted at 48 inches above the finished floor. Provide a rear grab bar that is at least 36 inches in overall length, with the closer end no more than 6 inches from the side wall; mounted 33 to 36 inches above the finished floor; with a diameter between 1¼ and 1½ inches; with 1½ inches between the grab bar and the wall; and at least 1½ inches between the grab bar and any other object, such as a toilet seat cover dispenser. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.16.4, 4.26.2, Fig. 29.
- (7) The seat cover dispenser is inaccessible because it is mounted at 64 inches above the finished floor and located behind the toilet above the rear grab bar, requiring a forward reach above the toilet. Provide a seat cover dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Ensure that the controls are a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that it is accompanied by clear floor space of 30 by 48 inches that

allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(13), 4.1.6(1)(b), 4.27.2, 4.27.3, 4.27.4, 4.2.4, 4.2.5, 4.2.6.

e. Men's Toilet Room with Stalls at the Rear of the Senior Center.

- i. The toilet room sign is mounted on the door. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.1.6(1)(b), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
- ii. Although an audible alarm is provided in this facility, there is no visual alarm appliance in the toilet room. Provide a visual alarm appliance in the toilet room. Standards §§ 4.1.3(14), 4.1.6(1)(b), 4.28.1, 4.28.3.
- iii. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.6, 4.19.4.
- iv. The paper towel dispensers and lavatory counters are protruding objects that are not cane-detectable. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- v. Toilet Stall for Persons with Disabilities
 - (1) The toilet is inaccessible because its centerline measures 21 inches from the side wall. Within 24 months, provide a toilet with a centerline that measures 18 inches from the near side wall. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.16.2, Fig. 28.
 - (2) The toilet stall is improperly configured, with the stall door opposite the toilet, rather than opposite the "open" side of the stall. Within 24 months, provide clear floor space that complies with

Fig. 30 at the toilet. Standards §§ 4.1.3(11), 4.22.4, 4.17.3, Fig. 30.

- (3) No accessible coat hook has been provided. Provide a coat hook at a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(12)(a), 4.1.6(1)(b), 4.25.2, 4.25.3, 4.2.4, 4.2.5, 4.2.6.
- (4) The seat cover dispenser is inaccessible because it is mounted at 64 inches above the finished floor and located behind the toilet above the rear grab bar and requires a forward reach above the toilet. Provide a seat cover dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Ensure that the controls are a maximum height above the finished floor of 48 inches for a forward approach or 54 inches for a side approach and that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach by a person using a wheelchair. Standards §§ 4.1.3(13), 4.1.6(1)(b), 4.27.2, 4.27.3, 4.27.4, 4.2.4, 4.2.5, 4.2.6.
- (5) The toilet paper dispenser is inaccessible because it is mounted above the side grab bar. Provide a side grab bar that has at least 1½ inches between the grab bar and any other object, such as the toilet paper dispenser. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.17.6, 4.26.2, Fig. 39.
- (6) The rear grab bar at the toilet is inaccessible because it is mounted at 48 inches above the finished floor. Provide a rear grab bar that is at least 36 inches in overall length, with the closer end no more than 6 inches from the side wall; mounted 33 to 36 inches above the finished floor; with a diameter between 1¼ and 1½ inches; with 1½ inches between the grab bar and the wall; and at least 1½ inches between the grab bar and any other object, such as a toilet seat cover dispenser. Standards §§ 4.1.3(11), 4.1.6(1)(b), 4.22.4, 4.16.4, 4.26.2, Fig. 29.

2. Within 18 months of the effective date of this Agreement, the City shall complete the following modifications to the **Park 4 Garage**:
 - a. Parking: Although the parking lot has a total of 772 parking spaces, an inadequate number are designated as reserved for people with disabilities and although the parking lot has parking spaces designated as “van accessible,” these spaces are less than 96 inches wide, some have no access aisles and others access aisles that are less than 96 inches wide. Additionally, some of the vertical signs are too short and can be blocked by parked vehicles. On the shortest accessible route to the accessible entrance, provide 2 van accessible spaces and 14 standard spaces designated as reserved for people with disabilities. Standard accessible spaces shall be a minimum of 96 inches wide and served by access aisles at least 60 inches wide. Van accessible spaces shall be a minimum of 96 inches wide and served by access aisles at least 96 inches wide. All spaces designated as reserved for people with disabilities shall have vertical signs with the International Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. Van accessible spaces shall have an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Standards §§ 4.1.2(5), 4.1.6(1)(b), 4.6, 4.30.7(1).
 - b. Elevator: The elevator does not have hoistway signage on both sides of every floor. Provide signage at hoistway entrances with raised and Braille floor designations on both jambs such that the centerline of the characters is 60 inches above the finished floor and the characters are 2 inches high. Standards §§ 4.1.3(5), 4.1.6(1)(b), 4.10.5, Fig. 20.
3. Within 18 months of the effective date of this Agreement, the City shall complete the following modifications to **Terry Park**:
 - a. Drinking Fountains
 - i. The drinking fountain between the Men’s and Women’s toilet rooms protrudes into the circulation route and is not cane-detectable. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
 - ii. Although a lower drinking fountain is provided, there is no fountain provided for persons who have difficulty bending or stooping. For each

accessible drinking fountain, provide a drinking fountain that is accessible to people who have difficulty bending or stooping. This can be accommodated by the use of a “hi-lo” fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible to people who use wheelchairs and a cup dispenser, or by such other means as would achieve the required accessibility for each group of people. Standards § 4.1.3(10)(a).

- b. Women’s Toilet Room with Stalls: The toilet room sign is mounted on the door and it does not have Braille or raised characters. Provide a toilet room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.1.6(1)(b), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
- c. Men’s Toilet Room with Stalls
 - i. The toilet room sign is mounted on the door and it does not have Braille or raised characters. Provide a toilet room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.1.6(1)(b), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
 - ii. Route: The route within the toilet room is restricted to less than 36 inches for some extended periods. Provide an accessible route within the toilet room with a minimum clear width of 36 inches, except at doors. Standards §§ 4.1.3(1), 4.3.3.
 - iii. Toilet Stall: There is no accessible stall provided. Within 24 months, provide a “standard” accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall’s elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply with the Standards. Standards §§ 4.1.3(11), 4.22.4, 4.22.7, 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

Attachment K: Program Access in Existing Facilities

Pursuant to Paragraph 40 of the Agreement, within three months of the effective date of the Agreement, the City will provide 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.

The technical requirements and, where appropriate, the scoping requirements of the Standards are used as a guide for determining whether a program or activity held in an existing facility is “readily accessible to and usable by” persons with disabilities and for determining what changes are necessary to make this program or activity accessible if it continues to be provided in the existing facility in question. See 28 C.F.R. §§ 35.150(b)(1), 35.151.

In order to ensure that each of the City’s programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, are readily accessible to and usable by persons with mobility impairments, the City will take the following actions:

1. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to the **City Hall**:
 - a. Common Elements
 - i. The double-leaf entrance doors (exterior and interior) to the City Hall and Police Department are inaccessible because the automatic door openers are mounted on the doors. At each such location, provide automatic door openers that are positioned so that users will not be hit by the swing of the door. Standards § 4.13, Figs. 24, 25.
 - ii. Raised and Braille characters are not provided at doors to permanent rooms throughout the facility. Wherever permanent room signs are provided, provide accessible signage with raised and Braille characters at permanent rooms and spaces. Each such sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.3(16)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6.
 - iii. Numerous interior doors throughout the facility have knob handles. Within 36 months, at each door used by the public, provide door hardware that is easy to grasp with one hand and that does not require tight grasping, pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs.

Standards § 4.13.9.

- iv. Numerous interior doors throughout the facility are inaccessible because the pressure required to open the doors is greater than 5 pounds. For each door used by the public, ensure that the door requires no more than 5 pounds of force to open. Standards § 4.13.11(2)(b).
- v. Numerous service counters, gun lockers, and other elements throughout the facility are protruding objects that are not cane-detectable. Provide an accessible route at each such location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- vi. Although the facility contains an emergency alarm system, the alarm system is inaccessible because audible alarms are not provided in all meeting rooms where visual alarms are installed. Provide visual alarm devices in toilet rooms and any other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use. Such devices shall be integrated into the facility alarm system and shall meet the requirements of the Standards for lamp type, color, pulse duration, intensity, and flash rate. Visual alarm appliances shall be placed 80 inches above the highest floor level within the space or 6 inches below the ceiling, whichever is lower. Visual alarm appliances shall be located such that no place in any room or space, including common corridors or hallways, required to have a visual alarm appliance shall be more than 50 feet from the signal. In large rooms and spaces exceeding 100 feet across, without obstructions 6 feet above the finished floor, devices may be placed around the perimeter, spaced a maximum of 100 feet apart, in lieu of suspending appliances from the ceiling. Standards § 4.28.3.

b. City Hall Police and City Court

- i. Lift at Interior Entrance to Police Department: The lift located at the entrance to the Police Department is inaccessible because the lift was turned off, the key was difficult to locate, there was no buzzer or signage with lift instructions, and the staff was unaware of proper operation. Provide a lift at this location that facilitates unassisted entry, operation, and exit from the lift. Standards § 4.11.3.
- ii. Elevator

- (1) The elevator is inaccessible because the main entry floor call button is not designated by raised star. Provide car control buttons that are at least $\frac{3}{4}$ inch in their smallest dimension and are raised or flush and that are designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols. Ensure that the call button for the main entry floor is designated by a raised star at the left of the floor designation; that all raised designations for control buttons are placed immediately to the left of the buttons to which they apply; that floor buttons are provided with visual indicators to show when each call is registered and are extinguished when each call is answered; that all floor buttons are no higher than 54 inches above the finished floor for a side approach and no more than 48 inches above the finished floor for a front approach; and that emergency controls, including the emergency alarm and emergency stop, are grouped at the bottom of the panel and have their centerlines no less than 35 inches above the finished floor. Standards § 4.10.12, Fig. 23.
- (2) The elevator is inaccessible because car position does not ring as car passes or stops on floors. Provide visual car position indicators above the car control panel or over the door to show the position of the elevator in the hoistway. Ensure that indicators emit an audible and visual signal as the car passes or stops at a floor served by the elevator, with the corresponding floor designation being illuminated; and that numerals are a minimum of $\frac{1}{2}$ inch high. Standards § 4.10.13.
- (3) The elevator is inaccessible because, although emergency communications are provided, the system does not work without voice communication. Provide a two-way communication system such that it does not require voice communication, the highest operable part is a maximum of 48 inches above the finished floor of the car, and it is identified by a raised symbol and lettering located adjacent to the device. If the system uses a handset, ensure that the length of the cord from the panel to the handset is at least 29 inches. If the system is located in a closed compartment, ensure that the compartment door hardware operates without tight grasping, pinching or twisting of the wrist. Standards § 4.10.14.

iii. City Court on Second Floor

- (1) The metal detector has an opening width of only 29 inches.
Provide an entrance to the court with a clear opening of 32 inches.
Standards § 4.13.5, Fig. 24.
 - (2) There is no assistive listening system installed and there are not portable listening systems available. Provide a permanently installed assistive listening system (ALS) or a portable ALS with an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system. Also provide 4% of total seats or a minimum of 2 receivers for use by the general public and signage indicating their availability.
Standards §§ 4.30, 4.33.
 - (3) The jury box is inaccessible because there is an 8 inch step up to the jury box. Install a ramp or platform lift in compliance with the Standards or establish a procedure for providing access to this area. Any procedure shall not require lifting or carrying persons with mobility impairments or require them to traverse unnecessary or extreme distances. Standards §§ 4.33.5, 4.3.8, 4.8, 4.11.
- iv. Women's Toilet Room with Stalls Near City Hall Administrative Offices:
In the toilet stall for persons with disabilities, the toilet seat cover dispenser is inaccessible because it is mounted above the back grab bar over the toilet and require a forward reach above the toilet. Provide a seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
 - v. Men's Toilet Room with Stalls Near City Hall Administrative Offices: In the toilet stall for persons with disabilities, the toilet seat cover dispenser is inaccessible because the controls are mounted above the back grab bar over the toilet and require a forward reach above the toilet. Provide a seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.1.3(13), 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
 - vi. Women's Toilet Room with Stalls Near City Court
 - (1) The toilet room sign is mounted with the centerline at 54 inches

above the finished floor. Provide a toilet room sign with raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6.

- (2) In the toilet stall for persons with disabilities, the toilet seat cover dispenser is inaccessible because the controls are mounted above the rear grab bar. Provide a toilet paper seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.
- (3) The tampon dispenser is inaccessible because it requires grasping, pinching, or wrist-twisting to operate. Provide a tampon dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards § 4.27.4.

vii. Men's Single User Toilet Room Near City Court

- (1) The lavatory counter is a protruding object that is not cane-detectable. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- (2) The toilet is inaccessible because the flush control is on the closed side. Provide a flush control mounted on the "open" side of the toilet's clear floor space; 44 inches or less above the finished floor; and requiring a maximum of 5 pounds of force to operate; or provide an automatic flush device. Standards §§ 4.16.5, 4.17.2, 4.27.4.
- (3) The toilet seat cover is inaccessible because the controls are mounted above the rear grab bar over the toilet and requires a forward reach over the toilet. Provide a toilet seat cover dispenser such that the controls comply with Fig. 5 for a forward reach or

with Fig. 6 for a side reach and such that it is accompanied by clear floor space of 30 by 48 inches that allows a forward or parallel approach, respectively, by a person using a wheelchair. Standards §§ 4.27.2, 4.27.3, 4.2.4, 4.2.5, 4.2.6.

- viii. Drinking Fountains: The drinking fountain under the 1940 dedication sign is inaccessible because the fountain is not detectable to a blind person using a cane. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.

2. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to the **Park 3 Parking Garage**:

- a. Parking: Some of the parking spaces reserved for persons with disabilities are narrower than 96 inches or their vertical signs are too low, and none of the “van accessible” spaces are served by access aisles that are 96 inches or wider. On the shortest accessible route to the accessible entrance, provide at least 1 van accessible space and 6 standard spaces designated as reserved for people with disabilities. Ensure that standard accessible spaces are a minimum of 96 inches wide and served by access aisles at least 60 inches wide. Ensure that van accessible spaces are a minimum of 96 inches wide and served by access aisles at least 96 inches wide. At all spaces designated as reserved for persons with disabilities, provide vertical signs with the International Symbol of Accessibility located such that they cannot be obstructed by parked vehicles. At van accessible spaces, provide an additional “Van-Accessible” sign located below the International Symbol of Accessibility. Ensure that all spaces and access aisles for persons with disabilities are flat and level, with slopes and cross-slopes not exceeding 1:50 in all directions, and that their surfaces are firm, stable, and slip-resistant. Standards §§ 4.1.2(5), 4.6, 4.30.7(1).
- b. The ramp located on level 2 of the Park 3 parking garage is inaccessible because its handrails do not extend past the top and bottom of the ramp. Provide handrails that are between 1¼ inches and 1½ inches in diameter such that the inside handrail is continuous and both handrails have a continuous gripping surface along both sides of the ramp extending at least 12 inches beyond the top and bottom of the ramp parallel with the ground surface; the handrails do not rotate within their fittings; and both handrails are mounted between 34 inches and 38 inches above the ramp surface, with ends rounded or returned smoothly to the floor, wall, or post. Standards § 4.8.5.
- c. Entrances: There is no directional signage at accessible and inaccessible entrances. Provide accessible directional signage with the International Symbol

of Accessibility at inaccessible entrances directing users to the accessible entrance, and provide accessible signage with the International Symbol of Accessibility at all permanent accessible entrances. Standards §§ 4.1.3(8)(d), 4.13, 4.30.

3. Within six months of the effective date of this Agreement, the City shall submit for the Department's review and approval, a written plan for providing access for persons with disabilities to the programs currently held at **North Park, Hawthorne Park, Pioneer Park, Veteran's Park, Highland Park and Sprayground, Rose Park, Westwood Park, and Athletic Park/Cobb Stadium**. Such plan shall not unnecessarily segregate persons with disabilities.
4. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to the **Park 2 Parking Garage**:
 - a. Parking
 - i. Although there are parking spaces designated as "van accessible," the access aisles serving these spaces are less than 96 inches. Provide designated van accessible parking spaces that are a minimum of 96 inches wide and served by access aisles at least 96 inches wide. Standards §§ 4.1.2(5)(b), 4.6.3, Fig.9.
 - ii. The parking space on level 2 that is designated as "van accessible" is not level. Provide designated accessible parking spaces and access aisles that are flat and level, with slopes and cross-slopes not exceeding 1:50 in all directions, with surfaces that are firm, stable, and slip-resistant. Standards §§ 4.3.6, 4.5.1, 4.6.3.
 - b. Elevator
 - i. The elevator is inaccessible because no hoistway signage is provided. Provide signage at hoistway entrances with raised and Braille floor designations on both jambs such that the centerline of the characters is 60 inches above the finished floor and the characters are 2 inches high. Standards § 4.10.5, Fig. 20.
 - ii. The elevator is inaccessible because Braille is not provided at the call buttons and the main entry floor call button is not designated by a raised star. Provide car control buttons that are at least $\frac{3}{4}$ inch in their smallest dimension and are raised or flush and that are designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols. Ensure that the call button for the main entry floor is designated by a raised star at the left of the floor designation; that all raised designations for control buttons are placed immediately to the left of the buttons to which they apply; that floor buttons are provided

with visual indicators to show when each call is registered and are extinguished when each call is answered; that all floor buttons are no higher than 54 inches above the finished floor for a side approach and no more than 48 inches above the finished floor for a front approach; and that emergency controls, including the emergency alarm and emergency stop, are grouped at the bottom of the panel and have their centerlines no less than 35 inches above the finished floor. Standards § 4.10.12, Fig. 23.

5. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to the **City Library**:
 - a. Telephone on First Level of Library: The telephone is inaccessible because the coin slot is 63 inches above the finished floor. Provide an accessible telephone with a clear floor space of at least 30 inches by 48 inches that allows either a forward or parallel approach by a person using a wheelchair such that bases, enclosures, and fixed seats do not impede approaches to the telephone; with the highest operable part of the telephone mounted no more than 48 inches above the floor for a front approach or no more than 54 inches above the floor for a side approach; that is hearing aid compatible and has a volume control mechanism; with telephone books, if provided, located between 15 and 48 inches above the finished floor for a front approach or between 9 and 54 inches above the finished floor for a side approach; with a cord of at least 29 inches long from the telephone to the handset; and with signage that complies with the Standards. Standards §§ 4.31, 4.30.7(2).
 - b. Meeting Rooms Throughout the Facility: Despite having several meeting and conference rooms, there is no permanently installed or portable assistive listening system provided. Provide a permanently installed assistive listening system (ALS) in each meeting or conference room or a portable ALS with an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system. Also provide a minimum of 2 receivers for use by the general public and signage in each meeting or conference room indicating their availability. Standards §§ 4.30, 4.33.
 - c. Women's Toilet Room with Stalls; First Level of Library
 - i. The toilet room sign is mounted on the door, there is no International Symbol of Accessibility, and no raised and Braille characters. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.

- ii. The door is inaccessible because the pressure required to open the door is 15 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards § 4.13.11(2)(b).
- iii. The door is inaccessible because knob hardware is used and a standard key is required to unlock the door. Provide a door with hardware that is easy to grasp with one hand and that does not require tight grasping, pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. Standards § 4.13.9.
- iv. The door to the toilet room, which is accessed through a front approach, is inaccessible because the pull side clearance is less than 18 inches. On the pull side of the door, provide maneuvering clearance at least 60 inches deep and provide a minimum of 18 inches (24 inches is preferred) of maneuvering clearance on the latch side of the door. Standards § 4.13.6, Fig. 25(a).
- v. The bottom edge of the lavatory apron is 26 inches above the finished floor. Provide a lavatory with the top of its rim or counter 34 inches or less above the finished floor; the bottom edge of the apron at least 29 inches above the finished floor; and knee and toe clearances that comply with Fig. 31. Standards § 4.19.2, Fig. 31.
- vi. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards § 4.19.4.
- vii. The paper towel dispensers are protruding objects and would not be detectable to a blind person using a cane. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- viii. Toilet Stall for Persons with Disabilities: Although 1 toilet stall has some elements intended for use by persons with disabilities, there is no toilet stall that is accessible to persons who use wheelchairs. Provide a “standard” accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall’s elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply with the Standards. Standards §§ 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

d. Men's Toilet Room with Stalls

- i. The toilet room sign is mounted on the door, there is no International Symbol of Accessibility, and no raised and Braille characters. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
- ii. The door is inaccessible because the pressure required to open the door is 10 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards § 4.13.11(2)(b).
- iii. The door is inaccessible because knob hardware is used and a standard key is required to unlock the door. Provide a door with hardware that is easy to grasp with one hand and that does not require tight grasping, pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. Standards § 4.13.9.
- iv. The bottom edge of the lavatory apron is 26 inches above the finished floor. Provide a lavatory with the top of its rim or counter 34 inches or less above the finished floor; the bottom edge of the apron at least 29 inches above the finished floor; and knee and toe clearances that comply with Fig. 31. Standards § 4.19.2, Fig. 31.
- v. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards § 4.19.4.
- vi. Toilet Stall for Persons with Disabilities: Although 1 toilet stall has some elements intended for use by persons with disabilities, there is no toilet stall that is accessible to persons who use wheelchairs. Provide a "standard" accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall's elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply with the Standards. Standards §§ 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

e. Girls' Toilet Room

- i. There is no signage directing people with disabilities to the accessible toilet rooms. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible toilet rooms indicating the location of the nearest accessible toilet room, and provide accessible signage with the International Symbol of Accessibility at all accessible toilet rooms. Standards §§ 4.1.2(7)(d), 4.1.6(3)(e)(iii), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.
- f. Boys' Toilet Room
 - i. There is no signage directing people with disabilities to the accessible toilet rooms. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible toilet rooms indicating the location of the nearest accessible toilet room, and provide accessible signage with the International Symbol of Accessibility at all accessible toilet rooms. Standards §§ 4.1.2(7)(d), 4.1.6(3)(e)(iii), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.
- g. Elevator 1 (Between 1st and 2nd levels)
 - i. The elevator is inaccessible because the hall call buttons are centered at 59 inches above the finished floor and there is no visual signal to indicate when a call is registered or answered. Provide hall (lobby) call buttons with visual signals indicating when each call is registered and when each call is answered. Ensure that the call buttons are centered at 42 inches above the finished floor, a minimum of ¾ inch in the smallest dimension, with the button designating the up direction on top; that the call buttons are raised or flush; and that objects mounted beneath hall call buttons do not project into the elevator lobby more than 4 inches. Standards § 4.10.3, Fig. 20.
 - ii. The elevator is inaccessible because a position indicator does not ring as the car passes or stops on floors. Provide visual car position indicators above the car control panel or over the door to show the position of the elevator in the hoistway. Ensure that indicators emit an audible and visual signal as the car passes or stops at a floor served by the elevator, with the corresponding floor designation being illuminated; and that numerals are a minimum of ½ inch high. Standards § 4.10.13.
 - iii. The elevator is inaccessible because hoistway signage is not provided. Provide signage at hoistway entrances with raised and Braille floor designations on both jambs such that the centerline of the characters is 60 inches above the finished floor and the characters are 2 inches high. Standards § 4.10.5, Fig. 20.
 - iv. The car control buttons do not have Braille and visual indicators and the main entry floor call button does not have a raised star. Provide car

control buttons that are at least $\frac{3}{4}$ inch in their smallest dimension and are raised or flush and that are designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols. Ensure that the call button for the main entry floor is designated by a raised star at the left of the floor designation; that all raised designations for control buttons are placed immediately to the left of the buttons to which they apply; that floor buttons are provided with visual indicators to show when each call is registered and are extinguished when each call is answered; that all floor buttons are no higher than 54 inches above the finished floor for a side approach and no more than 48 inches above the finished floor for a front approach; and that emergency controls, including the emergency alarm and emergency stop, are grouped at the bottom of the panel and have their centerlines no less than 35 inches above the finished floor. Standards § 4.10.12, Fig. 23.

- v. The emergency communications system is not marked by raised symbol or lettering and a silent test call revealed that the operator did not know how to respond appropriately to a silent call, indicating that the system does not work without voice communication. Provide a two-way communication system such that it does not require voice communication, the highest operable part is a maximum of 48 inches above the finished floor of the car, and it is identified by a raised symbol and lettering located adjacent to the device. If the system uses a handset, ensure that the length of the cord from the panel to the handset is at least 29 inches. If the system is located in a closed compartment, ensure that the compartment door hardware operates without tight grasping, pinching or twisting of the wrist. Standards § 4.10.14.

6. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to **Fire Station # 1**:

- a. Parking: The signage designating parking as reserved for persons with disabilities is too low and the pavement markings lack adequate demarcation. At each space designated as reserved for persons with disabilities, provide a vertical sign with the International Symbol of Accessibility located such that it cannot be obstructed by vehicles parked in the space. Standards §§ 4.6.4, 4.30.7(1).
- b. Entrances
 - i. There is no signage with the International Symbol of Accessibility indicating the accessible entrances or directional signage at inaccessible entrances pointing to the accessible entrances. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible entrances directing users to the accessible entrance, and provide accessible signage with the International Symbol of Accessibility at all permanent accessible entrances. Standards §§ 4.1.3(8)(d), 4.13,

4.30.

c. Women's Toilet Room with Stalls (Basement)

- i. The toilet room sign is mounted on the door, there is no International Symbol of Accessibility, and no raised and Braille characters. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
- ii. The door is inaccessible because the pressure required to open the door is 11 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards § 4.13.11(2)(b).
- iii. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards § 4.19.4.
- iv. The paper towel dispenser controls requires tight grasping, pinching or twisting of the wrist to advance the towels for use. Provide a paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards § 4.27.4.
- v. The paper towel dispenser is a protruding object and would not detectable to a blind person using a cane. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- vi. Although 1 toilet stall has some elements intended for use by persons with disabilities, there is no toilet stall that is accessible to persons who use wheelchairs. Within 36 months, provide a "standard" accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall's elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply

with the Standards. Standards §§ 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

d. Men's Toilet Room with Stalls (Basement)

- i. The toilet room sign is mounted on the door, there is no International Symbol of Accessibility, and no raised and Braille characters. Provide a toilet room sign with the International Symbol of Accessibility and raised and Braille characters. The sign shall be mounted on the wall adjacent to the latch side of the door with the centerline of the sign at 60 inches above the finished floor and situated such that a person can approach within 3 inches of the sign without encountering an obstruction or standing within a door swing. Standards §§ 4.1.2(7)(d), 4.30.1, 4.30.4, 4.30.5, 4.30.6, 4.30.7.
- ii. The door is inaccessible because the pressure required to open the door is 10 pounds. Provide a door that requires no more than 5 pounds of force to open. Standards § 4.13.11(2)(b).
- iii. The lavatory is inaccessible because the hot water pipes are not insulated or otherwise configured to protect against contact. Provide hot water and drain pipes that are insulated or otherwise configured to protect against contact. Standards § 4.19.4.
- iv. The paper towel dispenser is a protruding object and would not be detectable to a blind person using a cane. Provide an accessible route at this location such that no objects with their bottom leading edges measuring between 27 inches and 80 inches above the finished floor protrude more than 4 inches into walks, halls, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum from 27 inches to 80 inches above the ground or finished floor. Standards § 4.4.
- v. The paper towel dispenser controls require tight grasping, pinching or twisting of the wrist to advance the towels for use. Provide a paper towel dispenser with mechanical controls, if any, that can be operated with 5 lbf or less and that can be used with one hand and without tight grasping, pinching, or twisting of the wrist (lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs). Standards § 4.27.4.
- vi. Although 1 toilet stall has some elements intended for use by persons with disabilities, there is no toilet stall that is accessible to persons who use wheelchairs. Within 36 months, provide a "standard" accessible toilet stall at least 60 inches wide and at least 59 inches deep (or at least 56 inches deep with a wall-mounted toilet) such that all of the stall's elements, including stall door, stall door hardware, water closet, size and arrangement, toe clearances, grab bars, controls, and dispensers, comply

with the Standards. Standards §§ 4.13, 4.16, 4.17, 4.26, 4.27, Fig. 30.

e. Women's Toilet Room near Lobby (Main Level)

- i. There is no signage directing people with disabilities to the accessible toilet rooms. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible toilet rooms indicating the location of the nearest accessible toilet room, and provide accessible signage with the International Symbol of Accessibility at all accessible toilet rooms. Standards §§ 4.1.2(7)(d), 4.1.6(3)(e)(iii), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.

f. Men's Toilet Room near Lobby (Main Level)

- i. There is no signage directing people with disabilities to the accessible toilet rooms. Provide accessible directional signage with the International Symbol of Accessibility at inaccessible toilet rooms indicating the location of the nearest accessible toilet room, and provide accessible signage with the International Symbol of Accessibility at all accessible toilet rooms. Standards §§ 4.1.2(7)(d), 4.1.6(3)(e)(iii), 4.30.1, 4.30.2, 4.30.3, 4.30.5, 4.30.7.

g. Elevator

- i. The elevator is inaccessible because the hoistway signage lacks raised characters and Braille. Provide signage at hoistway entrances with raised and Braille floor designations on both jambs such that the centerline of the characters is 60 inches above the finished floor and the characters are 2 inches high. Standards § 4.10.5, Fig. 20.

7. Within 24 months of the effective date of this Agreement, the City shall complete the following modifications to the **Utility Services Center**:

- a. Parking: There are no demarcated access aisles serving the parking spaces designated as reserved for persons with disabilities. At each standard accessible space, provide an access aisle at least 60 inches wide. At each van accessible space, provide an access aisle at least 96 inches wide. Ensure that all access aisles are flat and level, with slopes and cross-slopes not exceeding 1:50 in all directions, and that their surfaces are firm, stable, and slip-resistant. Standards §§ 4.1.2(5), 4.6.3, Fig. 9.

Attachment L: Access to Billings Programs Housed in Others' Facilities

Access to City Programs Housed in Others' Facilities: In order to ensure that the City's 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 implement and report to the Department its written plan regarding how the programs, activities, or services housed in the following facilities will be made accessible to persons with disabilities:

1. GW Building, located at 2720 3rd Avenue North
 - a. Public Defender's Office (Suite 240): The door requires 14 pounds of force to operate. Provide a door that requires no more than 5 pounds of force to open. Standards §§ 4.1.3(7)(b), 4.1.6(1)(b), 4.13.11(2)(b).
 - b. Offices - Generally: The office doors have round door knob hardware. Provide doors with hardware that is easy to grasp with one hand and that does not require tight grasping, pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. Standards §§ 4.1.3(7)(b), 4.1.6(1)(b), 4.13.9.
 - c. Elevator
 - i. The elevator call buttons are centered at 54 inches above the finished floor. Ensure that the call buttons are centered at 42 inches above the finished floor, a minimum of $\frac{3}{4}$ inch in the smallest dimension, with the button designating the up direction on top; that the call buttons are raised or flush; and that objects mounted beneath hall call buttons do not project into the elevator lobby more than 4 inches. Standards §§ 4.1.3(5), 4.1.6(1)(b), 4.10.3, Fig. 20.
 - ii. No hoistway signage is provided. Provide signage at hoistway entrances with raised and Braille floor designations on both jambs such that the centerline of the characters is 60 inches above the finished floor and the characters are 2 inches high. Standards §§ 4.1.3(5), 4.1.6(1)(b), 4.10.5, Fig. 20.
 - iii. Car Controls: Braille or raised characters are not provided to the left of the buttons, the main entry floor button is not designated by a star, visual button indicators are not provided, emergency controls are located at the top of the control panel, and the emergency alarm button is 61 inches above the finished floor. Provide car control buttons that are at least $\frac{3}{4}$ inch in their smallest dimension and are raised or flush and that are designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols. Ensure that the call button for the main entry floor is designated by a raised star at the left of the floor designation; that all raised designations for control buttons

are placed immediately to the left of the buttons to which they apply; that floor buttons are provided with visual indicators to show when each call is registered and are extinguished when each call is answered; that all floor buttons are no higher than 54 inches above the finished floor for a side approach and no more than 48 inches above the finished floor for a front approach; and that emergency controls, including the emergency alarm and emergency stop, are grouped at the bottom of the panel and have their centerlines no less than 35 inches above the finished floor. Standards §§ 4.1.3(5), 4.1.6(1)(b), 4.10.12, Fig. 23.

- d. The Women's single user toilet room contains a number of inaccessible elements and is not accessible to people with disabilities. Provide an accessible toilet room such that all of the room's elements, including signage, door, door hardware, clear floor space, water closet, grab bars, lavatory, mirror, controls, and dispensers, comply with the Standards. Standards §§ 4.13, 4.16, 4.18, 4.19, 4.26, 4.27, 4.30, Figs. 28, 29.
- e. The Men's single user toilet room contains a number of inaccessible elements and is not accessible to people with disabilities. Provide an accessible toilet room such that all of the room's elements, including signage, door, door hardware, clear floor space, water closet, urinal (if provided), grab bars, lavatory, mirror, controls, and dispensers, comply with the Standards. Standards §§ 4.13, 4.16, 4.18, 4.19, 4.26, 4.27, 4.30, Figs. 28, 29.

Attachment M: Fiscal Analysis
Selected examples from existing Parks

North Park:

Page 7 of Attachment K

North Park is an “anchor” park which would mean we would provide access to all programs at this park.

Items: Parking signage	\$ 150
Signage	\$ 40
Closure adjustment (4)	\$ 0 (staff)
Provide floor object	\$ 40
Insulate hot water pipes	\$ 50 (staff)
Knob hardware change (2)	\$ 600
Unisex restroom accessible in Rec bldg	\$ 3000
Toilet changes	\$ 450
Restroom modifications	\$ 6500
Pavillion picnic table	\$ 200
Tennis court accessible route	\$ 2000
Accessible route baseball field	\$ 3000
 TOTAL – North Park	 \$16030

Hawthorne Park:

Being a neighborhood park, some program access would be referred to the “anchor” park for the area.

Items: Signage for referral to anchor park	\$ 150
Barbeque grill access	\$ 200
 TOTAL – Hawthorne Park	 \$ 350

Pioneer Park:

This would also be designated as an “anchor park”

Items: Signage changes	\$ 200
Toilet changes	\$ 500
Add edge protection to pool ramp	\$ 400
Add route change to restrooms	\$ 2500
 TOTAL – Pioneer Park	 \$ 3600

Rose Park:

This is an ‘anchor’ park

Items: Parking signage change	\$ 150
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TOTAL – Rose Park \$ 150

The Estimates contained in these are estimates as we understand the items required to comply today. As the projects are reviewed, these estimates may vary.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Annexation petition #05-09: Acknowledge receipt of petition and set a public hearing date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: DC Capital Real Estate, LLC is petitioning to annex land to the City of Billings under 7-2-4600, MCA. The .294-acre, undeveloped parcel is located at the on Broadwater Avenue, west of 52nd Street West. The adjacent Broadwater Avenue right-of-way will also be annexed bringing the total area to .363 acres. The parcel was once a County park, dedicated with the Grand Acres Subdivision. The legal description of the parcel is simply, Grand Acre Park, Grand Acre Subdivision. The park is now abandoned and owned by the DC Capital Real Estate, LLC. The property is contiguous with the Legacy Subdivision, a recently annexed and subdivided property. The petitioner is requesting annexation in order to incorporate this parcel into the subdivision and obtain city water and sewer services. City Council will consider this annexation at two separate Council meetings. At the first meeting, the Council acknowledges receipt of a petition and sets a public hearing date for September 26, 2005. At the second meeting, the Council conducts the hearing and acts on the petition to annex.

ALTERNATIVES ANALYZED: MCA, Section 7-2-4600 allows owners of more than 50% of the property to petition the city for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The proposed subdivision lies within the acceptable limits of annexation.

FINANCIAL IMPACT: A fiscal impact analysis and staff recommendation will be prepared and presented at the public hearing.

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for September 26, 2005, to consider annexing this property.

Approved by: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Property data
- B. Annexation petition
- C. Map

ATTACHMENT A
Annexation #05-09 Property Data

Type of annexation:	Petitioned - MCA 7-2-4600
Petitioner:	DC Capital Real Estate, LLC
Purpose of annexation:	Obtain City services
Property included:	Grand Acres Park (abandoned)
Location:	Broadwater Avenue west of 52 nd Street West
Total area:	.294 net acres; .363 acres with Broadwater ROW
Current zoning:	Agriculture - Open Space
Current land use:	Vacant
Future zoning:	R-9,600
Future land use:	Single Family

ATTACHMENT B
Annexation Petition #05-09

**PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS**

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

The map must show:

- a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Pamyly 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
8/12/05	Richard A. Down	Richard A. Down	2680 Overland Ave. Suite F

(continued on separate page)

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

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

[illegible]

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 8.12.05

Received By: C. Beaudry

Petition Number: AA05-Q8

Fee Paid: \$200.00

P:05021_Petition_Annex

(08/12/05) dml

[illegible]

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Grant Award – Domestic Violence Training
DEPARTMENT: Billings Police Department
PRESENTED BY: Jerry Archer, Chief of Police

PROBLEM/ISSUE STATEMENT: The Montana Board of Crime Control has awarded the City a grant for Domestic Violence training. This will consist of Lt. Mark Wynn conducting a Domestic Violence training on September 27th and 28th, 2005 and also attendance for Lt. Tim O’Connell, Officer Mike Samson, Karen Benner (Victim Witness Advocate) and Melanie Pfiefer (Domestic Violence Prosecuting Attorney) to the Domestic Violence conference in Baltimore, Maryland in October. City Council is being asked to accept this grant award from the State in the total amount of \$11,600.

FINANCIAL IMPACT: There is State funding of \$8,700 and a City match of \$2,900, for a total grant amount of \$11,600. This grant has been budgeted in the 05/06 budget.

RECOMMENDATION

Staff recommends that Council accept the grant award from the State in the total amount of \$11,600 for Domestic Violence training.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2004

SUBJECT: Sale of Surplus Property
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City of Billings will conduct an auction of surplus City items and police recovered property on Saturday, September 24, 2005, at the Billings Operations Center, located at 4848 Midland Road, Billings, MT 59101.

Attached is a list of those items departments would like sold at the City auction. The list has been circulated to all departments for their review. If other departments are interested in any of the items, they will not be auctioned.

The final list may change and will include only items no longer needed by the City of Billings.

RECOMMENDATION

Staff recommends that City Council declare the attached list of items as surplus property and give staff authorization to sell them at the public auction.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A-City of Billings Auction List

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday September 12, 2004

TITLE: Subordination of First Time Homebuyer Loan
DEPARTMENT: Planning and Community Services
PRESENTED BY: Ramona Mattix, Planning Department Director

PROBLEM/ISSUE STATEMENT: The Community Development Division has received a request to subordinate a First Time Homebuyer loan. HOME funds were provided to Kama Morast of 4228 Vaughn Lane, Unit #2, on September 18, 1998 for assistance with down payment, closing costs and minor repairs. On her original application for assistance, Ms Morast listed Jesse Arstein, her boyfriend, as a household member, but not a co-applicant. On June 20, 2005, Ms Morast quit-claimed the property to Mr. Arstein, without completing a title search. She has since moved out of state. Mr. Arstein is applying for a streamline refinance to assume the original mortgage and keep his home.

ALTERNATIVES ANALYZED: Alternative is to deny the subordination request and risk the City having to pay the \$5,000 back to HUD.

FINANCIAL IMPACT: The loan was a zero percent interest, and deferred until one of the following occurs; the recipient sells the home, the recipient refinances their mortgage, or they cease to live in the home. The City's recapture provisions as stated on the Deed Restriction Agreement state "the recapture provisions will be revived according to the original terms if during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the property." Conversations with the Legal Department have concluded because of the family ties, the recapture provisions will be revived and Mr. Arstein will assume the responsibility. Staff has reviewed the market value of the home and the preliminary HUD-1 settlement statement and has determined that subordinating the loan to a new home mortgage loan and remaining in second position will not jeopardize the City's investments or create greater risk.

RECOMMENDATION

Staff recommends that the City of Billings subordinate its lien in second position to a new mortgage loan by First Interstate Bank to Jesse Arstein in the first position.

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

ATTACHMENT(S)

- A. Subordination Agreement
- B. Substitution of Trustee

Subordination Agreement

Comes Now, The City of Billings, a Municipal Corporation, organized under the laws of the State of Montana, represents that it is the secured party under the provisions of a certain Trust Indenture dated September 18, 1998 executed by Kama Morast, and Bonnie Sutherland, as Trustee, recorded September 18, 1998 under Document 3019834 in the records of the Clerk and Recorder for Yellowstone County, Montana.

DO HEREBY SUBORDINATE the lien of said Trust Indenture to the lien and obligation of a Trust Indenture wherein William Lamdin is named as Beneficiary, Jesse Arstein is Grantor, and Brent Brooks is named as Trustee, dated _____, recorded in book _____, page _____, under document number _____, Yellowstone County Montana.

The intent of the undersigned is to subordinate the first above described Trust Indenture to the new lien ONLY as it is related to the below described real property; and to retain the priority position of the first above described Trust Indenture as to all other real property described herein; to wit:

Unit No. 2 of Optimist Park Townhomes, a condominium on Lots 6A, 7A and 8A, Block 2 of Amended Subdivision Plat of the West 25 Feet of Lot 5 and all of Lots 6, 7, 8 and 9, Block 2, Hayes Subdivision in the City of Billings, Yellowstone County, Montana according to the official plat thereof on file and of record in the Office of the Clerk and Recorder of said County under Document No. 1250793.

TOGETHER with an undivided percentile interest in common elements of said townhomes, as the said unit and common elements are established, defined and identified in the Declaration of Unit Ownership for Optimist Park Townhomes recorded April 20, 1984, Book 1260, under Document No. 1304843, and the Amendment to the Declaration of Unit Ownership for Optimist Park Townhomes recorded July 10, 1984, Book 1263, under Document No. 1315215, and the Second Amendment to the Declaration of Unit Ownership for Optimist Park Townhomes recorded July 12, 1985, Book 1277, under Document No. 1356617, records of Yellowstone County, Montana.

IN WITNESS WHEREOF, this instrument has been executed this _____ day of _____ 2005.

CITY OF BILLINGS

By: _____, Mayor

ATTEST: _____, City Clerk

ACKNOWLEDGEMENT

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this ____ day of _____, 2005, before me, a Notary Public for the State of Montana, personally appeared CHARLES F. TOOLEY and MARITA HEROLD, known to be to be the Mayor and City Clerk respectively of the City of Billings, and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Printed Name:_____

Notary Public for the State of Montana

Residing at Billings, Montana

My Commission Expires:_____

SUBSTITUTION OF TRUSTEE

KNOW ALL MEN THAT THESE PRESENTS:

THAT **Kama Morast**, is the Grantor(s), and BONNIE SUTHERLAND of Billings, Montana, an attorney licensed to practice law in the State of Montana, is the Trustee, and the CITY OF BILLINGS, a municipal corporation, organized under the laws of the State of Montana, acting through its Development Services Department, is the Beneficiary under the Deed of Trust dated **September 18, 1998**, and recorded on **September 18, 1998** of the records of Yellowstone County, Montana, as Document No. **3019834** in and to the following described real property:

Unit No. 2 of Optimist Park Townhomes, a condominium on Lots 6A, 7A and 8A, Block 2 of Amended Subdivision Plat of the West 25 Feet of Lot 5 and all of Lots 6, 7, 8 and 9, Block 2, Hayes Subdivision in the City of Billings, Yellowstone County, Montana according to the official plat thereof on file and of record in the Office of the Clerk and Recorder of said County under Document No. 1250793.

TOGETHER with an undivided percentile interest in common elements of said townhomes, as the said unit and common elements are established, defined and identified in the Declaration of Unit Ownership for Optimist Park Townhomes recorded April 20, 1984, Book 1260, under Document No. 1304843, and the Amendment to the Declaration of Unit Ownership for Optimist Park Townhomes recorded July 10, 1984, Book 1263, under Document No. 1315215, and the Second Amendment to the Declaration of Unit Ownership for Optimist Park Townhomes recorded July 12, 1985, Book 1277, under Document No. 1356617, records of Yellowstone County, Montana.

The successor Trustee is the City Attorney and the Beneficiary desires to have the City Attorney act as Trustee.

NOW THEREFORE, in view of the premises, the undersigned hereby appoints and substitutes BRENT BROOKS, an attorney licensed to practice law in the State of Montana, whose address is P.O. Box 1178 Billings, MT 59103, as successor trustee, under said Deed of Trust, the successor to have all the powers of said original trustee, effective forthwith.

IN WITNESS WHEREOF, this instrument has been executed this ____ day of September 2005.

CITY OF BILLINGS

By: _____
Mayor

ATTEST: _____
City Clerk

STATE OF MONTANA)
 :SS
County of Yellowstone)

On this _____ day of September 2005, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Charles F. Tooley, known to me to be the Mayor of the City of Billings whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of the City of Billings.

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

Printed Name: _____
Notary PUBLIC for the State of MT
Residing in Billings, Montana
My Commission expires: _____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Pledged Collateral on Certificates of Deposits, US Bank Repurchase Account, and US Bank Municipal Investor Account

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On June 30, 2005, the City had \$4,500,000 invested in Certificates of Deposit at Wells Fargo Bank N.A., Billings; \$6,100,000 invested in Cash and Certificates of Deposit at US Bank N.A.; \$628,833.96 invested in the U.S. Bank Municipal Investor Account; and \$4,464,505.89 in the US Bank Repurchase Account.

State law requires that the City Council approve the pledged collateral on securities.

Because Wells Fargo's net worth ratio is over 6%, the City is required to have 50% of the deposits covered by pledged securities. Wells Fargo has collateralized the City's deposits with 60.3% in pledged securities.

Because US Bank's net worth ratio is in excess of 6%, the City is required to have a minimum of 50% of the deposits covered by pledged securities. US Bank has collateralized the City's Certificates of Deposit and Municipal Investor Account with 111.82% in pledged securities and collateralized the Repurchase Account 102 % in pledged securities.

RECOMMENDATION

Staff recommends that Council approve securities pledged by Wells Fargo Bank and US Bank as collateral for their respective Certificates of Deposit and repurchase account.

Approved By: City Administrator ____ City Attorney ____

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Semi Annual Investment Report
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City of Billings Investment Policy states the City Administrators Office shall submit semi-annually, an investment report describing the portfolio in terms of type, interest rate, maturity and market value. In addition, the investment policy requires the funds average maturity may not exceed 397 days. The rate of return on investments was calculated on the earnings for the period of 1/1/05 to 6/30/05. On June 30, 2005 the City had the following amounts invested:

Repurchase Agreements	\$ 4,464,505.89
Montana State Short Term Investment Pool	\$ 28,012,489.61
U.S. government and U.S. agency obligations	\$ 55,309,855.14
Certificates of deposit	\$ 10,702,005.48
US Bank Municipal Investor	\$ 628,833.96
 Total Investments	 \$ 99,117,690.08
 Funds Average Days to Maturity	 210.09 Days
 Rate of Return on Investments (1/30/05 to 6/30/05)	 2.318%

RECOMMENDATION

Staff recommends that Council approve the Semi-Annual Investment Report.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Investment Detail

			Market Values		
			Long Term Investments		
			as of		
			6/30/2005		
	Institution and Type of Investment	Interest Rate	Value Carried by City	Market Values Per Institution	
		Due		6/30/2005	
	USB Financial				
	FHLB	2.2500	03/23/06	500,000.00	494,690.00
	FHLB	2.8750	10/15/05	2,028,120.00	1,996,260.00
	Balance			2,528,120.00	2,490,950.00
	Piper Jaffray				
	FHLB	2.2500	11/17/05	1,000,000.00	995,200.00
	FHLB		07/20/05	986,073.00	998,300.00
	Balance			1,986,073.00	1,993,500.00
	D.A.D. & Co.				
	FHLB	2.0400	11/15/05	1,500,000.00	1,492,035.00
	FHLB	2.2500	11/17/05	1,000,000.00	995,310.00
	FHLMC	2.0000	02/23/06	500,000.00	494,530.00
	FHLB	2.1800	03/24/06	500,000.00	494,375.00
	FHLB	2.5000	04/28/06	650,000.00	643,500.00
	FHLB	3.5000	04/28/06	500,000.00	498,905.00
	FHLB	2.8100	05/03/06	2,999,400.00	2,976,570.00
	FHLB	3.0500	06/16/06	2,998,800.00	2,979,390.00
	FHLB	3.1500	07/11/06	2,998,650.00	2,981,250.00
	FHLB	3.4700	09/08/06	2,995,800.00	2,987,820.00
	FHLB step up	3.2500	10/12/06	999,340.00	999,380.00
	FHLB	2.2500	10/13/06	500,000.00	490,315.00
	US Treasury Note	6.5000	10/15/06	10,000.00	10,362.90
	FHLB	2.7500	11/24/06	500,000.00	492,815.00
	FNMA	2.4100	11/28/06	2,500,000.00	2,452,350.00
	FNMA	2.1000	12/19/06	2,000,000.00	1,951,500.00
	US Treasury Note	6.2500	02/15/07	5,000.00	5,208.60
	FHLB	2.5500	02/28/07	2,500,000.00	2,449,225.00
	Fed. Farm Credit	2.3500	03/26/07	510,000.00	497,408.10
	FHLMC		11/15/05	983,599.00	987,000.00
	FHLB	2.2500	06/26/07	1,000,000.00	969,690.00
	US Treasury Note	6.1250	08/15/07	10,000.00	10,502.30
	US Treasury Note	5.5000	02/15/08	10,000.00	10,462.90
	US Treasury Note	6.0000	08/15/09	10,000.00	10,865.20
	US Treasury Note	6.5000	02/15/10	5,000.00	5,579.90
	FHLB step up	3.0000	02/09/06	1,000,000.00	998,130.00
	Balance			29,185,589.00	28,884,479.90
	RBC Dain Raucher				

	FNMA	2.5500	03/15/06	2,000,000.00	1,983,760.00
	FNMA		07/19/05	986,450.00	998,400.00
	Balance			2,986,450.00	2,982,160.00
	Institution and Type of Investment	Interest Rate		Value Carried by City	Market Values Per Institution
			Due		
					6/30/2005
	Wachovia - Buchanan Capital				
	FHLMC	2.8750	09/15/05	998,919.70	998,850.00
	FHLMC	2.1250	11/15/05	993,400.00	994,760.00
	FHLMC	2.0500	11/28/05	2,975,601.27	2,982,840.00
	FNMA	2.1650	09/29/06	500,000.00	489,995.00
	FNMA	2.7000	04/12/06	1,999,600.00	1,984,280.00
	FNMA	2.7500	05/11/06	2,000,000.00	1,983,120.00
	FHLB	3.2100	02/09/06	1,000,000.00	999,090.00
	FHLB	2.7500	08/25/06	2,000,000.00	1,994,520.00
	FHLB	3.0000	08/17/06	2,999,313.30	2,991,150.00
	FHLB	2.7500	03/07/06	498,850.00	499,470.00
	FHLB	3.2500	10/12/06	999,800.00	1,000,030.00
	FHLB	1.8000	12/27/05	123,750.00	123,932.50
	FHLB	3.0200	01/18/06	498,805.77	498,285.00
	FHLMC		01/10/06	499,966.60	501,582.27
	FHLB step up	3.5000	12/15/06	535,616.50	534,498.17
	Balance			18,623,623.14	18,576,402.94
	Miscellaneous				
	STIP	3.2600			28,012,489.61
	US Bank CDs	2.8400			1,000,000.00
		3.4000			500,000.00
		3.5300			1,000,000.00
		3.5300			1,000,000.00
		**			2,600,000.00
	MIA	2.8300			628,833.96
	Credit Union CDs	2.0000			102,005.48
	Wells Fargo CDs	2.7200			4,000,000.00
		2.0700			500,000.00
	Investment totals				94,270,821.89
	Less Amortized premium and discounts				<u>28,953.52</u>
					94,241,868.37
	Total investments at cost			<u>94,653,184.19</u>	
	Investment Total including the Repurchase account			99,117,690.08	
	**Non compensating US Bank CD				
	earning credits applied to bank charges				

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Authorization for a Loan for WO 03-02#1 and WO 02-14
DEPARTMENT: Administration-Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City was in the process of submitting an application for an InterCap Loan through the Montana Board of Investments to pay for two sidewalk projects. We were unable to fulfill one of the requirements that we obtain two marketability opinions. Both projects have been completed and have to be placed on the property tax bills in November. By using a loan from Solid Waste funds in the amount of \$278,058, we would be able to place these assessments on the tax bills and save the property owners \$10,000 on bond issuance costs. We will pool these two projects with other sidewalk projects that will be completed and repay the loan with the bond proceeds.

FINANCIAL IMPACT: The loan would be for one year at 3.8% interest rate. This is equivalent to the InterCap Loan rate and higher than the City's average rate of return on investments.

RECOMMENDATION

Staff recommends City Council approve the loan for projects WO 03-02#1 and WO 02-14.

Approved By: City Administrator ____ City Attorney ____

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

Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Bikenet's 5th Annual Ales for Trails Partial Street Closure
DEPARTMENT: Parks, Recreation and Public Lands
PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT:

Bikenet requests partial street closure of the 1st lane of traffic of Montana Avenue in front of the Billings Depot from 8:00 am on Friday, September 30, until 10:30 pm for its 5th annual Alles for Trails event. Map is attached.

Recommended conditions of approval include that Bikenet:

1. Contact all businesses and make them aware of the event 30 days in advance
2. Clean the area to be used and provide and empty waste cans
3. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
4. Obtain proper open container and noise permits from the Police Department
5. Provide and install adequate traffic barricades and signs directing motorists around closure
6. Make provisions for emergency access
7. Provide a certificate of insurance naming the City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the City of Billings for this event other than administrative time to process the permit. Police, traffic control and litter removal are to be paid for by Bikenet.

RECOMMENDATION

Staff recommends that Council approval the partial closure of the 1st lane of Montana Avenue in front of the Billings Depot from 8:00 am on Friday, September 30, until 10:30 pm for the 5th annual Ales for Trails event.

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

ATTACHMENTS

- A. Letter from Bikenet (2 pages)
- B. Right of Way Special Activity Permit (2 pages)
- C. Closure map (1 page)
- D. Certificate of insurance (1 page)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: City of Billings/Yellowstone County Agreement to provide Law Enforcement Data Processing Services for the period July 1, 2005 through June 30, 2006

DEPARTMENT: Administrative Services – Information Technology Division

PRESENTED BY: Jim Guy, Information Technology Manage

PROBLEM/ISSUE STATEMENT:

Approve the annual Data Processing Agreement between the City of Billings and the Yellowstone County Sheriff's Department. The City of Billings has contracted with Yellowstone County for the past several years to provide the Sheriff's Department with New World Public Safety access, disk storage, computer processing, program maintenance and operations to support their existing data processing requirements in exchange for a charge based on the actual cost of resources used during the prior fiscal year. This is an annual agreement.

FINANCIAL IMPACT:

The annual charge for July 1, 2005 through June 30, 2006 is \$78,562.00. The annual charge for the prior year was \$73,173.00. The increase of \$5,389.00 is due to the increased usage of the Public Safety Systems.

RECOMMENDATION

Staff recommends that Council approve the agreement to provide data processing services for the Yellowstone County Sheriff's Department in the amount of \$78,562.00.

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

ATTACHMENTS

A – Data Processing Agreement

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

SUBJECT: Resolution Relating to Water System Revenue Bonds Series 2005;
Authorizing the Issuance and Fixing the Terms and Conditions

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: On June 27, 2005, City Council approved a commitment agreement with the Department of Revenue for issuance of bonds for the water system improvements. The following resolution authorizes the issuance and fixes the terms and conditions of the bonds.

RECOMMENDATION

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

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a resolution entitled: "RESOLUTION RELATING TO \$17,300,000 WATER SYSTEM REVENUE BOND (DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on September 26, 2005, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____
_____; voted against the same: _____
_____; abstained from voting
thereon: _____; or were absent: _____
_____.

WITNESS my hand officially this _____ day of September, 2005.

City Clerk

BOND RESOLUTION

relating to

\$17,300,000 WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005

CITY OF BILLINGS, MONTANA

Adopted: September 26, 2005

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RESOLUTION NO. _____

RESOLUTION RELATING TO \$17,300,000 WATER SYSTEM REVENUE BOND (DNRC DRINKING WATER REVOLVING LOAN PROGRAM), SERIES 2005; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF

WHEREAS, pursuant to the Drinking Water State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 6, Part 2, as amended (the “Act”), the State of Montana (the “State”) has established a revolving loan program (the “Program”) to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the “DNRC”), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the “DEQ”), and has provided that a drinking water state revolving fund (the “Revolving Fund”) be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state drinking water revolving fund under the federal Safe Drinking Water Act (the “Safe Drinking Water Act”), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Safe Drinking Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, the City of Billings, Montana (the “Borrower”) has applied to the DNRC for a loan (the “Loan”) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the Project (as hereinafter defined) which will carry out the purposes of the Safe Drinking Water Act; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2005 Bond (as hereinafter defined) to evidence the Loan for the purposes set forth herein; and

WHEREAS, the DNRC will fund the Loan in part, directly or indirectly, with proceeds of State Bonds (as hereinafter defined) and in part, directly or indirectly, with funds provided by the United States Environmental Protection Agency.

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

DEFINITIONS, RULES OF CONSTRUCTION AND EXHIBITS

Definitions. In this Resolution, unless a different meaning clearly appears from the context:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the account within the Fund established pursuant to Sections 11.1 and 11.2.

“Act” means Montana Code Annotated, Title 75, Part 6, Chapter 2, as amended from time to time.

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

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any Counsel nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bond” shall mean the Series 2005 Bond, or Water Debt to be issued on a parity therewith pursuant to Article X.

“Borrower” means the City of Billings, Montana, or any permitted successor or assign.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“Closing” means the date of delivery of the Series 2005 Bond to the DNRC.

“Code” means the Internal Revenue Code of 1986, as amended.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Resolution and the Series 2005 Bond. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Resolution shall be without effect.

“Committed Amount” means the amount of the Loan committed to be lent by the DNRC to the Borrower pursuant to 0, as such amount may be reduced pursuant to 0 and 0.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the Project, selected by the Borrower and satisfactory to the DNRC.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the

Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the Act.

“Enabling Act” means Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, which authorizes the Borrower to own and operate the System, to undertake the Project and to issue the Series 2005 Bond to finance the costs of the Project.

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

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Section 1452 of the Safe Drinking Water Act.

“Fund” means the Water Fund established pursuant to Section 11.1.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of May 1, 1998, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan” means the Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the costs of the Project, and to fund a deposit to the Reserve Account.

“Loan Loss Reserve Surcharge” means a fee equal to one percent (1%) per annum on the outstanding principal amount of the Loan, payable on the same dates that payments of interest on the Loan are due.

“Net Revenues” means the entire amount of the gross revenues of the System (as described in Section 11.1) remaining upon each such monthly apportionment, after crediting to

the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve in the minimum amount herein stated.

“Operating Account” means the account within the Fund established pursuant to Sections 11.1 and 11.3.

“Operating Expenses” means those expenses of the System defined as such in Section 11.3.

“Operating Reserve” means the reserve to be maintained in the Operating Account as required by Section 11.3.

“Opinion of Counsel” means a written opinion of Counsel.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Program” means the Drinking Water State Revolving Fund Program established by the Act.

“Project” means the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the Loan, described in Exhibit A hereto.

“Public Entity” means a State agency, city, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body created pursuant to State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Regulations” means the Treasury Regulations, whether final, temporary or proposed, promulgated under the Code or otherwise applicable to the Series 2005 Bond.

“Replacement and Depreciation Account” means the account within the fund established pursuant to Sections 11.1 and 11.6.

“Reserve Account” means the account within the Fund established pursuant to Sections 11.1 and 11.5.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum amount of principal and interest payable on the Bonds in any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Reserved Amounts” means any undisbursed Committed Amount which will or may be required to pay any remaining costs of the Project upon completion thereof as provided in Section 3.4(a).

“Revenue Bond Account” means the account within the Fund established pursuant to Section 11.1 and 11.4.

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

“Series 2005 Bond” means the \$17,300,000 Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2005, issued to the DNRC to evidence the Loan.

“State” means the State of Montana.

“State Bonds” means the State’s General Obligation Bonds (Drinking Water State Revolving Fund Program), issued pursuant to the Indenture.

“Surplus Account” means the account within the Fund established pursuant to Sections 11.1 and 11.7.

“Surplus Net Revenues” shall mean that portion of the Net Revenue in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the existing municipal water system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including the Project.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

“Water Debt” means Debt incurred to acquire, construct, extend, improve, add to or otherwise pay expenses of or related to the System, without regard to the source of payment and security for such Debt (i.e., without regard to whether it is general obligation or revenue Debt), or Debt payable from, or secured by, in whole or in part, any Water Revenues.

“Water Debt Service” means, for the period of determination, all required payments of principal and interest (including mandatory sinking fund redemptions) on all Water Revenue Debt of the Borrower.

“Water Revenue Debt” means all Debt of the Borrower which is secured solely or partly by the Water Revenues.

“Water Revenues” means revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

Other Rules of Construction. For all purposes of this Resolution, except where the context clearly indicates otherwise:

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

Terms in the singular include the plural and vice versa.

All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

All references to mail shall refer to first-class mail postage prepaid.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

“Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Exhibits. Attached to this Resolution and hereby made a part hereof are the following Exhibits:

Exhibit A: a description of the Project;

Exhibit B: the form of the Series 2005 Bond; and

Exhibit C: additional agreements and representations of the Borrower.

REPRESENTATIONS AND COVENANTS

Representations. The Borrower represents as follows:

Organization and Authority. The Borrower:

is duly organized and validly existing as a municipal corporation and political subdivision of the State;

has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Resolution and to enter into the Collateral Documents and to issue the Series 2005 Bond and to carry out and consummate all transactions contemplated by this Resolution, the Bond and the Collateral Documents;

is a Governmental Unit and a Public Entity; and

has taken all proper action to authorize the execution, delivery and performance of its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2005 Bond in the maximum amount of the Committed Amount.

Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by this Resolution, the Bond and the Collateral Documents or the validity and enforceability of this Resolution, the Series 2005 Bond and the Collateral Documents. If any such litigation should be initiated or threatened, the Borrower will forthwith notify in writing the DNRC, and will furnish the DNRC a copy of all documents, including pleadings, in connection with such litigation. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the Project, the Series 2005 Bond or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Bond.

Borrowing Legal and Authorized. The adoption of this Resolution, the execution and delivery of the Series 2005 Bond and the Collateral Documents and the consummation of the transactions provided for in this Resolution, the Series 2005 Bond and the Collateral Documents and compliance by the Borrower with the provisions of this Resolution, the Series 2005 Bond and the Collateral Documents:

are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any resolution, indenture, loan agreement or other agreement or instrument (other than this Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of the charter or similar document, if applicable, of the Borrower or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Bond and the Collateral Documents, would constitute a default under this Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2005 Bond and the Collateral Documents.

Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Resolution, the Bond and the Collateral Documents or for the Project, the financing or

refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Resolution, issuing the Series 2005 Bond or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder. If a utility board or commission manages or controls the System, such board or commission has agreed with the DNRC to abide by the terms of this Resolution and the Collateral Documents, including approving any necessary water rate increases.

Binding Obligation. This Resolution, the Bond and any Collateral Document to which the Borrower is a party are the valid and binding special obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

The Project. The Project consists and will consist of the facilities, improvements and activities described in Exhibit A, as such Exhibit A may be amended from time to time in accordance with the provision of Article III of this Resolution. The Project comprises facilities of a type that, as determined by the EPA, will facilitate compliance with the national primary drinking water regulations applicable to the System or will otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

The System. The System is a "community water system" within the meaning of the Act and the Safe Drinking Water Act in that it is a public water system, comprising collection, treatment, storage and distribution facilities for the provision to the public of water for human consumption, that serves not less than 15 service connections used by year-round residents of the area served by the System or regularly serves not less than 25 year-round residents.

Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Bond.

Compliance With Law. The Borrower:

(1) is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

(2) has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under this Resolution, the Series 2005 Bond and the Collateral Documents.

Covenants.

Insurance. The Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the DNRC as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this Section 2.2(a) and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this Section 2.2(a).

Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under this Resolution, the Bond and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in

such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under this Resolution, the Series 2005 Bond and the Collateral Documents.

Maintenance of Security, if Any; Recordation of Interest.

The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of this Resolution and the Collateral Documents so long as any amount is owing under this Resolution or the Series 2005 Bond;

The Borrower shall forthwith, after the execution and delivery of the Series 2005 Bond and thereafter from time to time, cause this Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Board Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph (ii), and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2005 Bond and the Collateral Documents and the documents described in subparagraph (ii).

Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Exhibit C hereto.

Financial Information. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

- (1) the preliminary budget for the System, with items for the Project shown separately; and
- (2) when adopted, the final budget for the System, with items for the Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other

transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with this Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

A balance sheet as of the end of the fiscal year;

The number of premises connected to the System at the end of the fiscal year;

The amount on hand in each account of the Fund at the end of the fiscal year;

A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

A determination that the report shows full compliance by the Borrower with the provisions of this Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Revenue Bond Account (as hereinafter defined), and receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum amount of principal and interest payable on outstanding Bonds in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with this Resolution, or that the methods used in accounting for such revenues were contrary to any provision of this Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of this Resolution.

Project Accounts. The Borrower shall maintain Project accounts in accordance with generally accepted government accounting standards.

Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Safe Drinking Water Act, as provided in Section 75-6-224(1)(d) of the Act.

Compliance with Safe Drinking Water Act. The Borrower has complied and shall comply with all conditions and requirements of the Safe Drinking Water Act pertaining to the Loan and the Project, and shall maintain sufficient financial, managerial and technical capability to continue to effect such compliance.

Compliance with DEQ Requirements. The Borrower shall comply with plan, specification and other requirements for public water systems established by the DEQ, as required by Section 75-6-224(1)(h).

USE OF PROCEEDS; THE PROJECT

Use of Proceeds. The Borrower shall apply the proceeds of the Loan from the DNRC solely as follows:

The Borrower shall apply the proceeds of the Loan solely to the financing, refinancing or reimbursement of the costs of the Project as set forth in Exhibit A hereto and this Section 3.1. The Loan will be disbursed in accordance with Article IV hereof and Article VII of the Indenture. If the Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the Project and expend proceeds of the Series 2005 Bond to pay the costs of completing the Project.

No portion of the proceeds of the Loan shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Resolution of a Project the construction or acquisition of which occurred or began earlier than June 1, 1993. In addition, if any proceeds of the Loan are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this Resolution, the Borrower has complied in respect of such expenditures with the requirements of Section 1.150-2 of the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto.

Any Debt to be refinanced with proceeds of the Loan was incurred after June 1, 1993 for a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

The Project. Set forth in Exhibit A to this Resolution is a description of the Project, which describes the property which has been or is to be acquired, installed, constructed or

improved and the other activities, if any to be funded from the Loan (the Project may consist of more than one facility or activity). The Project may be changed and the description thereof in Exhibit A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

A certificate of the Borrower setting forth the amendment to Exhibit A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the Project and whether the change will materially accelerate or delay the construction schedule for the Project;

A written consent to such change in the Project by an Authorized DNRC Officer;

An Opinion or Opinions of Bond Counsel stating that the Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the Act and is, and was at the time the Series 2005 Bond was issued, eligible for financing under the Enabling Act, such amendment will not violate the Act or the Enabling Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2005 Bond from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed.

The Borrower acknowledges and agrees that an increase in the principal amount of the Loan may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to this resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in this resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the Loan to pay Project Costs or as to the availability of additional funds under the Program to increase the principal amount of the Loan.

Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

all construction of the Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards;

all future construction of the Project will be done only pursuant to fixed price construction contracts, and the Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

all future construction will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ; and

the Project is a project of the type permitted to be financed under the Enabling Act, the Act and the Program and Section 1452 of the Safe Drinking Water Act.

Completion or Cancellation or Reduction of Costs of the Project.

Upon completion of the Project, the Borrower shall deliver to the DNRC a certificate stating that the acquisition and construction of the Project have been completed, stating the amount, if any, of the Reserved Amounts, and releasing the remaining amount, if any, of the Committed Amount. If any Reserved Amount is not later needed, the Borrower shall so inform the DNRC and release such amount. If Exhibit A describes two or more separate projects as making up the Project, a separate completion certificate shall be delivered for each.

If all or any portion of the Project is cancelled or reduced or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and release the portion of the Committed Amount which will not be needed.

THE LOAN

The Loan; Disbursement of Loan. The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this Section 4.1 are met, an amount up to \$17,300,000 (the "Committed Amount") for the purposes of financing, refinancing or reimbursing the Borrower for the costs of the Project; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after 360 days following the Estimated Completion Date. The Committed Amount may be reduced as provided in 0 and 0. The Loan shall be disbursed as provided in this 0. The DNRC intends to disburse the Loan through the Trustee.

In consideration of the issuance of the Series 2005 Bond by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the Loan but only upon receipt of the following documents:

(1) an Opinion of Bond Counsel as to the validity and enforceability of the Series 2005 Bond and the security therefor and stating in effect that interest on the Series 2005 Bond is not includable in gross income for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

(2) the Series 2005 Bond, fully executed and authenticated;

(3) a certified copy of this Resolution;

(4) any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the Loan;

(5) if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than June 1, 1993 or the debt was incurred no earlier than June 1, 1993, (B) of the Borrower's title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if any proceeds of the Loan are to be used to reimburse the Borrower for Project costs paid prior to the date of adoption of this Resolution, the Borrower has complied in respect of such expenditures with the requirements of Section 1.150-2 of the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto;

(6) the items required by the Indenture for the portion of the Loan to be disbursed at Closing;

(7) such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

In order to obtain a disbursement of a portion of the Loan to pay costs of the Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

For refinancings, a disbursement schedule complying with the requirements of the Safe Drinking Water Act shall be established by the DNRC and the Borrower at Closing. The Trustee shall disburse Loan amounts directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need any portion of the Loan which was to have been used to refinance such debt, it shall inform the DNRC and the Trustee of such fact pursuant to Section 3.4(b) and a new disbursement schedule shall be drawn up by the DNRC. The DNRC shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

If all or a portion of a Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Safe Drinking Water Act established by the DNRC and the Borrower at the Closing.

Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do “overmatching” pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its best efforts to obtain an acceleration of such schedule if necessary.

Upon making each Loan disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2005 Bond.

The Borrower agrees that it will deposit in the Reserve Account upon receipt any proceeds of the Loan borrowed for the purpose of causing the balance in the Reserve Account equal the Reserve Requirement, either on the Closing Date of the Loan or upon any disbursement date. The Borrower further acknowledges and agrees that any portions of the Loan representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Debt Service Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2005 Bond and interest thereon shall accrue only from the date of transfer.

Compliance by the Borrower with its representations, covenants and agreements contained in this Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the Loan in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the Loan.

Commencement of Loan Term. The Borrower’s obligations under this Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Resolution. However, the obligation to make payments under Article V hereof shall commence only upon the first disbursement by the Trustee of Loan proceeds.

Termination of Loan Term. The Borrower’s obligations under this Resolution and the Collateral Documents shall terminate upon payment in full of all amounts due under the Series 2005 Bond and this Resolution; provided, however, that the covenants and obligations provided in 0, Section 12.4, and 0 shall survive repayment of the Series 2005 Bond.

Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

REPAYMENT OF LOAN

Repayment of Loan. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof, plus interest on the unpaid amounts lent at the rate of two percent (2.00%) per annum, in semiannual Loan Repayments. In addition, the Borrower shall pay an Administrative Expense Surcharge on the outstanding principal amount of the Loan at the rate of seventy-five hundredths of one percent (0.75%) per annum and a Loan Loss Reserve Surcharge equal to one percent (1.00%) per annum on the outstanding principal amount of the Loan. For purposes of this Resolution and the Program, the term “interest” on the Loan shall include the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge. The Borrower shall pay all Loan Repayments and Administrative Expense Surcharges and Loan Loss Reserve Surcharge in lawful money of the United States of America to the DNRC. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

The Loan Repayments required by this Section 5.1, and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge, shall be due on each January 1 and July 1 (the “Payment Dates”), as follows:

(1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the Loan shall be payable on each January 1 and July 1, beginning January 1, 2006 and concluding July 1, 2025; and

(2) the principal of the Loan shall be repayable on each Payment Date, beginning on January 1, 2006 and concluding on July 1, 2025, and the amount of each principal payment shall be calculated on the basis of level debt service at an interest rate of 3.75% per annum; provided that principal of the Loan is payable only in amounts that are multiples of \$1,000.

The payments of principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the Loan shall be due on the dates and in the amounts shown in Schedule B to the Series 2005 Bond, as such Schedule B shall be modified from time to time as provided below. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2005 Bond. Upon each disbursement of Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Series 2005 Bond under “Advances” and the total amount advanced under Section 4.1, including such disbursement, under “Total Amount Advanced.”

If the advance was made to pay costs of the Project pursuant to Section 4.1(b), interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. Once the completion certificate for a Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2005 Bond in accordance with this Section 5.1 and the Trustee

shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest and Administrative Expense Surcharges and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Any payment of principal, interest or Administrative Expense Surcharge and Loan Loss Reserve Surcharge under this 0 shall also be credited against the same payment obligation under the Series 2005 Bond.

Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the Loan, the Collateral Documents and the Series 2005 Bond, including, but not limited to:

- (1) the cost of reproducing this Resolution, the Collateral Documents and the Series 2005 Bond;
- (2) the fees and disbursements of Bond Counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, this Resolution, the Collateral Documents and the Series 2005 Bond and the enforcement thereof; and
- (3) all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2005 Bond, whether or not the Series 2005 Bond is then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2005 Bond, the Collateral Documents and this Resolution under the Board Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2005 Bond unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part pursuant to this Section 5.3, such prepayments shall be applied to principal payments in inverse order of maturity.

Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by this Resolution and the Series 2005 Bond and to perform its other agreements contained in this Resolution, the Series 2005 Bond and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in this Resolution and

the Series 2005 Bond, (b) shall perform all its other agreements in this Resolution, the Series 2005 Bond and the Collateral Documents and (c) shall not terminate this Resolution, the Series 2005 Bond or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with this Resolution.

Limited Liability. All payments of principal of and interest on the Loan and other payment obligations of the Borrower hereunder and under the Series 2005 Bond shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Resolution and the Series 2005 Bond shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2005 Bond, and no funds or property of the Borrower other than the Net Revenues may be used to pay principal of or interest on the Series 2005 Bond.

OTHER AGREEMENTS OF BORROWER

Maintenance of System; Liens. The Borrower shall maintain the System, including the Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the Project or any other property making up part of the System, other than liens securing Debt where a parity lien secures the Series 2005 Bond; provided that this Section 6.1 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under this Resolution, the Series 2005 Bond and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under this Resolution, the Bond and the Collateral Documents, (b) such action does not violate the Act or the Safe Drinking Water Act and does not adversely affect the exclusion of interest on the Series 2005 Bond or the State Bonds from gross income for federal income tax purposes, and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this Section 6.2.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

Covenants Relating to the Tax-Exempt Status of the State Bonds.

The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2005 Bond or any other funds of the Borrower, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower agrees that it will not enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the State Bonds.

The Borrower shall not use or permit the use of the Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

Any portion of the Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the DNRC to comply with Sections 2.2(h), 2.2(i) and 6.3 hereof and if the DNRC receives an Opinion of Bond Counsel to the effect that such transfer will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation. In addition, except as otherwise provided herein or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Safe Drinking Water Act.

At the Closing of the Loan the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements

of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except Additional State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

The Borrower agrees that during the Loan Term it will not contract with or permit any Private Person to manage the Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not will not violate the Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation.

The Borrower may not lease the Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any Default to occur under this Resolution, provided the Borrower may lease all or any portion of the Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower shall not change the use or nature of the Project if (i) such change will violate the Safe Drinking Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Competing Service. The Borrower will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the System.

Billing. The charges for water services shall be billed at least monthly, and if the bill is not paid within 90 days of the date of billing, or if the customer fails to comply with all rules and regulations established for the System within 90 days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the water service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for water service or approval by the Council of a contractual payment agreement for water service and compliance with all such rules and regulations. The Borrower shall take appropriate legal action to collect the unpaid charges, including, to the extent now or hereafter authorized by law, making the charge a lien against the real property served by the water connection for which the charge remains unpaid and causing charges with respect to such properties to be collected in the same manner as taxes levied against property within the Borrower.

Remedies. The DNRC, so long as it owns the Series 2005 Bond, or the owners of not less than 25% in principal amount of the outstanding Bonds issued and secured under the provisions of this Resolution shall have the right, either at law or in equity, through suit, action or other proceedings, to protect and enforce the rights of all owners of such Bonds and to compel the performance of any and all of the covenants required herein to be performed by the Borrower, and its officers and employees, including but not limited to the fixing and maintaining of rates, fees and charges and the collection and proper segregation of gross revenues and the application and use thereof. The owners of a majority in principal amount of such outstanding Bonds shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Bondowners or the exercise of any power conferred on them and the right to waive a default in the performance of any such covenant, and its consequences, except a default in the payment of the principal of, premium, or interest on any Bond when due. However, nothing herein shall impair the absolute and unconditional right of the owner of each such Bond to receive payment of the principal of, premium, if any, and interest on such Bond as such principal and interest respectively become payable, and to institute suit for any such payment. Any court having jurisdiction of the action may appoint a receiver to administer the System on behalf of the Borrower with power to charge and collect rates, fees and charges sufficient to provide for the payment of any Bonds or obligations outstanding against the System, and to apply the gross revenues in conformity with this Resolution and the laws of the State.

Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating them, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of water services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain the Operating Reserve herein established, and to produce net revenues during each fiscal year commencing with the fiscal year ending June 30, 2005, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year.

If at the close of any fiscal year the net revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

The establishment of the above ratio of net revenues available for the Revenue Bond Account is deemed necessary for the DNRC to make the Loan to the Borrower upon terms most advantageous. The excess of the Net Revenues over the annual principal and interest and reserve requirements of the Series 2005 Bond may be used as authorized in 0 of this Resolution. The Series 2005 Bond may be prepaid according to its terms on any date, and in the estimation of the governing body of the Borrower any excess, prior to that date, of Net Revenues over principal

and interest payments actually due and the balance required to be maintained in the Reserve Account, will be needed to pay or to provide reserves for payment of replacements, renewals and improvement costs, in order to provide adequate service for the present population and the increase thereof reasonably to be expected; and after that date, any excess not required for such purposes in the judgment of the governing body of the Borrower may be used to prepay the Series 2005 Bond and thereby reduce the interest cost thereon to the Borrower and to the persons served by the System.

Appointment of Superintendent. In the event of default on the part of the Borrower in the payment of principal of or interest on any Bond promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of 60 days, the governing body of the Borrower will appoint a special superintendent for the System, with the power and responsibility to operate the System for the Borrower, and to recommend to the governing body of the Borrower such revisions of the rates and charges and operating policies as may be necessary to comply with this Resolution, and to assure that the Net Revenues will be sufficient to pay all principal of and interest on Bonds, and he shall in all things so operate the System as to comply fully with all the requirements and provisions of this Resolution. The right of the owners of the Bonds to require employment of such a superintendent shall not be exclusive, and in the event of default as herein outlined, such owner or owners shall have the right to proceed at law or in equity, in any form of action which shall to them seem appropriate.

INDEMNIFICATION OF DNRC, DEQ AND TRUSTEE

The Borrower shall indemnify and save harmless the DNRC, the DEQ, the Trustee and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of, resulting from or in any way connected with the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the Project. The Borrower shall also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of any such claim or demand, the Borrower shall, upon notice from the Indemnified Party, defend such proceeding on behalf of the Indemnified Party. Notwithstanding the foregoing, the Borrower shall not be obligated to indemnify an Indemnified Party or any of its officers, employees or agents or hold any of them harmless against or from or in respect of any claim, damage, demand, expense, liability or loss arising from the intentional or willful misconduct or gross negligence of the Indemnified Parties.

ASSIGNMENT

Assignment by Borrower. The Borrower may not assign its rights and obligations under this Resolution or the Series 2005 Bond, except as provided in Section 6.2.

Assignment by DNRC. The DNRC will pledge its rights under and interest in this Resolution, the Series 2005 Bond and the Collateral Documents (except to the extent otherwise

provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

State Refunding Bonds. In the event the State Bonds and Additional State Bonds are refunded by bonds which are not Additional State Bonds, all references in this Resolution to State Bonds and Additional State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and Additional State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of Additional State Bonds, all references in this Resolution to the State Bonds shall be deemed to refer to such Additional State Bonds or, in the case of a crossover refunding, both the State Bonds and such Additional State Bonds.

THE SERIES 2005 BOND

Authorization. Under the provisions of the Enabling Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

Outstanding Water Debt. The City currently has no obligations that are payable from Water Revenues of the System.

Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2005 Bond the net revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The net revenues to be produced by such rates, charges and rentals during the term of the Series 2005 Bond will be more than sufficient to pay the principal and interest when due on the Series 2005 Bond, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as herein prescribed.

Issuance and Sale of the Series 2005 Bond. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2005 Bond to evidence the Loan. The Series 2005 Bond is issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(2)(a).

Terms. The Series 2005 Bond shall be in the maximum principal amount of \$17,300,000, shall be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the Loan. The principal of and interest on the Series 2005 Bond shall be payable on the same dates and in the same amounts as principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2005 Bond shall be deemed made when advances of the Loan are made

under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2005 Bond, as it may be revised by the DNRC from time to time in accordance with Section 5.1.

The Borrower may prepay the Series 2005 Bond, in whole or in part, only upon the terms and conditions under which it can prepay the Loan under Section 5.3.

Negotiability, Transfer and Registration. The Series 2005 Bond shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2005 Bond shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-2301 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2005 Bond shall be negotiable, subject to the provisions for registration and transfer contained in this section. No transfer of the Series 2005 Bond shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Bond, and (2) the City Clerk of the Borrower (the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2005 Bond and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the person in whose name the Series 2005 Bond is registered as the absolute owner of the Series 2005 Bond for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

Execution and Delivery. The Series 2005 Bond shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2005 Bond. The Bond shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2005 Bond shall cease to be officers of the Borrower before the Bond is issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2005 Bond may be signed by an authorized official who did not hold such office on the date of adoption of this Supplemental Resolution. The Series 2005 Bond shall be delivered to the DNRC, or its attorney or legal representative.

Form. The Series 2005 Bond shall be prepared in substantially the form attached as Exhibit B.

PRIORITIES AND ADDITIONAL WATER DEBT

Priority of Bond Payments. Each and all of the Bonds shall be equally and ratably secured without preference or priority of any one Bond over any other by reason of serial number, date of issue, or otherwise; provided that if at any time the Net Revenues on hand in the Fund are insufficient to pay principal and interest then due on all such Bonds, any and all Net Revenues then on hand shall be first used to pay the interest accrued on all outstanding Bonds,

and the balance shall be applied toward payment of the maturing principal of such Bonds to be paid first, and pro rata in payment of Bonds maturing on the same date.

Refunding Revenue Bonds. The Borrower reserves the right and privilege of refunding any or all of the Bonds subject to the following terms and conditions:

Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 10.1, should at any time be insufficient to make such payment in full.

Any Bonds may be refunded prior to maturity as and when they become prepayable according to their terms.

Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of cash sufficient, or of securities of the kinds authorized by law, the payments of interest on and principal of which are sufficient, to pay the principal amount of and premium, if any, on such Bonds with interest to maturity or to any prior date or dates on which they are prepayable, and have been called for redemption or provision has been irrevocably made for their redemption, on such date or dates.

Any refunding revenue Bonds issued for the above purposes may be made payable from the net revenues on a parity as to interest with all then outstanding Bonds; provided that (1) if not all of the Bonds of a series are refunded, the maturity of each refunding revenue Bond shall be subsequent to the last maturity of any then outstanding Bonds of such series which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no Bondowner shall be required to accept a refunding revenue Bond in exchange for any Bond owned by him.

Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2005 Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds, on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the net revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds

be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause the Reserve in the Revenue Bond Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of 0 hereof.

Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional Bonds which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account.

WATER SYSTEM FUND

Bond Proceeds and Revenues Pledged and Appropriated. A special Water System Fund is hereby created and shall be maintained as a separate and special bookkeeping account on the official books of the Borrower until all Bonds and interest and redemption premiums due thereon have been fully paid, or the Borrower's obligations with reference to such Bonds has been discharged as provided in this Resolution. All proceeds of Bonds issued hereunder and all other funds presently on hand derived from the operation of the System are irrevocably pledged and appropriated to the Fund. In addition, there is hereby irrevocably pledged and appropriated to the Fund all gross revenues and receipts from rates, fees, charges and rentals imposed for connections with and for the availability, benefit and use of the System and from any sales of property acquired for the System and all income received from the investment of such gross revenues, including investment of the Reserve established in the Revenue Bond Account and the Operating Reserve established in the Operating Account, but excluding any special assessments or taxes levied for construction of any part of the System and the proceeds of any grant or loan from the State or the United States, and any investment income thereon, to the extent such exclusion is a condition to such grant or loan. The Fund shall be subdivided into separate accounts as designated and described in Sections 11.2 through 11.7, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly, commencing as of the first day of the calendar month immediately following the date of closing of the Loan.

Acquisition and Construction Account. The Acquisition and Construction Account shall be used only to pay as incurred and allowed costs which under accepted accounting practice are capital costs of the Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking. To the Acquisition and Construction Account shall be credited as received all proceeds of Bonds issued hereunder (except proceeds of refunding Bonds appropriated to the

payment of outstanding Bonds and amounts required to be credited to the Revenue Bond Account), all other funds appropriated by the Borrower for the System and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account. Upon completion of a capital improvement or program of capital improvements for the System, except the Project, the balance remaining in the Acquisition and Construction Account shall be credited to the reserve balance in the Revenue Bond Account to the extent required to establish the required balance therein and, to the extent not so required, to the Replacement and Depreciation Account.

Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the account to pay the reasonable and necessary operating expenses of the System which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the System and its facilities, as calculated in accordance with sound accounting practice, and shall include, without limitation, administrative expenses of the Borrower relating solely to the System, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with sound accounting practices. Such expenses shall not include any allowance for interest expense or depreciation, renewals or replacements of capital assets of the System and shall not include any portion of the salaries or wages paid to any officer or employee of the Borrower, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the System. There shall also be credited to this account forthwith upon the delivery of the Series 2005 Bond and from available funds other than the proceeds therefrom a sum equal to the estimated average monthly operating expenses of the System to establish an Operating Reserve, which sum shall be maintained by additional transfers upon each monthly apportionment whenever necessary, or may be augmented by transfers of additional amounts from the Surplus Account described below if determined by the governing body of the Borrower to be necessary to meet contingencies arising in the operation and maintenance of the System. Money in the Operating Account shall be used solely for the payment of current operating expenses of the System.

Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account out of the net revenues an amount equal to not less than the sum of one-sixth of the interest due within the next six months plus one-twelfth of the principal to become due within the next twelve months with respect to outstanding Bonds payable from the Revenue Bond Account; provided that the Borrower shall be entitled to reduce a monthly credit by the amount of any surplus previously credited and then on deposit in the Revenue Bond Account. Money from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal of, premium, if any, and interest on the Bonds payable therefrom as such payments become due. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient therefor, such payment shall be advanced out of any net revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account.

Reserve Account. The Borrower agrees to establish and maintain a Reserve Account in the Fund. On the Closing Date, the Borrower shall deposit in the Reserve Account, from funds that the Borrower has on hand and available therefor, \$17,300,000, which is the initial Reserve Requirement based on the Committed Amount of the Loan. On the date of the final disbursement of proceeds of the Series 2005 Bond, the Borrower shall deposit in the Reserve Account, from proceeds of the Series 2005 Bond or, to the extent necessary, from other available funds of the Borrower, an amount necessary to cause the balance in the Reserve Account to equal the Reserve Requirement, calculated as of that date and based on the actual principal amount of the Series 2005 Bond. Thereafter, upon each monthly apportionment, from the Net Revenues remaining after the apportionment to the Revenue Bond Account, the Borrower shall credit to the Reserve Account such additional Net Revenues as may be required to establish and thereafter maintain the balance in an amount equal, as of the date of calculation, to the Reserve Requirement. Money in the Reserve Account shall be used only to pay maturing principal, premium and interest when money within the Revenue Bond Account is insufficient therefor; provided that on any date when all outstanding Bonds of a series are due or prepayable by their terms, if the amount then on hand in the Reserve Account allocable to such Bonds and available for such appropriation is sufficient with money available for the purpose to pay all such Bonds and the interest accrued thereon in full, it may be used for that purpose; and provided, further, that so long as the amount on hand in the Reserve Account is not less than the Reserve Requirement, the Borrower may credit earnings on investment of the Reserve Account to the Replacement and Depreciation Account.

Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account Surplus Net Revenues of the System, as the governing body of the Borrower shall determine to be required for the accumulation of a reasonable allowance for depreciation of the System and for replacement or renewal of worn out, obsolete or damaged properties and equipment thereof. Money in this account shall be used only for the purposes above stated or, if so directed by the governing body of the Borrower, to redeem Bonds which are prepayable according to their terms, to pay principal or interest when due thereon as required in 0, or to pay the cost of improvements to the System; provided that in the event construction and installation of additional improvements or additions to the System are financed other than from proceeds of Bonds payable from the Revenue Bond Account, surplus net revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the repayment of such indebtedness and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

Surplus Account. Any amount of the surplus net revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account (or such other account in the Fund as the Borrower may establish for bookkeeping purposes to account for surplus money in accordance with the purposes of this Resolution), and the money from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 11.4, may be used for any of the following purposes and not otherwise:

To redeem bonds payable from the Net Revenues when and as such bonds become prepayable according to their terms; or

To purchase Bonds on the open market, whether or not the Bonds or other such Bonds may then be prepayable according to their terms; or

To be held as a reserve for redemption of bonds payable from the Net Revenues which are not then but will later be prepayable according to their terms; or

To pay for repairs of or for the construction and installation of improvements or additions to the System; or

To restore the Operating Reserve or increase the same when determined to be necessary by the governing body of the Borrower.

No money shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Borrower, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in 0.

Deposit and Investment of Funds. The finance officer of the Borrower shall cause all money appropriated to the Fund to be deposited as received with one or more depository banks duly qualified in accordance with the provisions of Montana Code Annotated, Section 7-6-201, in a deposit account or accounts. The balance in such accounts, except such portion thereof as shall be guaranteed by federal deposit insurance, shall at all times be secured to its full amount by bonds or securities of the types set forth in said Section 7-6-201. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as defined and authorized in this Resolution; except that money from time to time on hand in the Fund may at any time, in the discretion of the governing body of the Borrower, be invested in securities which are direct, general obligations of, or obligations the prompt payment of the principal of and the interest on which is fully and unconditionally guaranteed by, the United States of America, bank repurchase agreements with respect to such obligations, certificates of deposits of national banks having a combined capital and surplus of at least \$1,000,000 or in the Montana short-term investment program administered by the Board of Investments, which investments mature and bear interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts; provided that funds on hand in the Reserve Account, the Replacement and Depreciation Account and the Surplus Account may be invested in said securities maturing not later than five years from the date of the investment; and provided, further, that money on hand in the Surplus Account of the Fund may, in the discretion of the governing body of the Borrower, be invested in any securities which are direct, general obligations of the Borrower. Income received from the deposit or investment of moneys in said accounts shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account.

TAX MATTERS

Use of Project. The Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not

enter into any lease, use or other agreement with any non-governmental person relating to the use of the Project or security for the payment of the Series 2005 Bond which might cause the Series 2005 Bond to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2005 Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2005 Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2005 Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Arbitrage Certification. The Mayor and the City Clerk being among the officers of the Borrower charged with the responsibility for issuing the Series 2005 Bond pursuant to this Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2005 Bond, it is reasonably expected that the proceeds of the Series 2005 Bond will be used in a manner that would not cause the Series 2005 Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Arbitrage Rebate. The City acknowledges that the Series 2005 Bond is subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2005 Bond from gross income for federal income tax purposes, unless the Series 2005 Bond qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2005 Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Administrator is hereby authorized and directed to execute a Rebate Certificate, substantially in the form of the Rebate Certificate currently on file in the office of the City Clerk of Council, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than February 15, 2006, a statement concerning the Series 2005 Bond containing the information required by Section 149(e) of the Code.

“Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2005 Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2005 other than the Series 2005 Bond under Section 265(b)(3), except its \$4,515,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005. The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the

Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2005 in an amount greater than \$10,000,000.

CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2005 Bond under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk of the Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

MISCELLANEOUS

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

DNRC:	Department of Natural Resources and Conservation 1625 Eleventh Avenue Helena, Montana 59620-1601 Attention: Conservation and Resource Development Division
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Trustee: U.S. Bank National Association
c/o Corporate Trust Services
Two Union Square
601 Union Street, Suite 2120
Seattle, Washington 98101
Attn: Corporate Trust Department

Borrower: City of Billings
PO Box 1178
Billings, Montana 59103
Attn: City Clerk

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

Binding Effect. This Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

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

Amendments. This Resolution may not be effectively amended without the written consent of the DNRC.

Applicable Law. This Resolution shall be governed by and construed in accordance with the laws of the State without giving effect to the conflicts-of-laws principles thereof.

Captions; References to Sections. The captions in this Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Resolution. References to Articles and Sections are to the Articles and Sections of this Resolution, unless the context otherwise requires.

No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Resolution and the making of the Loan.

Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Resolution or the Bond, shall not be Business Day, such payments may be made or act performed or right exercised on

the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Resolution or the Bond.

Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10%) from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the Project or the facility or facilities of which the Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2005 Bond and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2005 Bond, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements purported to be shown thereby.

Repeals and Effective Date.

Repeal. All provisions of other resolutions and other actions and proceedings of the Borrower and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Effective Date. This Resolution shall take effect immediately.

PASSED AND ADOPTED by the City Council of the Borrower on this 26th day of September, 2005.

Mayor

Attest: _____
City Clerk

EXHIBIT A

Description of the Project

The Project consists of rehabilitation of the filter complex and water treatment plant.

EXHIBIT B

[Form of the Series 2005 Bond]

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF YELLOWSTONE

CITY OF BILLINGS

WATER SYSTEM REVENUE BOND
(DNRC DRINKING WATER REVOLVING LOAN PROGRAM)
SERIES 2005

No. R-1

\$17,300,000

FOR VALUE RECEIVED, the City of Billings, Montana (the “City” or “Borrower”), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the “DNRC”), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A hereto under “Total Amount Advanced,” with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) and one percent (1.00%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a “Loan Repayment Date”) commencing July 1, 2006. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under “Total Loan Payment.” The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under “Advances” and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under “Total Amount Advanced.” The DNRC shall prepare Schedule B and revised Schedules B, or cause Schedule B and revised Schedules B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.75% per annum. Past-due payments of principal and interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments

under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond constitutes a series in the maximum authorized principal amount of \$17,300,000 (the "Series 2005 Bond"), issued to finance costs of the construction of certain improvements to the water system of the Borrower (the "System") and to pay costs of issuance of the Series 2005 Bond. The City will make the deposit to the reserve fund for the Bonds from other available funds of the City. The Series 2005 Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower. The Series 2005 Bond is issuable only as a single, fully registered bond.

Reference is made to Resolution No. _____, duly adopted by the governing body of the Borrower on September 26, 2005 (the "Resolution"), for a more complete statement of the terms and conditions upon which the Series 2005 Bond has been issued, the net revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such net revenues on a parity with the Series 2005 Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the City, and the rights of the owners of the Series 2005 Bond.

The Borrower may prepay the principal of the Series 2005 Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2005 Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the net revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

If default be made in the payment of any installment due under this Bond or by the occurrence of an event of default under the Resolution and if such event of default is not remedied as therein provided, the DNRC then, or at any time thereafter, may give notice to the Borrower that all unpaid amounts of this Bond then outstanding together with all other unpaid amounts outstanding under the Resolution are due and payable immediately and thereupon without further notice or demand all such amounts shall become and be immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any time in the event of any continuing or subsequent default. In the event of default in the payment of this Bond and if the same is collected by an attorney at law, the Borrower agrees to pay all costs of collection, including reasonable attorneys' fees.

The Borrower may deem and treat the person in whose name this Series 2005 Bond is registered as the absolute owner hereof, whether this Series 2005 Bond is overdue or not, for the

purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary.

This Series 2005 Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Fund into which the gross revenues of the System, including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, from and as a first and prior lien on the net revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable from that account; that the Borrower has created a Reserve Account in that fund and will deposit [\$1,300,000] from funds on hand on the date of issuance of this Bond, into which shall be paid additional net revenues sufficient to maintain a reserve therein equal to, as of the date of calculation, the lesser of (i) 10% of the original principal amount of all series of Bonds then outstanding or (ii) an amount equal to the maximum principal and interest payable on all outstanding Bonds in the current or any future fiscal year (giving effect to any mandatory sinking fund redemption); that the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year net revenues in excess of such current expenses equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Outstanding Bonds and the Series 2005 Bond upon certain conditions set forth in the Resolution but no obligation will be otherwise incurred and made payable from the net revenues of the System, whether or not such obligation shall also constitute a general obligation and indebtedness of the Borrower, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond and other parity Bonds on such net revenues; that all provisions for the security of this Series 2005 Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2005 Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2005 Bond and the premium, if any, and interest hereon are payable solely from the net revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2005 Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the ____ day of _____, 2005.

Mayor

(SEAL)

City Clerk

REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk, as bond registrar (the “Registrar”), has duly noted the transfer on the Bond and recorded the transfer on the Registrar’s registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower’s liability upon the Bond to the extent of the sum or sums so paid.

REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
<u> , 2005</u>	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> <u>Helena, MT 59620</u>	

**THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND
REGISTRAR UPON REGISTRATION OF EACH TRANSFER**

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

Date of Transfer	Name of New Registered Holder	Signature of Bond Registrar

FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Bond and does hereby irrevocably constitute and appoint _____ attorney to transfer the Bond

on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

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

SCHEDULE A

SCHEDULE OF AMOUNTS ADVANCED

[illegible]

SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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EXHIBIT C **ADDITIONAL REPRESENTATIONS AND COVENANTS**

None

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 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 August 8, 2005, the City Council adopted Resolution No. 05-18317 annexing 172.395 acres located between Ironwood Subdivision and the rimrocks, north of Yellowstone Club Estates (Annexation #05-07). 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 August 22, 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 hold the public hearing and approve the first 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 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. 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 22nd day of August, 2005.

PASSED by the City Council on the second reading this 12th day of September, 2005.

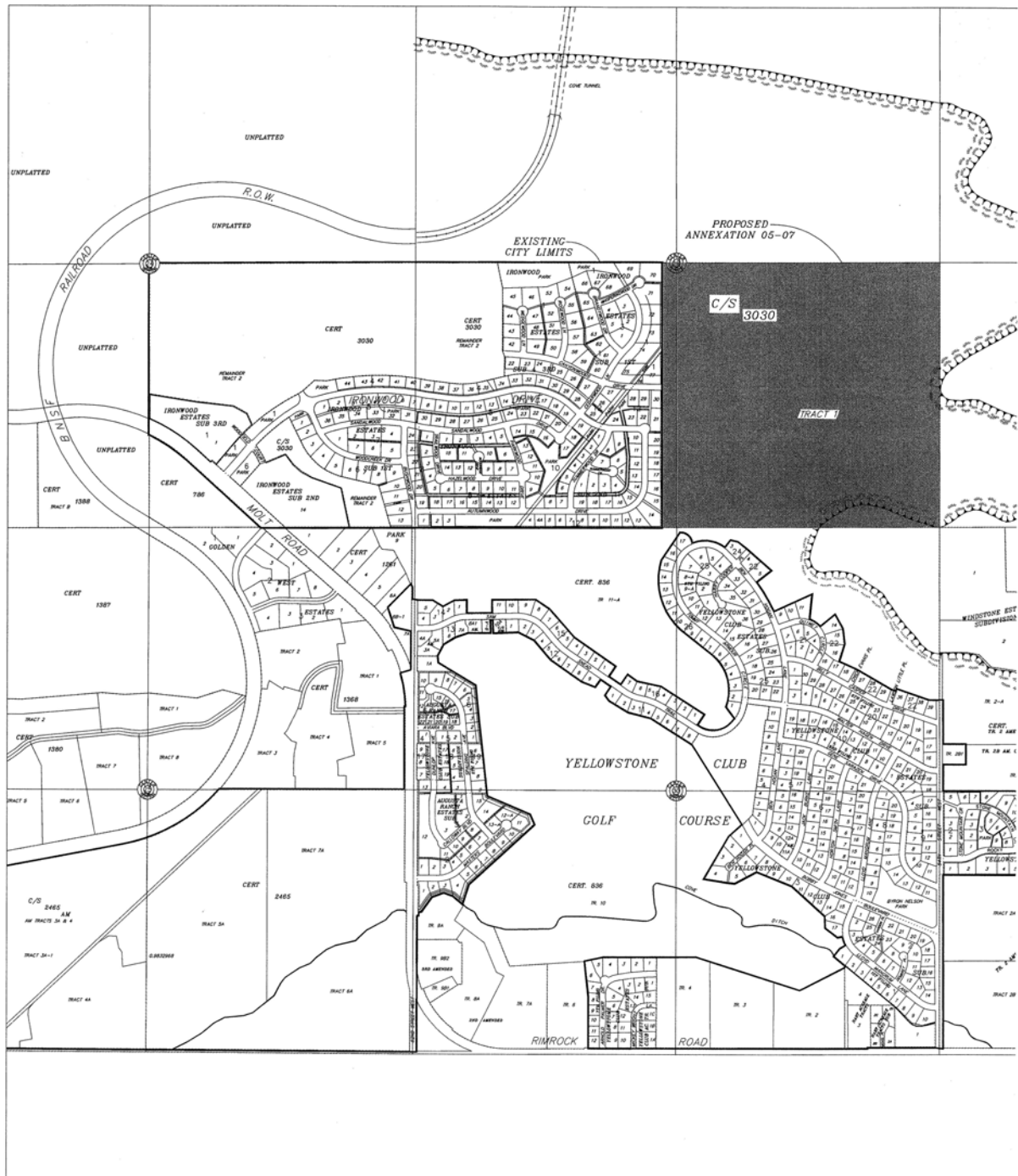
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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U

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Zone Change #761 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 7000 (R-7000) to Residential 5000 (R-5000) on Tract 1A of C/S 1335. The subject property is located at 1545 Hawthorne Lane. The property owner is First Free Will Baptist Church and the agent is Wesley Prouse. City Council approved the first reading of the zone change ordinance on August 22, 2005.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: This zone change should increase the City's tax base when the property is developed and the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #761 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 proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Contiguous development focused in and around existing population centers separated by open space.* The proposed rezoning concentrates development adjacent to existing City services.
- *More housing and business choices with each neighborhood.* The proposed rezoning offers residential options.

The City Zoning Commission found the zone change application to be inconsistent with the following goals:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns.* The proposed Residential 5000 zoning would permit "spot zoning".
- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites.* Regardless of the owner's intention to build only single family homes in the proposed R-5000 zone, the Zoning Commission voiced concern about this zone change establishing "spot zoning".

2. *Is the new zoning designed to lessen congestion in the streets?*

The new zoning will not increase the traffic generated from this site significantly. During the subdivision process, access to this development on Wicks Lane will be limited.

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 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 lights and air.

6. *Will the new zoning prevent overcrowding of land?*

The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential 5000 allows for maximum lot coverage of 40 percent or 2,000 square feet on a 5,000 square foot lot. These features should prevent overcrowding of the land.

7. *Will the new zoning avoid undue concentration of population?*

The new zoning of Residential 5000 allows single-family detached dwellings and two-family units, based on minimum lot areas. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning will not affect the adjacent streets or traffic patterns.

Water and Sewerage: The City currently provides water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: The tax records state that children from this development would attend Bitterroot Elementary, Castrock Middle and Skyview High Schools. There are two developed parks near this area, Hawthorne and Primrose. There is also a multi-use trail easement of this development that is a Heritage Trail link to Two Moon Park. This trail can also be used to reach Bitterroot Elementary School.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of subdivision review.

9. *Does the new zoning give reasonable consideration to the character of the district?*

This area of the city has recently been acknowledged by the City Council as one that is likely to be developed in the near future at urban densities. Although it is currently vacant land, the availability of municipal water and sewer lines in the adjacent streets has made urban density development possible.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The new zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the new zoning will allow for more dense development on lots that are currently served with City water and sanitary sewer.

ATTACHMENT B
ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION ON Tract 1A of C/S 1335 a 164,221
square foot parcel of land. **THE SUBJECT**
PROPERTY IS LOCATED AT 1545 HAWTHORNE
LANE.

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

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

2. DESCRIPTION. A tract of land known as Tract 1A of C/S 1335 containing 164,221 square feet of land, more or less and is presently zoned Residential 7,000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 7,000** to **Residential 5,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 5000** 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#761

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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Zone Change #762 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 9,600 to Neighborhood Commercial on Lots 3A and 4 of Block 1, Missions United Subdivision. The property is located at 2117 and 2223 Shiloh Road and is currently vacant. The property owner is St Vincent's Healthcare and the agent is Jim Shepard of CTA Architects and Engineers. City Council approved the first reading of the zone change ordinance on August 22, 2005.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: This zone change should increase the City's tax base when the property is developed and the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #762 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 provide smaller retail services and neighborhood services in this densely developed area of West Billings. The 2003 Growth Policy supports the development of commercial uses, multifamily uses and neighborhood services 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 will increase the traffic generated from this site. The new traffic generated will be controlled by the limited access to Shiloh Road. The proposed use, the Center for Healthy Aging, will not generate a large amount of off-site trips since the center is meant to serve the existing and new residents of the assisted living facilities on the east side of Shiloh Road.
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. Neighborhood Commercial zones do not allow liquor licenses or gaming and generally restricts the size of retail establishments to no greater than 3,000 square feet in floor area.
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. Neighborhood Commercial has the same height limitation for new buildings as the existing zoning of R-9,600 – 34 feet.
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 Neighborhood Commercial zone allows maximum lot coverage of 50 percent while the R-9,600 zone allows 30 percent. 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 Neighborhood Commercial allows single-family and multifamily dwellings, based on minimum lot area. The allowable density under the zoning code for this 10.35 acre lot is a maximum of 298 dwelling units in a single structure. The property is not likely to develop for this type of residential use and 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 will provide 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 Residential-9,600 with Residential Multifamily-Restricted to the south on both sides of Shiloh Road. The existing neighborhood to the west of Shiloh Road is primarily single family residential with some assisted living homes. Highgate House, a 3-story assisted living apartment building, as well as St. John's Nursing Home and assisted living facilities are located on the east side of Shiloh, south and north of this location respectively. The new district of Neighborhood Commercial allows smaller retail shops to serve local residents, multifamily developments and professional services such as doctor's and lawyer's offices, accountants and similar uses. This change fits with the character of the existing neighborhood.
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 site development requirements for this site include the Shiloh Road Corridor Overlay standards and screening from existing residential uses to the south.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

**ATTACHMENT B
ORDINANCE NO. 05-**

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION ON Lot 3A and Lot 4 of Block 1
Missions United Subdivision, a 10.35 acre parcel of
land. **THE SUBJECT PROPERTY IS LOCATED AT
2117 AND 2223 SHILOH ROAD.**

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 Lots 3A and Lot 4 of Block 1 Missions United Subdivision containing 10.35 acres of land, more or less and is presently zoned Residential-9,600 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-9,600** to **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____

Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#762

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W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Zone Change #763 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 Community Commercial to Highway Commercial on Lot 4 of Block 1, North Pointe Square Subdivision. The property is located at 2376 Main Street and is the site of the former K-mart retail center. The property owner is KMT DIL, LLC of Dallas, TX and Michael Dockery is the agent. All American Nutrition of 1831 Main Street in Billings is the prospective buyer of the property. City Council approved the first reading of the zone change ordinance on August 22, 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 #763 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 in an existing 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 will increase the traffic generated from this site. The new traffic generated will generally be less than the previous K-mart shopping center use, since this will not be a primary retail use of the property. The traffic signal at Pemberton Lane and Main Street will control the majority of the traffic into the site.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This lot has public street frontage and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed and provides for minimum setback requirements for structures.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, 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 while the Community Commercial zone allows 50 percent. 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 allowable density under the zoning code for this 7.74 acre lot is a maximum of 220 dwelling units in a single

structure. The property is not likely to develop for residential use and 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 currently 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 south across Pemberton Lane. The existing neighborhood has experienced and has been compatible with the retail use of the property. The new district of Highway Commercial allows some types of small manufacturing uses that are not currently allowed in Community Commercial. This change fits with the character of the existing neighborhood.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The new zoning is not expected to appreciably alter the value of buildings in the area. The existing building on the property will retain its value and will be conforming to the zoning regulations.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

Yes, the new zoning will encourage the most appropriate use of this land in the area.

ATTACHMENT B
ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE
CLASSIFICATION ON Lot 4 of Block 1 North Pointe
Square Subdivision a 7.74 acres parcel of land. **THE**
SUBJECT PROPERTY IS LOCATED AT 2376 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 Lot 4 of Block 1 North Pointe Square Subdivision containing 7.74 acres of land, more or less and is presently zoned Community Commercial 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 **Community Commercial** 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#763

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X

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Preliminary Plat of Foxtail Subdivision, 2nd Filing
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: Kenmark Construction, Inc., owner and applicant, submitted a preliminary plat application for a 25-lot major, residential subdivision on July 1, 2005. The subdivision includes Tract 123 of Sunny Cove Fruit Farm and is located adjacent to Foxtail Village Subdivision. The City Council approved the petition to expand the Urban Planning Area and annex this property on July 11, 2005. The property is located at the northeast corner of Grand Avenue and 60th Street West and consists of 9.33 gross acres. Future development of the property would include, at full build-out, 23 single-family lots, and two large lots that will be developed as duplex patio homes. The subdivider will be required to rezone the property to ensure the lot size and housing type complies with the underlying zoning. The subdivider withdrew a previous application for a zone change to allow multifamily units due to neighborhood opposition.

The Foxtail Village preliminary plat is being presented to the Planning Board for review and comments on August 9, followed by a public hearing on August 23. The City Council will act on the preliminary plat application on September 12.

ALTERNATIVES ANALYZED: State law and City subdivision regulations require that preliminary plats be reviewed using specific criteria, as stated within this report. The City Council may not unreasonably restrict an owner's ability to develop land. However, the City Council may condition the preliminary plat approval to reasonably minimize potentially significant adverse impacts identified through the subdivision review.

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property may further develop, resulting in additional tax revenues for the City. However, it is unknown if the value of these proposed homes will generate sufficient taxes and fees to pay for the required services.

RECOMMENDATION

The Yellowstone County Board of Planning recommends conditional approval of the preliminary plat of Foxtail Village Subdivision, 2nd Filing, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

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

ATTACHMENTS

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

INTRODUCTION

The proposed 25-lot residential subdivision is located at the northwest corner of Grand Avenue and 60th Street West. The property is owned by Kenmark Corporation and is designed as an extension of Foxtail Village Subdivision to the east, owned by the same entity. The subdivision will be developed for single family and duplex units.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Division on June 1, 2005.
- A concurrent zone change request was submitted on July 5, 2005.
- The subject property was annexed into the City of Billings by Ordinance #05-18305, on July 11, 2005.
- The City Zoning Commission recommended denial of the zone change request on August 2, 2005.
- The Planning Board reviewed the plat on August 9, 2005.
- The Planning Board conducted a public hearing on August, 22 2005, and forwarded a recommendation of conditional approval to the City Council.
- The City Council will act on the preliminary plat on September 12, 2005.

BACKGROUND

On June 1, 2005, the Planning Department received a preliminary plat application for Foxtail Village Subdivision, 2nd Filing. The subject property contains approximately 9.33 acres of land; 23 lots are proposed for single-family residences and two lots are proposed for duplex units. The subdivision was originally designed to provide a mix of housing including single family units on lots zoned R-9600 and R-7000 and multifamily units on lots zoned R-6000. This plan has been modified because the applicant withdrew the zone change request changing the existing zoning from R-9600 to R-6000 and R-7000. The withdrawal was a result of opposition voiced at the Zone Change public hearing before the Zoning Commission and the Zoning Commission's recommendation of denial. The subdivider will be required to obtain a zone change from R-9600 to R-7000 prior to filing the final plat if the City Council approves this preliminary plat with the recommended conditions.

The subject property is bordered on the north by large-lot, single-family residences and to the east by the Foxtail Village Subdivision, 1st Filing. Lands west and south are used primarily for agricultural purposes. The Birely Drain flows through the property and will be utilized for stormwater management. A smaller drain ditch also flows through the property which serves lots to the north. General information on the subdivision is listed below:

GENERAL LOCATION:	Northeast corner of 60 th Street West and Avenue.
LEGAL DESCRIPTION:	Tract 123, Sunny Cove Fruit Farms
SUBDIVIDER:	Kenmark Construction, Inc.
ENGINEER:	Engineering, Inc.

EXISTING ZONING	Residential-9600
SURROUNDING ZONING	
NORTH	Agricultural – Open Space
SOUTH	Agricultural – Suburban
EAST	Residential-9600 and Residential-7,000
WEST	Agricultural – Open Space
EXISTING LAND USE	Agricultural
PROPOSED LAND USE	Residential
GROSS AREA	9.3312 acres
NET AREA	6.9899 acres
LINEAL FEET OF STREETS	11,503 feet
NUMBER OF LOTS	25
Residential-9,600	7
Residential-7,000	16
Residential-6,000	2
MINIMUM LOT SIZE	7,000 square feet
MAXIMUM LOT SIZE	54,668 square feet
DEDICATED PARK/OPEN SPACE	cash-in-lieu of parkland

ALTERNATIVES ANALYSIS

The preliminary plat was reviewed by various City Departments and other affected agencies to identify potentially negative effects resulting from the proposed subdivision. If negative effects are identified, the City Council may place conditions on the approval of the preliminary plat to reasonably mitigate the impacts. The Findings of Fact (attached) discuss the potential negative impacts of the subdivision. The following conditions of approval are recommended as measures to mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

In order to mitigate the effects on agriculture and agricultural water users' facilities, local services, the natural environment, wildlife and wildlife habitat and protect public health, safety and welfare, the planning staff recommends the following conditions of approval:

1. **To minimize the effect on agricultural water user facilities**, the subdivider shall:
 - a. Obtain written permission from the Birely Drain Board to modify the dimensions of the drain and to discharge stormwater generated by the subdivision into the drain.
 - b. Show the existing easement granted to the Birely Drain Board on the face of the final plat.

- c. Identify the area to be dedicated to the City of Billings for stormwater purposes on the final plat.
- d. Obtain written permission from the users of the drain ditch located along the western boundary of the subdivision to modify, cover or relocate the ditch. Under no circumstances shall the operation and maintenance of this ditch be impaired.

2. To minimize the effect on local services, the subdivider shall:

- a. The following changes shall be made to the SIA to bring the Agreement into acceptable format:
 - SIA-3. Streets – Any reference to Kenmar Drive West shall be replaced with “Kennedy Way”.
 - SIA-4. Birely Drain – replace “deeded to” with “dedicated to”.
 - SIA-4. Heritage Trail Plan – amend the language in this section to indicate the type of access provided to the 58th Street West.
 - SIA-6. Parks/Open Space – Replace “district will be set up for Lot 3, Block 3”, in the second to last sentence with “district will be established for the area dedicated to the City for stormwater purposes”.
- b. To bring the subdivision into conformance with the City/County Unified Zoning Regulations, the subdivider shall obtain approval for a zone change to ensure the subdivided lots comply with the minimum lot size requirements of the zoning district in which the property is located.

3. To minimize the effect on the natural environment, the subdivider shall complete a detailed floodplain analysis for the Birely Drain in accordance with the Flood Evaluation requirements specified in the City Subdivision Regulations. If necessary, a plan for floodplain mitigation shall be approved by Planning, City Engineering and the City/County Floodplain Administrator prior to final plat approval. The final stormwater management plan for the Foxtail Village Subdivisions, 1st and 2nd Filings, shall incorporate the results of this study as required by City Engineering.

4. To ensure the provision of easements for the location and installation of any planned utilities, the subdivider shall grant utility easements as specified by Yellowstone Valley Electric Co-operation and Montana-Dakota Utilities.

5. To ensure that the final plat will comply with local subdivision regulations and state law:

- a. Conditional approval of the Foxtail Village Subdivision, 2nd Filing plat does not constitute approval of future multi-family development in Lots 1 and 2, Block 3. The subdivider must submit and receive approval for a Development Plan prior to any construction on this lot.
- b. Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Departments to clarify the documents and bring them into standard acceptable formats.

- c. The final subdivision plat and supplementary documents shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code (BMCC), and rules, regulations, policies, and ordinances of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

The Planning Board is recommending approval of the following variances from the City Subdivision Regulations.

1. Variance from the provision of Section 23-601(k) of the City Subdivision Regulations requiring 60-foot right-of-way on an interior street. Kennedy Way and Foxtail Loop West would be platted as 50 foot rights-of-way. Staff is supportive of this variance because it is consistent with the continuation of rights-of-way widths in the first filing and because the subdivider will grant a 5 foot wide street light, and sidewalk easement on both sides of the rights-of-way.
2. Variance from the provisions of Section 23-605(d) of the City's Subdivision Regulations prohibiting double frontage lots. This lot configuration is supported by staff because it limits access onto Grand, a Principal Arterial.

Granting these variances to the City Subdivision Regulations will not be detrimental to the public health, safety or general welfare or injurious to other adjoining properties and would not adversely affect the public. The variances are necessary to bring the subdivision into compliance with the City Subdivision Regulations and reduce the hardship on the subdivider resulting from the property being located along major arterials.

STAKEHOLDERS

A public hearing was conducted on August 22, 2005. No public comments were received.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the Transportation Plan and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

The Yellowstone County Board of Planning recommends conditional approval of the preliminary plat of Foxtail Village Subdivision, 2nd Filing, approval of the variances, and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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



View of proposed rezoning looking southwest towards Grand Avenue. Line of trees delineates Birely Ditch located on the area to be rezoned R-6000. Area of proposed R-7000 zoning is shown in foreground.



View of residential development located on 10-acre tracts north of area to be rezoned. Area of proposed R-7000 is shown in foreground and R-9600 zoning in midground. The Yellowstone County Planning Board recommends the following Findings of Fact for Foxtail Village Subdivision, 2nd Filing. These findings are based on the preliminary plat application and

supplemental documents. The findings address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

A. Primary Review Criteria [Section 23-304(c)(1), BMCC; 76-3-608(3)(c), MCA]

1. Effect on Agriculture

The land to be subdivided had been farmed in the past but is no longer in agricultural production. The 9.33 acres will be converted to urban land use and will lose its agricultural value and tax status.

2. Effect on Agricultural Water Users Facilities

The Birely Drain traverses the property at the southwest corner. This facility provides drainage for irrigated properties and serves as a primary conduit for storm and floodwaters in the West Billings area. The subdivider proposes to widen the Birely Drain in the subdivision to accommodate stormwater from a 100-year storm event for both the Foxtail Village Subdivision and the Foxtail Village Subdivision, 2nd Filing. To ensure this expansion of the facility is acceptable to the Birely Drain Board, the subdivider must obtain written permission from the Board prior to recording the final plat (Condition 1a). The subdivider also proposes to dedicate the property to the City of Billings as part of the future stormwater management system. To accomplish this, the area containing the Birely Drain must be designated for stormwater dedication on the final plat (Condition 1b and 1c).

The property was previously flood irrigated although no ditches remain serving this property. A drain ditch originating from the properties to the north traverses the western edge of the lots along 60th Street West. This ditch is currently active. Any disruption in flow could negatively affect the drain ditch users. In order to minimize the potential negative impacts on this facility and to ensure that it continues to function properly, the subdivider must obtain written permission from the ditch users before the ditch is modified, relocated or covered (Condition 1d). There are at least 4 documented owners of water rights listed by the Montana Department of Natural Resources for the SW ¼ of section 31, Township 1 North, Range 25 East.

3. Effect on Local Services

- **Water:** Water service will be extended from the east through the Foxtail Village Subdivision, 1st Filing. The water service originates from a water main located in 58th Street West.
- **Sewer:** Sewer lines will also be extended from a sanitary sewer line located in 58th Street West through Foxtail Village Subdivision, 1st Filing. The 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 developers propose to widen the existing Birely Drain to an area sufficient to retain stormwater discharge from both the 1st and 2nd Filings. The Birely Drain Board has tentatively approved this design.

The stormwater collection facilities will be designed and constructed in accordance with City regulations at time of development.

- **Transportation:** The study area adjoins Grand Avenue, a Principal Arterial, to the south and is 1/8th of a mile west of 58th Street West, a Collector. Both streets are expected to be affected by the future development of Foxtail Village Subdivision, 2nd Filing as are 56th Street West, a principal arterial and 54th Street West, a minor arterial. It is estimated that the development would produce approximately 400 trips on an average weekday.

The Subdivider will contribute cash towards the required improvements to Grand Avenue and grant an additional 30 feet of right-of-way along Grand Avenue. This cash contribution will be for curb, gutter, and half of a residential street.

The subdivision will be accessed from 60th Street West from Grand Avenue and through Foxtail Village Subdivision, 1st Filing onto 58th Street West. 60th Street West is currently platted, but unimproved. The subdivider is required to grant an additional five feet of right-of-way along the east side of 60th Street West and construct the new roadway to half-street standards including 30 feet of pavement, curb and gutter, and sidewalk along the east side. A 48-inch culvert will be installed under the street for the Birely Drain.

All internal streets will be constructed to 37-foot back of curb to back of curb. Foxtail Lane, continued from Foxtail Village Subdivision, 1st Filing, will be constructed within a 60-foot right-of-way. The subdivider has requested a variance from the subdivision regulations to reduce the width of the rights-of-way for Foxtail Loop West and Kennedy Way from 60 to 50 feet wide. These streets will be adjoined by 5-foot wide streetlight and sidewalk easements to accommodate these improvements.

The subdivider is required to install 5-foot wide curbwalks along 60th Street West and handicap ramps at all intersections as the streets are constructed. The remainder sidewalks along internal streets shall be built at the time of lot development. This stipulation is listed in the SIA under "Conditions that Run with the Land".

- **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. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 6 incidents per year at full buildout.
- **Parks:** The study area lies within the influence area of the future Cottonwood Park, located approximately 3/4 of a mile to the northeast. The future subdivision would contribute cash-in-lieu of parkland for the development of Cottonwood Park and participate in a Park Maintenance District for the continued maintenance. The area to be dedicated for stormwater retention along the Birely Drain will be maintained through a Park Maintenance District. The Parks, Recreation and Public Lands Department requested that the subdivider form a Park Maintenance District at the time of final plat approval.

- **Fire and Police Protection.** The proposed subdivision will be served by City Police and Fire Departments. Fire Station #5 is the closest fire station and is located a 505 S. 24th Street West.
- **Solid Waste Disposal.** Solid waste disposal will be provided by the City of Billings.
- **Schools.** Elementary students would attend Central Heights Elementary School with a current enrollment of 339 students. Middle school students would attend Will James Middle School with an enrollment of 561 students and an ideal capacity of 690 students. High school students would attend Billings West High. West High has an enrollment of 2,101 but has an ideal capacity of only 1,400 students. School District #2 was notified of this application but has submitted no comment regarding the impacts to local schools or school transportation.

4. Effects on the Natural Environment

The property to be subdivided is located on level ground that has been cultivated for agricultural purposes. According to the geotechnical investigation prepared for this property, most of the soil on this subdivision consists of sandy silt and lean clay (low to moderate clay content) with sand to a depth of 8 feet. Beneath this layer, lean clay with sand and lean to fat clay (high clay content) are present to a depth of 16 feet. These soils exhibit low bearing strength and further geotechnical investigation should be completed prior to constructing structures in this subdivision. Notation to this effect is included in the Subdivision Improvements Agreement to inform future land owners and help mitigate the potential problems associated with these soils.

In Section 31, Township 1 North, Range 25 East, the average depth to the water table is 17.35 feet. The geotechnical investigation encountered a perched groundwater table at 9 to 10 feet and an unconfined aquifer at 12.8 to 15.4 feet. Because the development will be connected to City sewer and water services and storm drainage, there is low potential for groundwater contamination or drawdown. However, the project may require dewatering prior to installation of utility lines.

Flooding in this area is a potential concern because it lies within an area of influence of the Cove Creek drainage. Cove Creek has a history of flash flooding resulting from intense rain storm events. The drainage area, measured above Rimrock Road, is approximately 10 square miles and can generate substantial runoff in a short time. Peak discharge has been measured at Rimrock Road at 3,940 cfs for the 500-year flood event and 1,550 cfs for the 100-year event. During the 100-year flood event, the base flood elevation was measured at 1.9 feet above Rimrock Road. Flooding south of Rimrock Road in the vicinity of 54th and 62nd Streets West is unconfined but generally follows subtle topographic lows. According to the Approximate Floodplain Analysis prepared by HKM, Engineering (2004), a portion of the subdivision is located in the projected floodway. Areas located within the floodway are deemed subject to flooding. City Subdivision Regulations require that the subdivider submit a flood hazard study as specified in Section 23-1201, BMCC (Condition 3).

5. Effects on Wildlife and Wildlife Habitat

This area has limited wildlife habitat potential but deer and upland bird populations frequent most of the Billings West End to some degree. Wildlife encounters will

undoubtedly occur, but no negative comments were received from Montana Department of Fish, Wildlife and Parks (MFWP) were received. As a matter of course for subdivisions within potential wildlife habitat, MFWP has requested a statement in the SIA to inform property owners that they do not mitigate conflicts between residents and wildlife. This statement is found in the “Conditions that Run with the Land” section.

6. Effects on Public Health and Safety

The potential natural hazards present on this property are compressible soil conditions and flood hazards. Both of these conditions have been addressed in previous chapters and mitigation measures recommended where appropriate.

B. Environmental Assessment [Section 23-1100, BMCC; 76-3-210(1),MCA]

This subdivision is exempt from preparing an environmental assessment pursuant to Section 23-1100, BMCC; “Subdivisions totally within a master planning area adopted pursuant to MCA Title 76, Chapter 1 wherein zoning regulations pursuant to MCA Title 76, Chapter 2 and a long-range development program of public works projects pursuant to MCA 76-1-601 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment” [Section 23-1100 (h)].

C. Conformance with the Yellowstone County – City of Billings 2003 Growth Policy, Billings West End Plan, BikeNet, and the Billings Urban Area 2000 Transportation Plan [Section 23-304(c)(3) BMCC].

1. 2003 Growth Policy

The Foxtail Village Subdivision, 2nd Filing is consistent with the following 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).
- Visually appealing rights-of-way that serve the needs of all uses (Transportation Element Goal, page 10).
- A safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Element Goal, page 10).
- Increased circulation connections for improved traffic flow (Transportation Element Goal, page 10).

The Foxtail Village Subdivision, 2nd Filing is *not* consistent with the following goal.

- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).

The Foxtail Village Subdivision, 2nd Filing is neutral as to the following goals.

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, page 6).

- Attractive and accessible communities (Economic Development Element Goal, page 7).
- An economically and culturally vibrant Downtown Billings (Economic Development Element Goal, page 7).
- Visually appealing communities (Economic Development Element Goal, page 7).

2. Billings West End Plan

The Foxtail Village Subdivision, 2nd Filing is consistent with the goals of the West Billings Plan as follows.

- Plan for the orderly and efficient urbanization of agricultural lands (Land Utilization Goal 1, page 32).
- Create development in West Billings that are compatible with their surroundings and provide a safe and desirable environment for residents, shoppers, workers, and visitors (Community Character Goal 1, page 38).

3. Northwest Shiloh Land Use Plan

The subdivision lies within an area that has been identified for moderate to high density development by this plan and is therefore consistent with the plan.

4. Heritage Trail Plan

An off-street bike path along the west edge of 58th Street West was installed as recommended in the Heritage Trail Plan was installed as part of the Foxtail Village Subdivision, 1st Filing.

5. Billings Urban Area 2000 Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2005 Updated Transportation Plan and preserves the street network and street hierarchy laid out in that plan.

D. Compliance with the Montana Subdivision and Platting Act and local subdivision regulations [Chapter 23, BMCC].

The preliminary subdivision plat application met all the requirements of the City Subdivision Regulations and the Montana Subdivision and Platting Act. The subdivider has complied with the procedures.

E. Sanitary requirements. [Section 23-201, BMCC; Section 23-304(c)(5), BMCC].

The subdivider must receive approval from the Montana Department of Quality to connect with the City sanitary sewer lines.

F. Zoning requirements [Section 23-201, BMCC; Section 23-304(c)(6), BMCC].

The subdivision is proceeding with a concurrent rezoning application that will bring the proposed subdivision into compliance with the Unified Zoning Regulations.

G. Planned utilities [Section 23-304(c)(7), BMCC; 76-3-608(3)(c), MCA].

Electricity, gas, telephone and cable TV can be extended from existing services adjacent to the proposed subdivision. Utility will be located within utility easement along the frontage lot lines and internally as requested by the utility companies (Condition 4).

H. Legal and physical access [Section 23-304(c)(7), BMCC; 76-3-608(3)(c), MCA].

Legal and physical access to the subdivision is provided by 60th Street West to Grand Avenue and Foxtail Lane to 58th Street West. Internal access is provided by three public streets.

Approved by the Billings City Council, September 12, 2005.

Charles F. Tooley, Mayor

September 12, 2005

Kenmark Corporation
3936 Avenue B, Suite A
Billings, MT 59102

Dear Applicant:

On September 12, 2005, the Billings City Council approved the requested variances and conditionally approved the preliminary plat of Foxtail Village Subdivision, 2nd Filing. The conditions of approval are as follows:

6. **To minimize the effect on agricultural water user facilities**, the subdivider shall:
 - a. Obtain written permission from the Birely Drain Board to modify the dimensions of the drain and to discharge stormwater generated by the subdivision into the drain.
 - b. Show the existing easement granted to the Birely Drain Board on the face of the final plat.
 - c. Identify the area to be dedicated to the City of Billings for stormwater purposes on the final plat.
 - d. Obtain written permission from the users of the drain ditch located along the western boundary of the subdivision to modify, cover or relocate the ditch. Under no circumstances shall the operation and maintenance of this ditch be impaired.
7. **To minimize the effect on local services, the subdivider shall:**
 - a. The following changes shall be made to the SIA to bring the Agreement into acceptable format:
 - SIA-3. Streets – Any reference to Kenmar Drive West shall be replaced with “Kennedy Way”.
 - SIA-4. Birely Drain – replace “deeded to” with “dedicated to”.
 - SIA-4. Heritage Trail Plan – amend the language in this section to indicate the type of access provided to the 58th Street West.
 - SIA-6. Parks/Open Space – Replace “district will be set up for Lot 3, Block 3”, in the second to last sentence with “district will be established for the area dedicated to the City for stormwater purposes”.
 - b. To bring the subdivision into conformance with the City/County Unified Zoning Regulations, the subdivider shall obtain approval for a zone change to ensure the subdivided lots comply with the minimum lot size requirements of the zoning district in which the property is located.
8. **To minimize the effect on the natural environment**, the subdivider shall complete a detailed floodplain analysis for the Birely Drain in accordance with the Flood Evaluation requirements specified in the City Subdivision Regulations. If necessary, a plan for floodplain mitigation shall be approved by Planning, City Engineering and the City/County Floodplain Administrator prior to final plat approval. The final stormwater

management plan for the Foxtail Village Subdivisions, 1st and 2nd Filings, shall incorporate the results of this study as required by City Engineering.

9. **To ensure the provision of easements for the location and installation of any planned utilities**, the subdivider shall grant utility easements as specified by Yellowstone Valley Electric Co-operation and Montana-Dakota Utilities.
10. **To ensure that the final plat will comply with local subdivision regulations and state law:**
 - a. Conditional approval of the Foxtail Village Subdivision, 2nd Filing plat does not constitute approval of future multi-family development in Lots 1 and 2, Block 3. The subdivider must submit and receive approval for a Development Plan prior to any construction on this lot.
 - b. Minor changes may be made to the Subdivision Improvements Agreement and final documents upon request of Planning and Community Services or Public Works Departments to clarify the documents and bring them into standard acceptable formats.
 - c. The final subdivision plat and supplementary documents shall comply with all requirements of the City of Billings Subdivision Regulations, Billings Municipal City Code (BMCC), and rules, regulations, policies, and ordinances of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Candi Beaudry with the Planning Division at 657-8249 or by email at beaudryc@ci.billings.mt.us.

Sincerely,

Charles F. Tooley, Mayor

Pc: Will Ralph, Engineering, Inc.

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

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Preliminary Plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision

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

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting preliminary plat approval of Amended Lots 1-7 and 8-A, Block 1 of Spring Valley Subdivision, which was submitted on July 28, 2005. The owners are Ernest and Jacqueline Szillat and Engineering, Inc. is the 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.

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 could further develop resulting in additional tax revenues for the City.

RECOMMENDATION

Staff recommends that the City Council conditionally approve the Preliminary Plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision and adopt the Findings of Fact 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 aggregate Lots 1-7 and 8A to create one (1) large lot for a residential condominium development containing nine (9) units. Section 76-3-207(2)(a) of the Montana Code Annotated (MCA) specifies that any division of lots that results in an increase or redesigns or rearranges six (6) or more lots must be reviewed and approved by the governing body. The subject property is located on the northeast corner of the intersection of Alkali Creek Road and Indian Trail, adjacent to the north of Alkali Creek Elementary School. The subject property is bordered on the north and north by parkland and Alkali Creek Elementary School, and on the south and west by single-family residences and vacant land within the Spring Valley Subdivision (south) and Alkali Creek Subdivision (west).

PROCEDURAL HISTORY

- The half cul-de-sac providing access from Indian Trail to the original platted lots was vacated on April 25, 2005, per Resolution #05-18257.
- The City Council will consider the preliminary plat application on September 12, 2005.

BACKGROUND

General location:	The northeast corner of the intersection of Alkali Creek Road and Indian Trail, adjacent to the north of Alkali Creek Elementary School.
Legal Description:	Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision
Subdivider/Owner:	Ernest and Jacqueline Szillat
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	R-9600
Surrounding zoning:	North: R-9600 and Public; South: R-9600; East: Public; West: R-9600
Existing land use:	Vacant
Proposed land use:	Single-family residences within a condominium development
Gross area:	2.578 acres
Lots:	One aggregated lot containing 2.578 acres

Dedications:

A parkland dedication is not required for a minor subdivision. The parkland dedication has been previously satisfied with the first filing of Spring Valley 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. The subdivider shall depict 10-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
2. Section VI of the SIA shall be amended to include the standard language for utilities. *(Recommended by the Public Utilities Department)*
3. The number of sewer services installed should match the number of water services installed. *(Recommended by the Public Utilities Department)*
4. The subdivider shall provide a location for a centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle with the site development plan for the subject property. The location of the box shall be reviewed and approved by the post office. A statement regarding the proposed location of the box and pullout shall be included within the SIA. *(Recommended by the United States Postal Service)*
5. 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.
6. 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

No variances requested.

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 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 Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

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

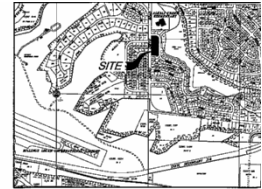
ATTACHMENT A

Preliminary plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision

PRELIMINARY PLAT OF AMENDED LOTS 1-7 AND 8-A, BLOCK 1,
SPRING VALLEY SUBDIVISION
 SITUATED IN THE NW 1/4 OF SECTION 28, T. 1 N., R. 26 E., P.M.M.
 YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : ERNEST & JACQUELINE SZILLAT
 PREPARED BY : ENGINEERING, INC.
 SCALE : 1" = 30'

AUGUST, 2005
 BILLINGS, MONTANA



VICINITY MAP
 NOT TO SCALE

BASIS OF BEARING: SPRING VALLEY SUBDIVISION

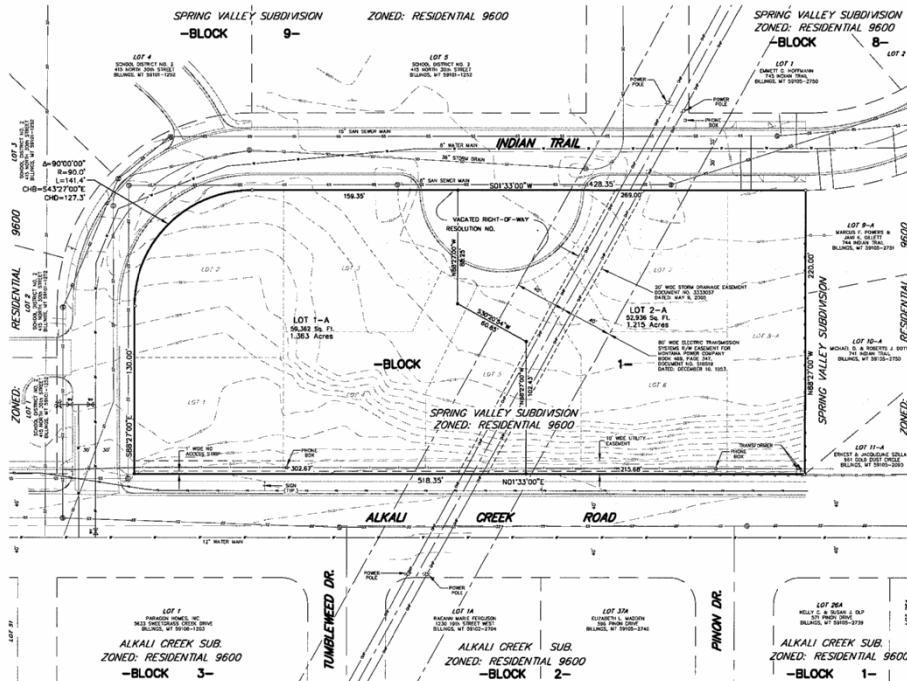
- = REAR AND CAP MARKED "ENGINEERING INC."
- = SET 5/8" X 18" REAR WITH CAP MARKED WITH THE
 LEGAL NUMBER OF THE UNDERGROUND LAND SURVEYOR
 AND "ENGINEERING INC. BILLINGS MT"

PLAT DATA

GROSS AREA	= 2.578 Acres (112,297 sq. ft.)
NET AREA	= 2.578 Acres (112,297 sq. ft.)
NUMBER OF LOTS	= 2
MINIMUM LOT SIZE	= 1.215 Acres (52,936 Sq. Ft.)
MAXIMUM LOT SIZE	= 1.363 Acres (59,362 Sq. Ft.)
PARKLAND REQUIREMENT	= NONE
PARKLAND DEDICATION	= NONE
EXISTING ZONING	= RESIDENTIAL 9600
SURROUNDING ZONING:	
NORTH	= RESIDENTIAL 9600
SOUTH	= RESIDENTIAL 9600
EAST	= RESIDENTIAL 9600
WEST	= RESIDENTIAL 9600
EXISTING LAND USE	= VACANT
PROPOSED LAND USE	= RESIDENTIAL

LEGEND:

- FO FIBER OPTICS LINE
- SS SANITARY SEWER MAIN
- SM SANITARY SEWER MANHOLE
- SD STORM DRAIN LINE
- SDM STORM DRAIN MANHOLE
- OP OVERHEAD POWER LINE
- T TELEPHONE LINE
- W WATER LINE
- WH WATER VALVE
- WM WATER MANHOLE
- PP POWER POLE
- PB TELEPHONE BOX
- TR TRANSFORMER
- F FENCE LINE
- S SIGN



ATTACHMENT B
Site Photographs



Figure 1: View southeast across the subject property.



Figure 2: View south along the sidewalk that borders the subject property on the west. (Alkali Creek is pictured in the photograph).



Figure 3: View from the northwest corner of the property north toward the adjacent elementary school.



Figure 4: View west toward developing land within Alkali Creek Subdivision.

ATTACHMENT C
Mayor's approval letter
Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision

September 12, 2005

Ernest and Jacqueline Szillat
961 Gold Dust Circle
Billings, Montana 59105

Dear Property Owner:

On September 12, 2005, the Billings City Council approved the preliminary plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision, subject to the following conditions of approval:

1. The subdivider shall depict 10-foot easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
2. Section VI of the SIA shall be amended to include the standard language for utilities. *(Recommended by the Public Utilities Department)*
3. The number of sewer services installed should match the number of water services installed. *(Recommended by the Public Utilities Department)*
4. The applicant shall provide centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the box shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
5. 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.
6. 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

pc: Matthew Waite, Engineering, Inc.

ATTACHMENT D
Findings of Fact
Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision

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 – An 8-inch sewer main and water main exists within the Indian Trail right-of-way. The subdivider is proposing a 2-inch water connection and a 6-inch sanitary sewer line to every three (3) units within the development. As required by Condition #3, there shall be the same number of sewer water connections within the development.
- b. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for the additional waste.

Streets – Access to the proposed lot will be via two (2) 30-foot wide private drives from Indian Trail, an existing 60-foot wide dedicated right-of-way that borders the subject property to the east. As indicated in the SIA, the subdivider will complete pavement on Indian Trail along the south and west sides of the road through a private contract. Sidewalks will be constructed along Indian Trail for the entire frontage of the proposed subdivision.

There is a 1-foot no access strip depicted along the western boundary of the subject property in order to prevent access from Alkali Creek Road. No improvements are proposed to Alkali Creek Road with this subdivision.

There is a dedicated half width cul-de-sac or pullout located along the western portion of the site on Alkali Creek Road that has been previously vacated. The pullout originally served the lots within the subdivision, however it is no longer necessary, as the subdivider is required to access the proposed Lot from Indian Trail on the east side of the subdivision. This portion of dedicated right-of-way was vacated at the April 25, 2005, City Council meeting per Resolution #05-18257.

- c. Emergency services – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).

- d. Schools – The proposed subdivision is located within School District #2. No comments were received from School District #2
- e. Parks and Recreation – There is no parkland dedication requirement, as this is a minor plat. The parkland requirement has been previously satisfied with previous filings of Spring Valley Subdivision.
- f. MET Transit – The subject property is serviced by MET transit (routes 14P and 15P). The proposed residential development on this property should positively impact MET service by increasing ridership.
- g. Mail Delivery - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #4. The location of the mail box shall be reviewed and approved by the post office.

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

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is in close proximity to prime deer, antelope and wild turkey habitat and it is likely that homeowners will experience damage to landscaping.

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 neighborhood character and surrounding land use patterns.

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

The proposed subdivision will contain single-family residences, which is compatible with the surrounding R-9600 zoning.

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

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 parkland directly adjacent to the east of the subject property.

2. Urban Area Transportation Plan

Alkali Creek Road is identified on the functional classification map as a principle arterial. No improvements are necessary for Alkali Creek Road as a result of this subdivision.

3. Heritage Trail Plan

The Heritage Trail Plan identifies Alkali Creek Road as an arterial bikeway on the west side and as a multi-use trail on the east side. No improvements are proposed to the trail system as a result of this subdivision.

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

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 Indian Trail 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 Residential 9600 (R-9600) zoning district. The subdivider is proposing nine (9) single-family residences within a condominium development on the subject property, which complies with R-9600 zoning district.

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)]

As required by Condition #1, the applicant shall provide 8-foot utility easements, where indicated on the plat review submitted by the Montana-Dakota Utilities Company.

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 private internal driveways from Indian Trail.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Amended Lots 1-7 and 8-A, Block 1, Spring Valley Subdivision 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 and satisfies sanitary, easement and zoning requirements. Legal and physical access is provided to the parcel.

Approved by the Billings City Council on September 12, 2005

Charles F. Tooley, Mayor

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

Z

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Preliminary Plat of Tierra Yellowstone Industrial Park Subdivision, 2nd Filing

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

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting preliminary plat approval of Tierra Yellowstone Industrial Park, 2nd Filing, which was submitted on August 1, 2005. The owner is Elk River Concrete Products Company and Engineering, Inc. is the 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.

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:

4. Approve
5. Conditionally Approve; or
6. Deny the Preliminary Plat

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

RECOMMENDATION

Staff recommends that the City Council conditionally approve the Preliminary Plat of Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, and adopt the Findings of Fact 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 five (5) lots from the previously filed 14 lots within the first filing and amended filings of Tierra Yellowstone Industrial Park. The result is an aggregation of Lots 1-7 and 11-12 of Block 2A and Lots 10-11 of Block 1A into proposed Lot 2; and a reconfiguration of Lots 8, 9, and 12 of Block 1A into proposed Lots 1-5. The proposed lots will range from 2.18 acres to 19.56 acres in size. The subject property is located adjacent to the north of Hesper Road between South 30th Street West and South 32nd Street West. The subject property is zoned Controlled Industrial (CI) and contains an existing concrete business (Cretex) on the southwest corner of the site (proposed Lot 2) and a tree nursery on the eastern portion of the property (proposed Lot 3); Lot 1, the northern portion of Lot 2, and Lots 4-5 are vacant. The subject property is bordered on the west by a powder coating business, on the south by vacant land and a vacant warehouse structure and on the east and north by vacant and developing land.

PROCEDURAL HISTORY

- Conrad Road, which is located through the center of the subject property is proposed to be vacated at the September 12, 2005, City Council meeting.
- The City Council will consider the preliminary plat application on September 12, 2005.

BACKGROUND

General location:	Adjacent to the north of Hesper Road between South 30 th Street West and South 32 nd Street West
Legal Description:	Tierra Yellowstone Subdivision, 2 nd Filing, being Lots 1-8, Block 1A and Lots 1-7, 11, 12, Block 2A of Amended Blocks 1, 2, 3, and 4 of Tierra Yellowstone Industrial Subdivision and Vacated Conrad Road
Subdivider/Owner:	Elk River Concrete Products Company
Engineer and Surveyor:	Engineering, Inc.
Existing Zoning:	Controlled Industrial (CI)
Surrounding zoning:	North: CI; South: CI; East: CI; West: CI
Existing land use:	Proposed Lot 2 contains Cretex Concrete; proposed Lot 3 contains tree nursery stock; and proposed Lots 1, 4, and 5 are vacant
Proposed land use:	Industrial Uses
Gross area:	29.48 acres

Lot 1: 3.24 acres
Lot 2: 19.56 acres
Lots 3 and 4: 2.18 acres
Lot 5: 2.33 acres

A parkland dedication is not required for a minor subdivision.

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:

7. The subdivider shall depict 25-foot wide easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
8. The applicant shall provide centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the box shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
9. Section VI of the SIA shall be amended to include the standard language for utilities. *(Recommended by the Public Utilities Department)*
10. Section VI. A of the SIA shall be amended to that Lot 2, Block 6, shall participate in an SID for the construction of a 12-inch water main in Hesper Road with the adjacent property owners. *(Recommended by the Public Utilities Department)*
11. The following information regarding the vacation of Conrad Road shall be included in the SIA *(Recommended by the Public Utilities Department)*:
 - The water main stub at Conrad Road and South 32nd Street west shall be plugged at the tee.
 - The water main stub at Conrad Road and South 30th Street West shall be plugged at the 12" x 12" tee in South 30th. A fire hydrant and branch shall be installed at the property line of Lots 3 and 4, Block 3A of Tierra Yellowstone Industrial Park Subdivision.
 - The subdivider shall provide street cuts in South 30th Street West for water and sanitary sewer services to be installed.

- The sanitary sewer stub to Conrad Road will require the inlet to the manhole to be plugged in the manhole.
12. 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.
 13. 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

No variances requested.

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 Tierra Yellowstone Industrial Park Subdivision, 2nd Filing and adopt the Findings of Fact 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

TIERRA YELLOWSTONE INDUSTRIAL PARK SUBDIVISION, 2ND FILING

BEING LOTS 8 - 12, BLOCK 1A AND LOTS 1 - 7, 11 & 12, BLOCK 2A OF AMENDED BLOCKS 1, 2, 3, AND 4 OF TIERRA YELLOWSTONE INDUSTRIAL PARK SUBDIVISION AND VACATED CONRAD ROAD
SITUATED IN THE S 1/4 OF THE SW 1/4 OF S. 13, T. 1 S., R. 25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: CRETEX CONCRETE PRODUCTS WEST, INC.

PREPARED BY: ENGINEERING, INC.

SCALE: 1" = 100'

JULY, 2005
BILLINGS, MONTANA

BASIS OF BEARING:

- = FOUND 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT"
- = FOUND INTERSECTION MONUMENT, 5/8" X 18" REBAR WITH I MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "ENGINEERING INC BILLINGS MT". WILL BE REPLACED WITH BRASS CAP MONUMENT SOX LUPC COMPLETION OF STREET IMPROVEMENTS.

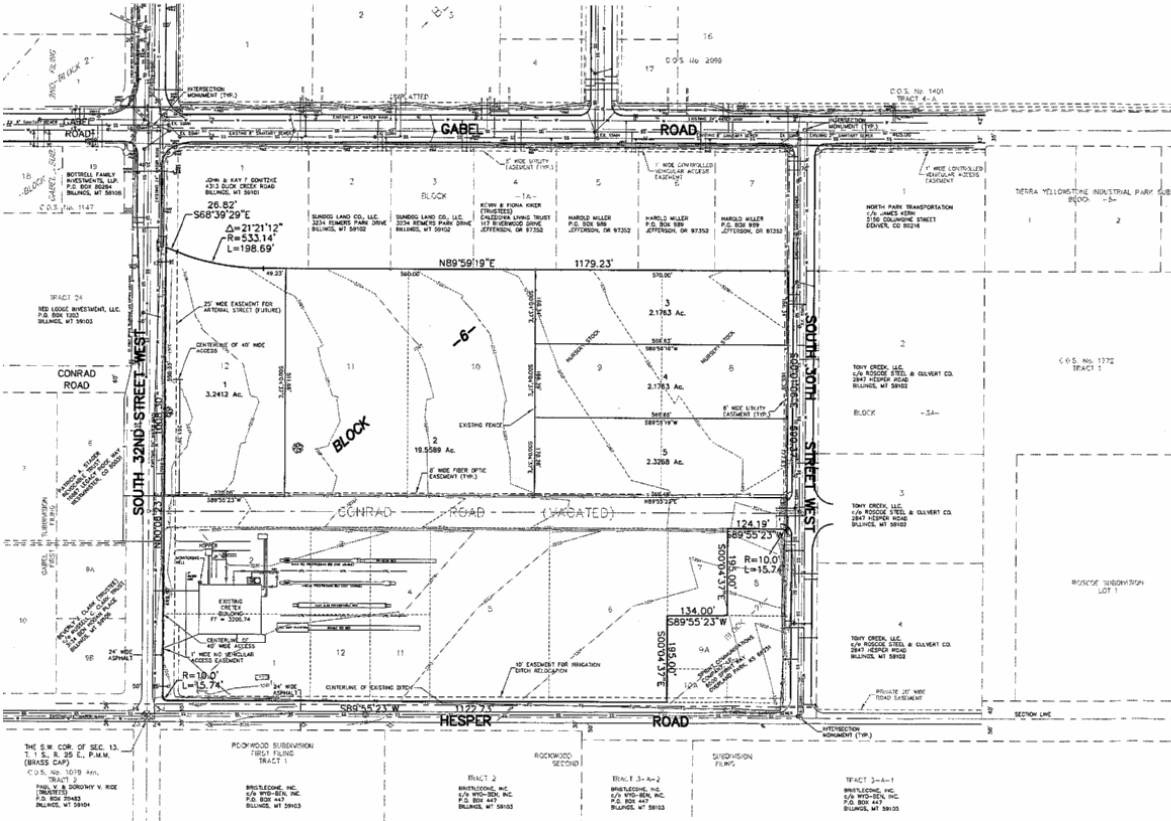
[224] = TYPICAL STREET ADDRESS

PLAT DATA

GROSS AREA	= 29.4795 Ac.
NET AREA	= 29.4795 Ac.
NUMBER OF LOTS	= 5
MINIMUM LOT SIZE	= 2.1763 Ac.
MAXIMUM LOT SIZE	= 19.5589 Ac.
LINEAL FEET OF STREETS	= 0
PARKLAND REQUIREMENT	= NONE
PARKLAND DEDICATION	= NONE
EXISTING ZONING	= CONTROLLED INDUSTRIAL
SURROUNDING ZONING:	
NORTH	= CONTROLLED INDUSTRIAL
SOUTH	= CONTROLLED INDUSTRIAL
EAST	= CONTROLLED INDUSTRIAL
WEST	= CONTROLLED INDUSTRIAL
EXISTING LAND USE	= CONTROLLED INDUSTRIAL
PROPOSED LAND USE	= CONTROLLED INDUSTRIAL



VICINITY MAP
(NOT TO SCALE)



ATTACHMENT B
Site Photographs



Figure 1: View northeast toward the existing concrete business on the site (Cretex).



Figure 2: View from subject property parking lot west toward the adjacent powder coating business.



Figure 3: View north along South 32nd Street West, which borders to the subject property on the west. The parking lot for the Cretex building is pictured.



Figure 4: View from Gabel Road south toward the existing nursery stock on proposed Lot 3.

ATTACHMENT C
Mayor's Approval Letter
Tierra Yellowstone Industrial Park Subdivision, 2nd Filing

September 12, 2005

Elk River Concrete Products Company
Attn: John Reineking and Harold Miller
P.O. Box 1620
Rapid City, South Dakota 57709

Dear Property Owner:

On September 12, 2005, the Billings City Council approved the preliminary plat of Tierra Yellowstone Industrial Park Subdivision, 2nd Filing, subject to the following conditions of approval:

1. The subdivider shall depict 25-foot wide easements on the plat in accordance with the highlighted easement areas indicated on the plat review by the Montana-Dakota Utilities Company. *(Recommended by Montana-Dakota Utilities)*
2. The applicant shall provide centralized delivery box with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the box shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
3. Section VI of the SIA shall be amended to include the standard language for utilities. *(Recommended by the Public Utilities Department)*
4. Section VI. A of the SIA shall be amended to that Lot 2, Block 6, shall participate in an SID for the construction of a 12-inch water main in Hesper Road with the adjacent property owners. *(Recommended by the Public Utilities Department)*
5. The following information regarding the vacation of Conrad Road shall be included in the SIA *(Recommended by the Public Utilities Department)*:
 - The water main stub at Conrad Road and South 32nd Street west shall be plugged at the tee.
 - The water main stub at Conrad Road and South 30th Street West shall be plugged at the 12" x 12" tee in South 30th. A fire hydrant and branch shall be installed at the property line of Lots 3 and 4, Block 3A of Tierra Yellowstone Industrial Park Subdivision.
 - The subdivider shall provide street cuts in South 30th Street West for water and sanitary sewer services to be installed.
 - The sanitary sewer stub to Conrad Road will require the inlet to the manhole to be plugged in the manhole.

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.

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

pc: Marshall Phil, Engineering, Inc.

ATTACHMENT D
Findings of Fact
Tierra Yellowstone Industrial Park Subdivision, 2nd 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, as the subject property is not currently used for agriculture. There is a 10-foot wide irrigation lateral located along the southern boundary. Upon improvements to Hesper Road, a 10-foot irrigation ditch easement has been provided north of the right-of-way line to accommodate relocation of that lateral due to future widening of the road.

2. Effect on local services

- h. Utilities – A 12-inch water main exists within South 30th Street West and a 24-inch water main is located within South 32nd Street West. An additional 12-inch water main will be installed within Hesper Road to the south through future Special Improvement District in order for all property owners to contribute to the improvements. Proposed Lot 3 maintains an existing 6-inch water line from South 30th Street West and Lots 4 and 5 will establish a connection to South 30th Street West upon site development. Lot 1 will connect to the water main within South 32nd Street West at the time of lot development. Lot 2 has water services, as it contains an existing business.

There is a 21-inch sewer main within South 30th Street West, an 18-inch main within Hesper Road, and an 8-inch main in South 32nd Street West. The future Special Improvement District will provide for an extension and/or replacement of the main within South 32nd Street West from Hesper Road north to Gabel Road. Proposed Lot 1 will connect to the existing 8-inch sewer main in South 32nd Street West. Lot 3 has an existing 6-inch line from South 30th Street West and Lots 4 and 5 will connect to the 21-inch sewer main within South 30th Street West upon lot development. Lot 2 has sanitary sewer services, as it contains an existing business.

The Public Utilities Department reviewed the petition for vacation of the Conrad Road right-of-way, which is currently located through the center of the subject property. As part of their review, Condition #5 specifies the requirements to eliminate additional connections to water and sewer services currently located within Conrad Road. Information regarding the plugging of these connections shall be included within the SIA.

- i. Solid waste – The City provides solid waste collection and disposal. The City's landfill has adequate capacity for the additional waste.
- c. Streets – Access to proposed Lot 1 and 2 are via existing 40-foot wide access points from South 32nd Street West. Though there are no access points along Hesper Road, Lot 2 has

the potential to gain an additional access from Hesper Road to the south. The Engineering Department has reviewed this proposal and finds that a second access will not cause conflicts with traffic along Hesper Road. However, in order to prevent additional accesses to Lot 1 along 32nd Street West, a 1-foot no access strip has been depicted along the western boundary of the lot, with the exception of the existing 40-foot access point. Lots 3, 4, and 5 will have separate access points along South 30th Street West; the locations of these accesses will be determined at the time of site development.

Hesper Road and South 32nd Street West will undergo improvements in the future through an area wide Special Improvement District (SID). Both streets currently contain 24-foot wide asphalt pavement; future improvements will include 49-feet of paving from back of curb to back of curb. The 1st filing of Tierra Yellowstone Industrial Park included a 35-foot right-of-way dedication along both Hesper Road and 32nd Street West, which will accommodate future improvements to streets. The right-of-way width for South 30th Street West is currently 70-feet, which is sufficient to accommodate traffic at this time, therefore no improvements are proposed.

- d. Storm Drainage – There is an existing 12-inch storm drain located within South 32nd Street West, which will accommodate runoff from Lot 1. The 15-inch storm drain within South 30th Street West will accommodate runoff from Lots 4 and 5; Lot 3 maintains an existing connection to this 15-inch drain. Lot 2 will continue to utilize the existing 15-inch stub installed within the Conrad Road right-of-way. As stated in the SIA, any additional drainage improvements shall comply with the *Stormwater Management Manual* and shall be submitted for review and approval by the Engineering Department.
- e. Emergency Services – The 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.
- f. 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 industrial.
- g. Parks and Recreation – There is no parkland dedication requirement, as this is a minor plat.

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 and industrially zoned 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 and the property to be subdivided is located within an area contained in an adopted growth policy.

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.

The proposed subdivision is consistent with the surrounding industrial uses.

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

The proposed subdivision is bordered on all sides by developed and vacant land within the Controlled Industrial (CI) zoning district. Any proposed industrial uses will be compatible with the surrounding neighborhood.

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

The proposed subdivision will utilize existing infrastructure. The subdivision may be considered infill and does not contribute to urban sprawl.

2. Urban Area Transportation Plan

South 32nd Street West (west), Hesper Road (south), South 30th Street West (east) are collector streets at this location; Gabel Road, located to the north, is classified as a principal arterial at this location, however it does not border the subject property.

3. Heritage Trail Plan

The subject property is not identified within the Heritage Trail Plan for the preservation of a trail corridor.

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 property is served by municipal water, sewer, storm drain and solid waste services, which will be extended from South 30th Street West, South 32nd Street West, and Hesper Road. 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 Controlled Industrial (CI) and conforms to the requirements set forth by Unified Zoning Code.

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 an 8-foot wide utility easement depicted along the eastern border of proposed Lots 3-5. As required by Condition #1, the subdivider shall depict a 25-foot easement along the western border of the property to accommodate utilities for the Montana Dakota Utilities Company.

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)]

Access to the proposed lots will be via access points from South 30th Street West (east), South 32nd Street West (west), and Hesper Road (south)

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Tierra Yellowstone Industrial Park Subdivision, 2nd 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 infill 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 does not 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 September 12, 2005

Charles F. Tooley, Mayor

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

AA

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Final Plat of Copper Ridge Subdivision, 1st Filing
DEPARTMENT: Planning and Community Services, Ramona Mattix, AICP, Planning Director
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Copper Ridge Subdivision, 1st Filing is being presented to Council for approval. On April 25, 2005, the City Council conditionally approved the 78 lot major subdivision. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Copper Ridge Subdivision, 1st Filing.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

ATTACHMENT A
Final Plat

COPPER RIDGE SUBDIVISION, 1ST FILING

BEING TRACT 3A & 4 OF CERTIFICATE OF SURVEY NO. 2465
SITUATED IN THE SW 1/4 OF SECTION 25, T. 1 N., R. 24 E., P.M.M.
BILLINGS, YELLOWSTONE COUNTY, MONTANA

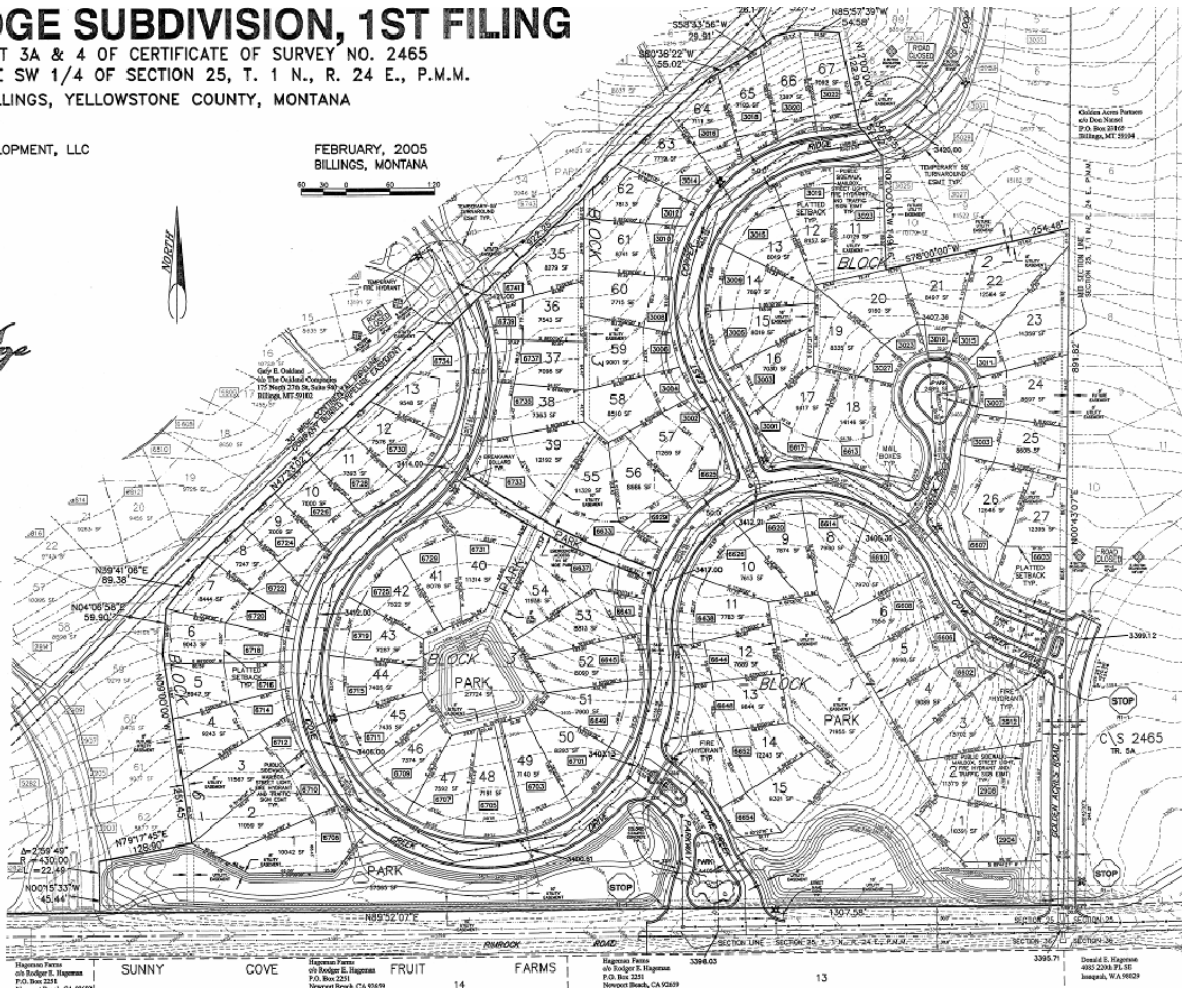
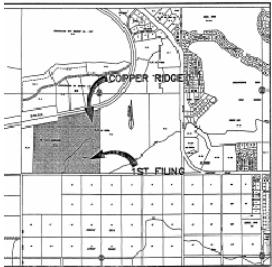
PREPARED FOR : COPPER RIDGE DEVELOPMENT, LLC
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 60'

FEBRUARY, 2005
BILLINGS, MONTANA



SITE DATA

GRASS AREA - 53.849 ACRES
NET AREA - 12.038 ACRES
NUMBER OF LOTS - 78
MAINWAY LOT SIZE - 14,140 S.F.
MINIMUM LOT SIZE - 7,000 S.F.
RESIDENTIAL USE - 1.750 ACRES (3,899 ACRES DEDICATED)
PARK REQUIREMENT - 1.750 ACRES (3,899 ACRES DEDICATED)
NORTH - 1.750 ACRES
SOUTH - 1.750 ACRES
EAST - 1.750 ACRES
WEST - 1.750 ACRES



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

BB

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Falcon Ridge Subdivision, Final Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Wyeth Friday, Planner I, through Ramona Mattix, Planning Director

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was approved on September 13, 2004. The subdivision name has been changed from Golden Acres Subdivision to Falcon Ridge Subdivision since the preliminary plat was approved. The Falcon Ridge Subdivision is located west of Molt Road and north of Rimrock Road on the west side of Billings. It contains 74 lots for residential development. The final documents meet all of the preliminary plat approval conditions. The City Attorney reviewed and approved the subdivision plat and the associated documents.

FINANCIAL IMPACT: There should be no direct financial impact to the City for approving this final plat.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of the Falcon Ridge Subdivision. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

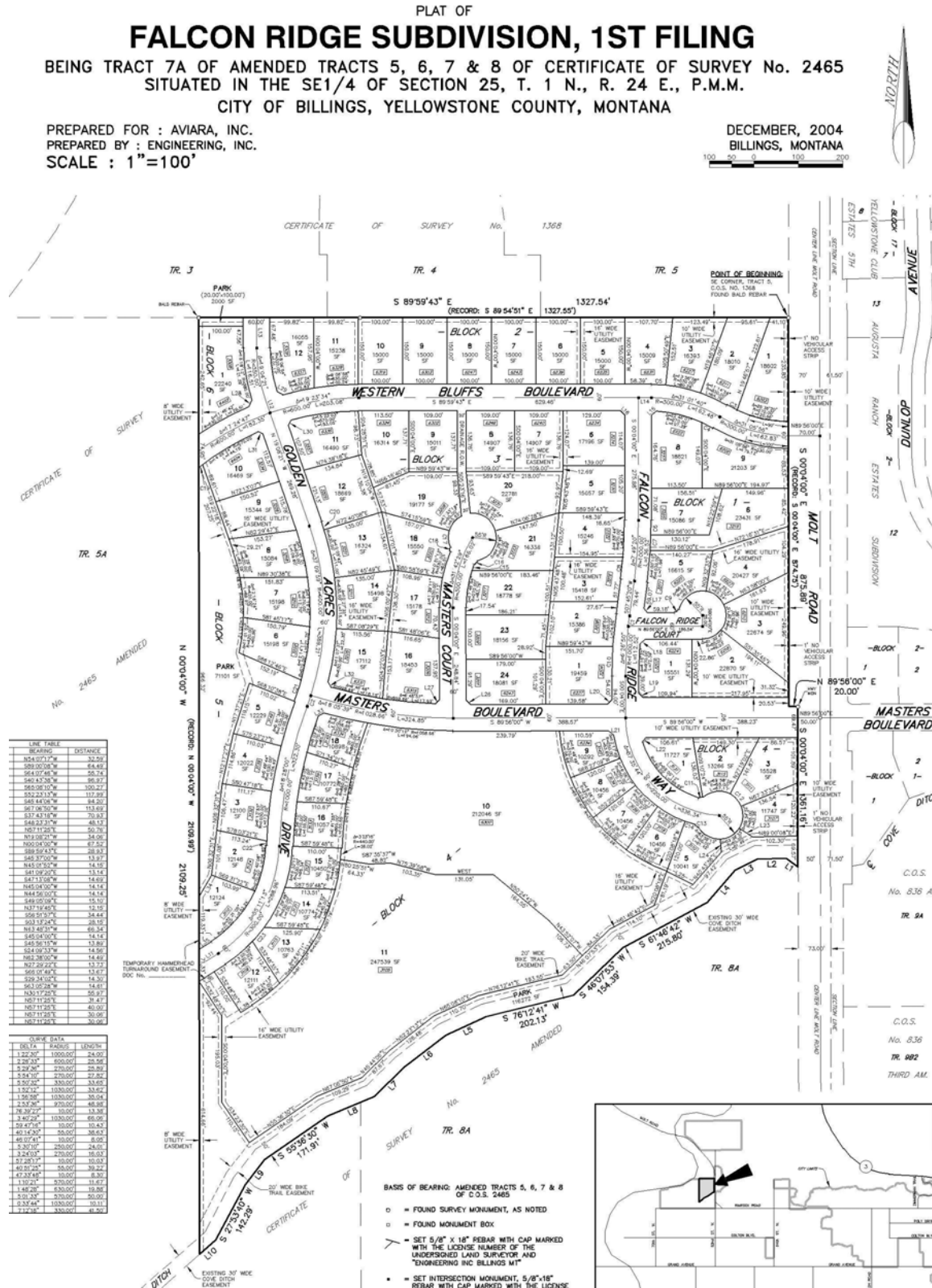
Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A. Copy of Final Plat

ATTACHMENT A

(Back to
Consent
Agenda)



CC

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Final Plat of Amended Lot 11, Weidler Acres Subdivision

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

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 11, Weidler Acres Subdivision, is being presented to Council for approval. On July 28, 2003, the City Council conditionally approved the two (2) lot preliminary minor plat. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Amended Lot 11, Weidler Acres Subdivision.

Approved By: City Administrator ____ City Attorney ____


ATTACHMENT

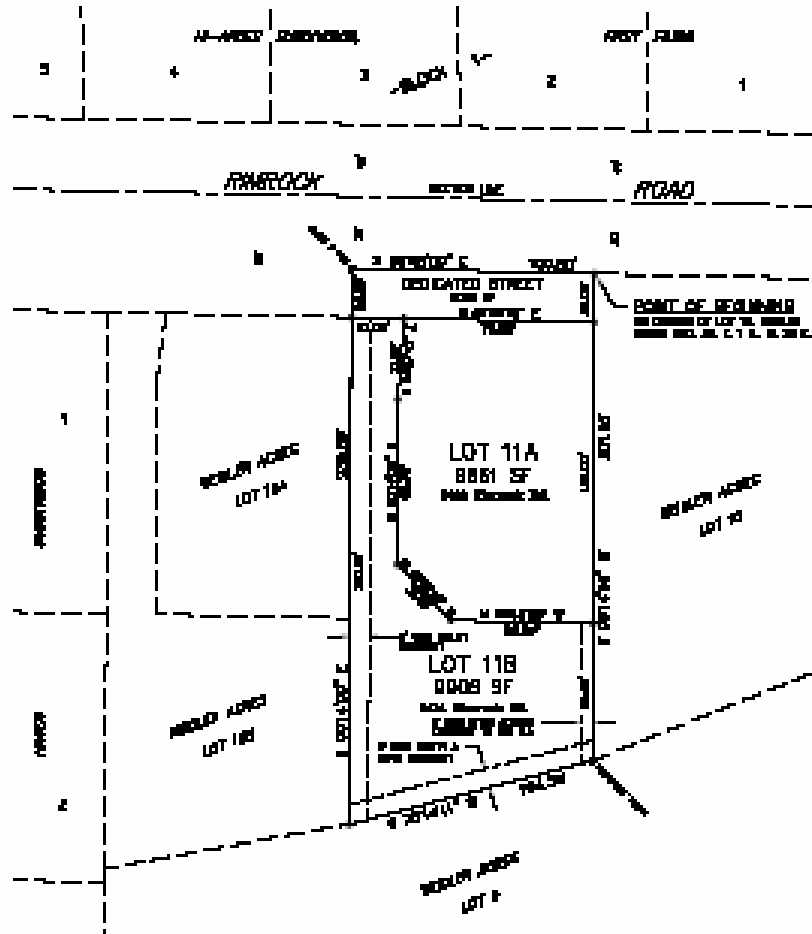
A: Final Plat

ATTACHMENT A
Final Plat

AMENDED PLAT OF LOT 11,
WEIDLER ACRES
SITUATED IN THE NE1/4 OF SECTION 35, T. 1 N., R. 25 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : CARRIE McNEESE
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 30'

APRIL, 2004
BILLINGS, MONTANA




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

DD1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 12, 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 \$1,162,928.74 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 5, 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, September 12, 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 \$2,025,810.35 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 12, 2005, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT:

A -- List of claims greater than \$2500

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

DD3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, September 12, 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 \$1,116,251.99 have been audited and are presented for your approval for payment. A complete listing of the claims dated August 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, September 12, 2005

TITLE: Public Hearing and Resolution to Create SID 1372 Summerhill Subdivision

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Jeff Essman, owner of 12 of the 22 lots proposed in the SID district boundary, has the desire to construct public improvements on Winter Green Drive, West Antelope Trail, and Antelope Place within Summerhill Subdivision. These improvements generally consist of water, sanitary sewer, storm drain, curb and gutter, and street improvements within Summerhill Subdivision as shown on the attached exhibit. The Resolution of Intent was approved at the August 22, 2005 Council Meeting. The protest period will end on September 9, 2005.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve the Resolution to Create SID 1372; or
2. After holding a public hearing, do not approve the Resolution of Intent to Create SID 1372.

FINANCIAL IMPACT: The total estimated costs of the Improvements are \$467,315.67. The costs of the Improvements are to be paid from the following sources: (1) \$242,000.00 of Special Improvement District bonds hereinafter described; and (2) \$225,315.67 of cash contribution by Jeff Essman, the owner of 12 of the 23 lots in the District.

RECOMMENDATION

Staff recommends that Council approve the Resolution to Create SID 1372.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Boundary of Proposed Special Improvement District (1 page)
- B. Resolution to Create SID 1372

INTRODUCTION

Jeff Essman, owner of 12 of the 23 lots within the proposed boundary of the SID, has a desire to develop lots within Summerhill Subdivision. In order to develop these lots, all the necessary street improvements need to be constructed on Winter Green Drive, West Antelope Trail, and Antelope Place. 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

- August 22, 2005 – Resolution of Intent to Create SID 1372.
- September 12, 2005 – Public Hearing and Resolution Creating SID 1372.
- Spring 2006 – 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 Winter Green Drive, West Antelope Trail, and Antelope Place. Jeff Essman, owner of 12 of the 23 lots in the District will pay a cash contribution to the project. The total cost of the project including bond costs is \$467,315.67, however, the total cost of the project excluding the bond costs is \$431,855.04. The total cash contribution is equal to \$225,315.67 and represents 54.44 percent of the construction and administrative costs of the Improvements excluding the bond costs. 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 1372 will begin in the spring of 2006 and be completed by the spring of 2006.

RECOMMENDATION

Staff recommends that Council approve the Resolution to Create SID 1372.

ATTACHMENTS

- A. Boundary of Proposed Special Improvement District (1 page)
- B. Resolution to Create SID 1372

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. **1372**; 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 **September 12, 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. **1372**; 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 **August 22, 2005**, adopted Resolution No. **18325** (the "Resolution of Intention"), pursuant to which this Council declared its intention to create a special improvement district, designated as Special Improvement District No. **1372** 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 **September 12, 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 **\$242,000** 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 12th day of September 2005.

THE CITY OF BILLINGS:

BY _____
Charles F. Tooley MAYOR

ATTEST:

BY _____
Marita Herold, CMC/AAE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Hearing and Resolution - Vacation of Conrad Road Right of Way
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: The property owners adjacent to Conrad Road between South 30th Street West and South 32nd Street West, which include Harold Miller, Jon K Reineking, and Elk River Concrete Products Company, have requested that the city vacate Conrad Road between South 30th Street West and South 32nd Street West. Conrad Road is undeveloped and the property owners are currently replatting the lots adjacent to Conrad Road, which if vacated, will include the Conrad Road Right-of-Way. Attached is copy of the proposed plat showing the proposed vacated area.

ALTERNATIVES ANALYZED:

1. After holding a public hearing, approve the vacation of Conrad Road Right-of-Way.
2. After holding a public hearing, do not approve the vacation of Conrad Road Right-of-Way.

FINANCIAL IMPACT: Attached are two buy/sell agreements for properties recently sold within the Tierra Yellowstone Industrial Park Subdivision. Lots 5 through 9 were purchased for about \$1.20/SF and Lots 10 through 12 were purchased for about \$1.16/SF. Both of these purchases were in 2003. The total area proposed to be vacated is 98,060 square feet. With the comparison prices from the buy/sell agreements, the Conrad Road Right-of-Way would be valued anywhere between \$113,749.60 to \$117,672.00. The petitioners are willing to pay the average between the two buy/sells at \$1.18/SF for a total of \$115,710.80.

RECOMMENDATION

Staff recommends that Council approve the vacation of Conrad Road Right-of-Way as shown on Attachment A and set a price for the petitioner.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- B. Map Depicting Area to be Vacated
- C. Buy/Sell Agreements for Property Sold Within the Area

RESOLUTION NO. 05-_____

A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING **Conrad Road.**

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of **Conrad Road** as described hereinafter; and WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. **DISCONTINUANCE AND VACATION.** Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., **Conrad Road** more particularly described as follows:

Considering the basis of bearing to be the Amended Plat of Blocks 1, 2, 3 and 4 of Tierra Yellowstone Industrial Park Subdivision with all courses contained herein related thereto.

Beginning at a point on the south right-of-way line of Conrad Road, said point being the westerly point of curvature at the northeast corner of Lot 8 in Block 2A of Amended Blocks 1, 2, 3 and 4 of Tierra Yellowstone Industrial Park Subdivision;

thence, from said point of beginning, along the south right-of-way line of Conrad Road, S 89°55'23" W a distance of 1379.74 feet and along a curve to the left with a radius of 10.00 feet a distance of 15.68 feet to a point on the east right-of-way line of South 32nd Street West;

thence, along said east right-of-way line, N 00°06'23" E a distance of 90.00 feet to a point on the north right-of-way line of Conrad Road;

thence, along said north right-of-way line, along a non-tangent curve to the left with a radius of 10.00 feet a distance of 15.74 feet, N 89°55'23" E a distance of 1379.55 feet and along a curve to the left with a radius of 10.00 feet a distance of 15.70 feet to a point on the west right-of-way line of South 30th Street West;

thence, along said west right-of-way line, S 00°01'06" E a distance of 90.00 feet to a point on the south right-of-way line of Conrad Road;

thence, along said south right-of-way line, along a non-tangent curve to the left with a radius of 10.00 feet a distance of 15.72 feet to the point of beginning; containing an area of 98,060 square feet, more or less.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **Conrad Road** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 12th day of September 2005.

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Hearing and Resolution 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 Resolution of Intent to Create PMD 4030 was approved at the August 8, 2005, regular City Council meeting. The required Public Notice of Intent was advertised as required and all property owners within the proposed district were mailed a notified by mail of the proposed Park Maintenance District and have been provided a period for protest and comment from August 12th through August 25th, 2005. The Resolution to Create the District completes the process to include all lots of King's Green Subdivision, Second and Third Filings, in Park Maintenance District No. 4030. The City Council will be provided a staff report on protests and comments received at the Public Hearing.

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 to Create Park Maintenance District No. 4030, as proposed.

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

ATTACHMENT

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

INTRODUCTION

Approval of the Resolution to Create Park Maintenance District No. 4030 for the maintenance of King's Green Subdivision, Second and Third Filings, public areas will complete the process in creating the Park Maintenance District

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 was considered and adopted at the August 8th, 2005, City Council meeting.
- Public Notice of Intent to Create PMD 4030 was advertised as required on August 11th, and August 18th, and was sent by mail to affected property owners explaining the protest and comment procedures and protest period from August 12th through August 26th, and the date and the time for the Public Hearing and Council consideration of the Resolution creating the district.
- Public Hearing and Council consideration of the Resolution to Create the district at the September 12th, 2005, regular City Council meeting, will complete the process.

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 to Create Park Maintenance District No. 4030 for King's Green Subdivision, Second and Third Filings, completes the creation of the district.

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 to Create Park Maintenance District No. 4030, as proposed.

ATTACHMENT

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

RESOLUTION No. 05-
A RESOLUTION CREATING 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

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 4030 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 4030. All lands included within Park Maintenance District Number 4030 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, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Park 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 estimated cost of the proposed maintenance for the first year will be \$116.53 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 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, 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 31st 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 4030.
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 Harold, CMC, CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Service Report, Public Hearing and Resolution for Annexation 05-08, Tracts 1 and 2 of Certificate of Survey 3190

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Twin Oaks Development, LLC, is petitioning to annex an approximate 33.71 acre parcel legally described as Tracts 1 and 2 of Certificate of Survey 3190, 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 north of Uinta Park Subdivision, south of Wicks Lane. 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 conducted a public hearing on this request on August 2, 2005, and forwarded a positive recommendation (by a 4-1 vote) to the City Council for the August 22, 2005, meeting.

The petitioners are requesting annexation in order to obtain municipal water and sewer services for a proposed major subdivision in accordance with Section 7-2-4601, 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 municipal services to the subject 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 the City Council approve the Resolution of Annexation for Tracts 1 and 2 of Certificate of Survey 3190, subject to the following conditions of approval:

- a. Prior to site development 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

The petition for annexation for the 33.71 acres parcel located directly adjacent to the north of Uinta Park Subdivision. The owner, Twin Oaks, LLC, is requesting annexation to obtain City services for a future 94 lot residential subdivision. The property is currently zoned Residential 7000 and Residential 6000. 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 subject property is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next seven (7) years.

PROCEDURAL HISTORY

- The petition for annexation was submitted July 7, 2005.
- On August 2, 2005, the Zoning Commission conducted a public hearing to change the zoning from R-7000 to R-5000 on the northern portion of the site. They voted 4-1 to forward a positive recommendation to the City Council.
- On August 8, 2005, the City Council acknowledged the receipt of the petition for annexation and set a public hearing date of September 12, 2005.
- On August 22, 2005, the City Council conducted a Public Hearing and approved the zone change to R-5000 for the northern portion of the site on the first reading.
- On September 12, 2005, the City Council will conduct a Public Hearing on a resolution to annex and will either approve or deny the annexation request. The second reading for the proposed zone change will be a public hearing item at the same City Council meeting.
- If the Council approves the petition for annexation, a Public Hearing and First Reading on a resolution to adjust the City Council Ward boundaries will be conducted on September 26, 2005, and the Second Reading on October 11, 2005.

BACKGROUND

The subject property is wholly surrounded by properties within the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004.

ALTERNATIVES ANALYSIS

The City Council has expressed concerns regarding how annexations may affect the City's ability to provide services to annexed properties without diminishing the services provided to existing City residents. To address these concerns, the City 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, including streets, satisfy City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any 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 six (6) 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. All City departments responded favorably. No comments were received from 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 existing 12-inch water main located within Wicks Lane and a water main located within Broadview Drive at the southeastern portion of the property. The subject property is served by the County Water District of Billings Heights.

Sewer: Sewer lines will be extended from existing 12-inch sanitary sewer lines located in along the southern and eastern boundaries of the property. 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 onsite and discharged through the existing storm sewer located within Wicks Lane. The Engineering Department has stated that the storm sewer in Wicks Lane is sufficient to accommodate runoff from the proposed subdivision. Any additional stormwater collection facilities will be designed and constructed in accordance with City regulations at time of development.

Transportation: As indicated on a conceptual subdivision layout, Wicks Lane, a principle arterial, borders the subject property to the north and will serve as the main entry into the proposed subdivision. Interior roads will connect to Broadview Drive and Watson Peak Road located within Uinta Park Subdivision to the south. No improvements will be required along Wicks Lane as a result of development on this property.

Fire Station: The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. Fire station #6, located at 1601 St. Andrews is the nearest station to the subject property.

Parks: Parkland would be dedicated at the time of subdivision. The conceptual plan for the subdivision depicts a network of linear parks and open space throughout the design of the subdivision with a connection to the park within Uinta Park Subdivision adjacent to the south. 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 utilized to develop parkland in the future.

Bicycle and pedestrian facilities: A bicycle and pedestrian trail is depicted in the Heritage Trail Plan generally following the BBWA Canal located along the northwestern portion of the property. The developer is proposing to provide a pedestrian and bicycle connection from Uinta Park north to Wicks Lane. The location of the connection will be determined at the time of 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: The MET transit system serves this property through Routes 16P, 17P, and 18M. There were no comments received by the MET transit system regarding the proposed annexation.

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

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

Public Utilities Department: The Public Utilities Department has no objection with the annexation request.

Ambulance Service: The City does not provide ambulance service, however it does dictate 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 including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct 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 public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy Plan*:

- 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).
- Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, page 6).

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation for Tracts 1 and 2 of Certificate of Survey 3190, subject to the following conditions of approval:

- a. Prior to site development 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 NW ¼ of Section 22, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 3190, Tracts 1 and 2, Recorded May 11, 2004, Under Document No. 3287254, Records of Yellowstone County, Montana; Containing 33.711 gross and net acres, more or less.

(# 05-08) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:
 - a. Prior to site development 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 12th day of September, 2005.

THE CITY OF BILLINGS:

BY: _____

Charles F. Tooley, MAYOR

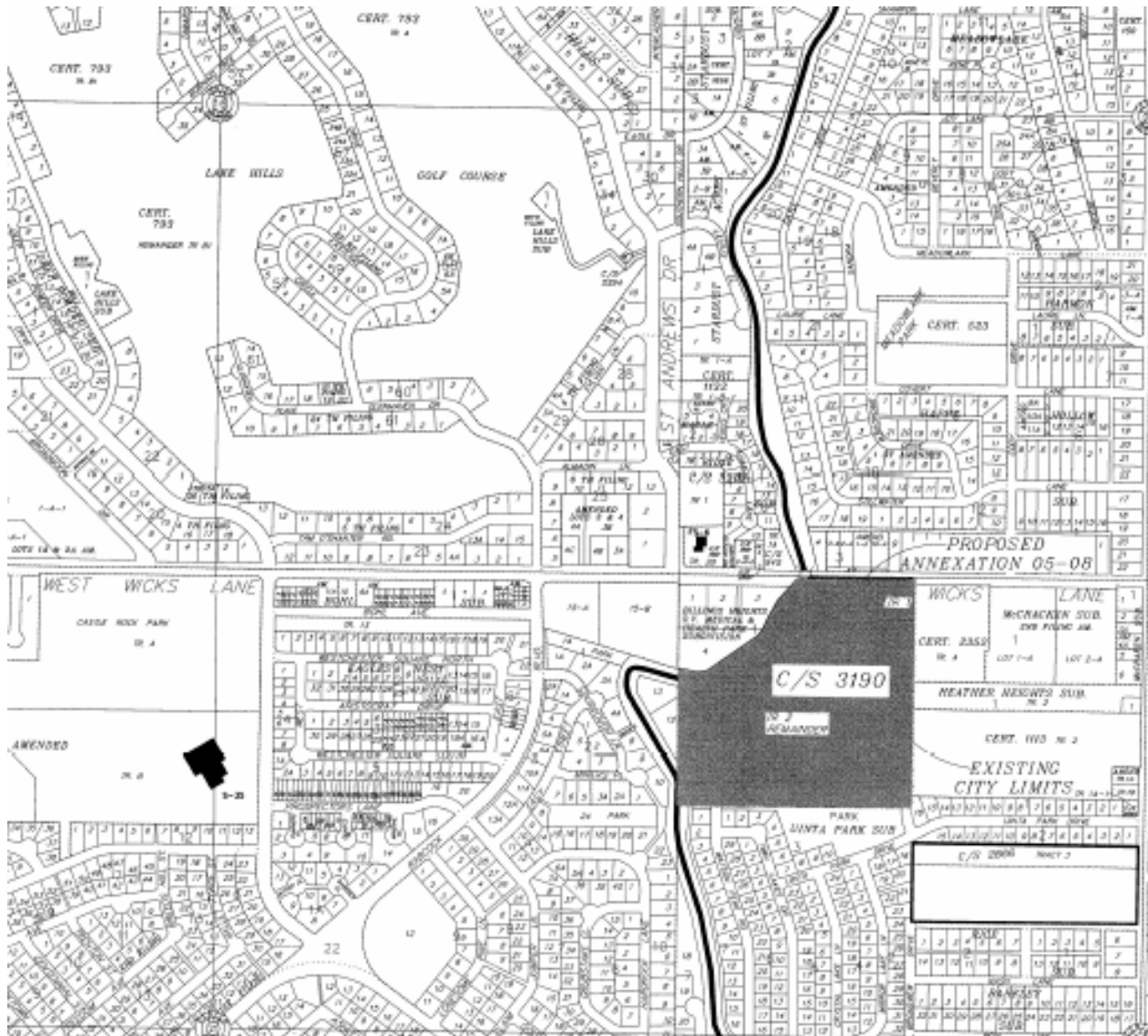
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 05-08)

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, September 12, 2005

TITLE: Zone Change #765, Second Reading of Ordinance
DEPARTMENT: Planning and Community Development Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT The applicant is requesting to rezone the northern portion of a property described as Tracts 1 and 2 of Certificate of Survey 3190 from Residential 7000 (R-7000) to Residential 5000 (R-5000). The southern portion of the property is zoned Residential 6000 (R-6000) and is not included in this application. The subject property is located at 120 Wicks Lane and contains a single-family residence and uncultivated agricultural land. The owner is Twin Oaks Development, LLC and their representative is Engineering, Inc. The City Council approved the first reading of this zone change on August 22, 2005. The second reading will be placed on the public hearing agenda after the proposed annexation to ensure that the annexation process has taken place prior to the City Council acting on this zone change.

ALTERNATIVES ANALYZED: State law and local regulations require zone changes 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: The proposed zone change could increase the City's tax base, when the property is developed.

RECOMMENDATION

The City Zoning Commission recommends that the City Council approve Zone Change #765 on the second reading and adopt the determinations discussed 12 criteria.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Zoning Commission Determinations
- B. Ordinance

ATTACHMENT A
Zoning Commission Determinations

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 proposed annexation will provide the subject property with City services and will provide for infill development, if approved. The proposed zoning will address urban sprawl by providing for greater density within this infill development. The 2003 Growth Policy supports contiguous development in and around existing population centers, as well as compatibility with the surrounding neighborhood.

2. *Is the new zoning designed to lessen congestion in the streets?*

The proposed zoning will not increase the traffic generated from this site significantly. Any traffic impacts will be addressed during the subdivision process and/or site development.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

Wicks Lane provides public street frontage along the northern boundary of the subject property. The property will be served by interior roads upon development.

4. *Will the new zoning promote health and general welfare?*

The proposed zoning, limits development to single-family residences and duplexes. The Unified Zoning Regulations contain minimum setbacks and lot coverage requirements, as well as height restrictions for the R-5000 zoning district.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-5000 zoning district permits maximum lot coverage of 40%; a maximum building footprint of 2,000 square feet on a 5,000 square foot lot. This requirement will help prevent overcrowding of land.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning permits detached single-family residential units and duplexes. The applicant is proposing twin homes on the northern portion of the subject property and is requesting R-5000 in order to provide for larger footprints. The subject property is bordered on the east by multi family residential and on the west by R-6000, which both permit multi-family residential uses. The proposed zoning will not create any more of a concentration of population than the adjacent residential zoning districts.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning will not affect the adjacent streets or traffic patterns. Any proposed roads or improvements will be reviewed upon site development.

Water and Sewerage: The applicants have submitted an annexation petition. Upon approval of the annexation, the City will provide water and sewer to the property through existing lines along the southern and eastern border of the property and within Wicks Lane.

Schools and Parks: According to the Yellowstone County tax records for the subject property, children from this development would attend Bench Elementary, Castlerock Middle School and Skyview High School. There are several parks within the vicinity of this property including a private park within Uinta Subdivision directly adjacent to the south. There is a multi-use trail located along the portion of the BBWA Canal bordering Uinta Park Subdivision on the west.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate service will be reviewed and ensured at the time of subdivision review.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The proposed zoning will give reasonable consideration to the character of the district by providing a transition zone between the multi-family residential uses on the east and the commercial offices to the west. In addition, Wicks Lane is a Principle Arterial and has been identified for more dense residential development, as well as intermittent Neighborhood Commercial development.

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 structures in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The proposed zoning will permit for more dense development, as well as provide an infill project within an already urbanized portion of the City.

ATTACHMENT B
Ordinance

ORDINANCE NO. 05-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
ON Tract 1 and the northern portion of Tract 2, Certificate of
Survey 3190, containing approximately 18 acres. **THE
SUBJECT PROPERTY IS LOCATED AT 120 WICKS
LANE.**

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

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

2. DESCRIPTION. A tract of land known as Tract 1 and the northern portion of Tract 2, Certificate of Survey 3190, containing approximately 18 acres and is presently zoned Residential 6000 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 6000** to **Residential 5000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 5000** 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 August 22, 2005.

PASSED, ADOPTED AND APPROVED on second reading September 12, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#765

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Hearing and Resolution – Annual Street Maintenance Districts Assessments for Fiscal Year 2006

DEPARTMENT: Public Works Department

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

PROBLEM / ISSUE STATEMENT: The annual street maintenance districts assessment resolution has been completed by Public Works Administration staff and they are ready to spread on the tax files.

Street maintenance district rates remain the same as in FY05.

RECOMMENDATION

Staff recommends that a public hearing be held and that the City Council approve the resolution on September 12, 2005.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS:

Attachment A – Street Maintenance Districts Annual Assessment Resolution (3 pages)

RESOLUTION NO. _____

**A RESOLUTION DETERMINING AND FIXING THE METHODS OF ASSESSMENT
IN EACH DISTRICT, FIXING THE RATE OF ASSESSMENT FOR COSTS OF
STREET MAINTENANCE WITHIN THE CITY OF BILLINGS, PROVIDING FOR
NOTICE, HEARING AND ADOPTION**

WHEREAS, the City of Billings, by Resolution, has defined the boundaries and established street maintenance districts as provided by State Law, and

WHEREAS, it is necessary to determine, levy and assess the properties within the districts.

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

1. **METHOD OF ASSESSMENT:** The City hereby determines that each lot or parcel of land within both Street Maintenance Districts One (1) and Two (2) shall be assessed for that portion of the whole cost which each lot or parcel of land in the respective district bears to the total area of the respective district exclusive of streets, avenues, alleys and public places.

2. **ASSESSMENT DISTRICT ONE (1):** Each lot or parcel within portions of the Central Business District, being District One (1), is hereby assessed **\$0.036348** per square foot of area for fiscal year 2006.

3. **ASSESSMENT DISTRICT TWO (2):** Each lot or parcel within the balance of the City, being District Two (2), is hereby assessed **\$0.005975** per square foot of area for fiscal year 2006.

4. **MAXIMUM ANNUAL CHARGE:** The maximum annual charge for any tract, parcel or lot which is undeveloped and unimproved shall be Nine Hundred Ten Dollars (\$910.00).

5. **LOTS AND PARCELS ASSESSED:** A list which describes each lot or parcel of land assessed within the respective district, with the name of the owner thereof, and the amount levied thereon set is available as a printed document in the office of Public Works at the Parmly Billings Library Building, Billings, Montana.

6. **EXCLUDED PROPERTIES:** All properties, currently within the 12-year assessment term, 1988 through 1999, originally assessed for previous sidewalk, curb and gutter improvements, shall be excluded from the curb and gutter repair portion of this additional Street Maintenance District assessment during this 12-year term. The curb and gutter repair portion of the new additional Street Maintenance Districts assessment is \$0.000625 per square foot of area. The exemption will include properties within a current assessment term that have previously paid off their assessment. Any party who would have been included in one of these City programs, but elected to have their repairs done privately, may make special application for an exclusion to the City Engineer's Office.

7. **EXEMPTION:** Maintenance District assessments shall not be paid by the City General Fund, Public Safety Fund, Library Fund or MET Transit Fund.

8. **COLLECTION OF ASSESSMENTS:** Said special assessments shall be placed upon the assessment rolls and collected in the same manner as other taxes.

9. **CURB AND GUTTER POLICY:** The portions of the City Council's Curb, Gutter and Sidewalk Policy that applies to curb and gutter replacement/repair ONLY are incorporated herein:

All curb and gutter repair and replacement is paid by the city curb and gutter program. Improvements to existing streets including the widening of those streets and the installation of curbs and gutters would have a cap placed on property owner assessments. The cap on assessments is based on the appraised value of the property as follows: (1) if the assessment is less than 5% of the property value, then the homeowner is responsible for the

entire assessment; (2) if the assessment is more than 5% of the property value but less than 10%, the city curb and gutter program pays one-half of the assessment amount in excess of 5%; and (3) if the assessment is more than 10% of the property value, then the curb and gutter program pays one-half of the amount of the assessment between 5 and 10% and all of the assessment in excess of 10%."

Home/property owners currently paying assessments will be exempt from paying fees to the annual curb and gutter program, until they have paid their assessment. Upon full payment of their assessment, they will be entered into the city-wide assessment program. Those owners who elected to pay assessments in full or contract to perform repairs without involvement in the city program, will need to submit proof of payment to the City Finance Office and will receive the same exemption.

10. NOTICE OF HEARING: On Monday, **September 12, 2005**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the final adoption of this resolution. The City Clerk is hereby directed to publish notice thereof twice, at least five (5) days prior to the hearing, in the *Billings Times*.

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

11. EFFECTIVE DATE: This resolution shall be effective upon final adoption.

The foregoing Resolution No. _____ was ADOPTED by the City Council and APPROVED this **22nd** day of **August 2005**.

CITY OF BILLINGS, MONTANA

BY: _____

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Hearing & Resolution City Emergency and Waiving Competitive Bidding Requirement

DEPARTMENT: Public Works Department

PRESENTED BY: David Mumford, Director, Public Works Department

PROBLEM/ISSUE STATEMENT: On August 23rd the short term bypass of the secondary digester to the centrifuges needed during the digester cleaning resulted in an operational mode that has damaged both centrifuges at the plant. It was not anticipated that the primary thickened sludge would be capable of damaging the equipment. One hypothesis is that the sludge partially blocked the inlet feed line, pressure would build behind the plug; when the plug broke free it created enough hydraulic force to bend the scrolls.

With both centrifuges damaged and out of service, the wastewater plant has no way to dewater the approximately 40,000 gallons per day of sludge production. The sludge was temporarily being transferred into the empty primary digester. We estimate the plant had 5 days of capacity as of August 25th. We sent the centrifuge parts to the manufacturer for repair. Options were explored by Public Works Department to continue processing sludge during repair of the centrifuges. We have requested Change Order #1 for \$42,500 with the existing contractor, Walker Centrifuge Services (WCS) to process the 40,000 gallons of sludge per day for 30 days. The manufacturer has informed us the damage to the centrifuge parts are extensive and will take 4 months to complete.

Due to the high cost of retaining WCS to process the sludge, Public Works solicited quoted from four firms. Trimax Residual provided the City of Billings Public Works Dept. with a quote of \$36,650 to rent a portable centrifuge for the remaining 120 days. Additionally, the manufacturer is estimating the centrifuge scroll repairs at \$77,650.

ALTERNATIVE ANALYSIS: 7-5-4302 MCA requires advertising for competitive bids and accepting the lowest responsive bid. Due to the gravity of the problem, the cost of change ordering the sludge processing to Walker Centrifuge Services and soliciting four quotes for long term processing was the most prudent temporary solution. Competitive bidding is impractical because the time requirement to advertise and analyze bids and award a contract would require

several weeks before we could begin processing the sludge. Public Works Department is requesting to use a three quote system and authorize the contractor to begin work. 7-5-4303 MCA allows cities to declare an emergency and waive the requirement for advertising and competitive bidding when $\frac{3}{4}$ of the Council members present at the meeting declare an emergency.

FINANCIAL IMPACT: The estimated repair cost, contractor change order, and centrifuge rental should not exceed \$167,105. The funding to complete the repair and change order would come from Public Works budget account 512-821-621-7990. This account was established for emergency repairs and would not require a budget amendment.

RECOMMENDATION

Staff recommends that Council adopt a resolution declaring an emergency and waiving the competitive bidding requirement to repair the damaged centrifuge.

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

ATTACHMENT

A: Resolution

ATTACHMENT A

A RESOLUTION DECLARING AN EMERGENCY AND WAIVING THE REQUIREMENT FOR COMPETITIVE BIDS AS CONTAINED IN 7-5-4302 AND 7-5-4303 MCA

WHEREAS, the wastewater centrifuges were damaged requiring repair and a contractor change order for sludge processing, and

WHEREAS, the repair of the centrifuges must be made immediately so that the wastewater treatment plant can continue to operate, and

WHEREAS, 7-5-4302 MCA requires cities to advertise for competitive bids and to award the bid to the lowest responsive bidder, and

WHEREAS, competitive bidding requires an advertising and award process that would delay the repair to the system until at least September 26, 2005, and

WHEREAS, 7-5-4303 MCA allows cities to waive the competitive bidding requirements if $\frac{3}{4}$ of the members present at the meeting of the City Council declare an emergency.

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

1. EMERGENCY DECLARED. The repair of the centrifuge and sludge processing are declared an emergency due to the unanticipated event, the damage incurred and the requirement to repair the wastewater treatment plant centrifuge.
2. COMPETITIVE BIDDING WAIVED. Due to the declared emergency, the City Council waives the competitive bidding requirement for repair of the two centrifuges and temporary wastewater sludge processing for the Wastewater Treatment Plant as permitted by 7-5-4303 MCA.

APPROVED by at least $\frac{3}{4}$ of the members present at the meeting of the City Council of the City of Billings, Montana, on the 12th day of September, 2005.

CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

Marita Herold, CMC CITY CLERK

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

8A&B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, September 12, 2005

TITLE: Public Hearing on Disposing of City Owned 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 6th Avenue South and South 26th 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 approved a resolution of intent to dispose of the property and advised adjacent neighbors and the community of the proposed action. The City has advertised for bids to determine if there are other proposals for the site. One bid was received from Bannum Inc.

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 (approximately 16,750 sq. ft.) could generate approximately \$41,875 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 \$73,238 using Tax Increment resources.

RECOMMENDATION

Staff recommends that the Council hold a public hearing 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 accept the bid submitted by _____ for \$ _____.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

City Council action is required to receive public input to consider the sale of City-owned property located on the northwest corner of 6th Avenue South & South 26th Street. The City Council approved a Resolution of Intent to Sell City-owned Property on August 8, 2005, setting the public hearing on the disposition of the property for September 12, 2005. Prior to the public hearing, the City has notified the surrounding property owners of the proposed action. The South Side Task Force has also been advised of the proposed action. On August 25th, the City advertised for bids to purchase the property to determine interest from other parties in the site. A bid of ____ dollars (\$____) for the property was received from Bannum Inc.

PROCEDURAL HISTORY

The land was acquired for redevelopment purposes with tax increment resources for \$23,553 in 1994. Other redevelopment projects on South 27th Street include the current site of the women's prison, the Chamber of Commerce, the Labor Temple, the Justice Building, Probation and Parole, the Deering Clinic, Youth Treatment Center, Northern Plains Resource Council, Mailing Technical Services, Security Armored Express, and Montana Rescue Mission.

On September 12th, a public hearing will be held on the proposed sale of the property. Council action on a resolution authorizing the disposition of the property will be considered on September 12, 2005.

BACKGROUND

The current request for bids has been triggered by interest expressed by Bannum Inc to purchase the property. Bannum is interested in using the site to construct a 15-bed Community Corrections Center halfway house.

The South 27th Street Development Incentives were approved in the late 1980's and are designed to encourage the sale and development of properties along the South 27th Street Corridor. The incentives include a reduction in the sales price based on the size of the development, the number of jobs created and the value of improvements or increased tax base, and rewards cash sales. The incentives also allow for the payment of 5% sales commission to realtors for sales over \$100,000. In response to the request from Bannum Inc, the City of Billings has requested bids for the property to determine if other parties are interested in purchasing and developing the property.

ALTERNATIVES ANALYSIS

Alternatives for the disposition and sale of this property include: 1) selling the land according to the existing S. 27th Street Development Incentives. This allows for reductions in the sales price based on the number of jobs being created and the value of the improvements, and provides a discount for a cash sale; 2) selling the property at appraised value; 3) requesting bids to determine interest of other parties in the property; and 4) deciding not to sell the land for this project. The City pursued the option of selling the land according to the S. 27th Street

Development Incentives in conjunction with requesting bids to determine if other parties are interested in purchasing the property.

STAKEHOLDERS

The surrounding neighbors have been advised of the proposed development and the public hearing scheduled for September 12th.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Development of the property is consistent with redevelopment efforts in the area. The development of the site must meet the requirements of the South 27th Street zoning designation.

RECOMMENDATION

Staff recommends that the Council hold a public hearing 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 accept the bid submitted by _____ for \$ _____.

-----Original Message-----

From: David A. Lowry [mailto:dal@kentuckymg.com]

Sent: Wednesday, July 20, 2005 2:13 PM

To: oliver@floborg.com

Subject: Letter of Intent Bannum Inc (2)

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”

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: 2006 Unified Planning Work Program

DEPARTMENT: Planning & Community Services Department

PRESENTED BY: Scott Walker, Transportation Planner

ISSUE STATEMENT: Please find attached the Draft 2006 Unified Planning Work Program (UPWP) for the Billings Metropolitan Planning Organization. This is provided for your review and recommendation to the Billings Policy Coordinating Committee (PCC). The UPWP is primarily for the purpose of programming the federal dollars we receive from the Federal Highway Administration (FHWA) for transportation planning. These funds are passed through the Montana Department of Transportation (MDT). However, we include all planning activities in the UPWP so that it represents a more complete and useful document. This UPWP proposes planning activities for Federal Fiscal Year 2006, which runs from October 1, 2005 through September 30, 2006.

This UPWP corresponds directly with the Planning Divisions annual work plan. The significant changes in this year's program are, addressing the MDT audit (Memorandum of Understanding with MDT and adding a fifth member representing Transit to PCC), filling the vacant planning position, a Garden Avenue Study and updating the man month and funding tables; the document is straightforward and consistent with past programs. A copy of the UPWP is on file in the City Clerks office if council members wish to review it.

ALTERNATIVES ANALYZED: Accept the plan (recommended); or not accept the plan and instruct the Mayor to give a negative recommendation to PCC.

FINANCIAL IMPACT:	\$330,000	City of Billings-Planning Department Revenue
	\$230,000	Yellowstone County - Mill Levy
	<u>\$678,045</u>	Federal Planning (PL) Allocation
	\$1,238,045	Total Program (UPWP)

RECOMMENDATION

Staff recommends that Council approve the Draft 2006 UPWP and authorize the Mayor to take this recommendation to the Policy Coordinating Committee meeting.

Approved by: City Administrator_____ City Attorney_____

ATTACHMENT

A – 2006 Unified Planning Work Program (UPWP) – 50 Pages.

INTRODUCTION

The Unified Planning Work Program (UPWP) is developed each year by the Planning Department and includes a task-by-task discussion of projects, which are to be undertaken during the program year by the Department. The UPWP contains appropriate funding, budget and staffing information, and a schedule for each project proposed in the program.

BACKGROUND

As federally mandated, the Billings Urban Area Transportation Planning Process is conducted in a cooperative, coordinated, and comprehensive manner. The Yellowstone County Board of Planning, as the designated Metropolitan Planning Organization (MPO), is charged with the responsibility of administering this planning process. Under federal regulation an MPO must be established for urban areas with populations greater than 50,000 in order to receive and spend federal funds for construction projects and transportation planning.

Ultimately, this UPWP requires approval of both the MDT and FHWA; however, our local PCC must first approve it. The PCC is the local approving body for documents such as this and includes the following members:

1. Mayor, City of Billings
2. Chair, Board of County Commissioners
3. President, Board of Planning
4. District Administrator, MDT-Billings
5. Division Administrator, FHWA

Members of PCC bring the recommendation of their organization to the meeting and a vote is taken.

The UPWP undergoes a comprehensive review at the local, state, and federal levels every year and once adopted, is in effect from October 1 to September 30.

RECOMMENDATION

Staff recommends that Council approve the Draft 2006 UPWP and instruct the Mayor to bring this recommendation with him to the Policy Coordinating Committee meeting.

ATTACHMENT

A – 2006 Unified Planning Work Program (UPWP) – 50 Pages.

Billings Urban Area

Unified Planning Work Program (UPWP)

Federal Fiscal Year

DRAFT
2006

Prepared By:

Billings/Yellowstone County Planning Department
4th Floor, Parmly Billings Library
510 North Broadway
Billings, Montana 59101

In Cooperation With:

Montana Department of Transportation
Federal Highway Administration
Federal Transit Administration

UNIFIED PLANNING WORK PROGRAM

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INTRODUCTION

The Billings Urban Area planning process is organized and conducted in a cooperative, coordinated, and comprehensive manner. The Yellowstone County Board of Planning, as the designated Metropolitan Planning Organization (MPO), is charged with the responsibility of administering the planning process. Under federal regulation an MPO must be established for urban areas with populations greater than 50,000 in order to receive federal funds for construction projects and transportation planning. This document, the Billings Urban Area Unified Planning Work Program (UPWP), and a companion document, the Prospectus, is the foundation upon which the planning process is based.

The Unified Planning Work Program (UPWP) is developed each year, and once adopted, is in effect from October 1 to September 30. The UPWP contains a task by task discussion of projects, which are to be undertaken during the program year. It also contains appropriate funding information, staffing information, and a schedule for each project. The UPWP undergoes a comprehensive review at the local, state, and federal levels each year.

This year, Federal Fiscal Year 2006, the format for work program activities conforms to Federal Transit Administration (FTA) Circular 8100.1B, specifically Chapter IV. The Montana Department of Transportation and the Yellowstone County Board of Planning have mutually agreed upon use of this format.

The Prospectus is a detailed description of projects, which occur on a routine basis. Once adopted, the Prospectus is only amended if there is a change in the planning process. The Prospectus also contains information pertaining to the organization of the planning process, agencies involved, and agreements between agencies involved in the process.

Cost overrun guidelines have been established by the Montana Department of Transportation, and agreed to by the Yellowstone County Board of Planning. Those guidelines will determine the allowable overruns for any work program element. Overruns that surpass those outlined in the guidelines will require a UPWP amendment.

This document includes two chapters, Highway and Transit. Each chapter contains individual work elements. These work elements describe work the planning staff will undertake in the program year as well as work accomplished in the past year. Also included is a breakdown of funding sources which include, Planning (PL) funds and Local (City & County) funds which are used to match the PL funds.

DATES OF LOCAL APPROVAL

TAC –
PLANNING BOARD –
COUNTY COMMISSION –
CITY COUNCIL –
PCC –

CHAPTER I

YELLOWSTONE COUNTY BOARD OF PLANNING

SECTION I UNIFIED PLANNING WORK PROGRAM

41.11.100 PROGRAM SUPPORT & ADMINISTRATION

100 PROGRAM ADMINISTRATION (4301)

OBJECTIVE

- To administer the area-wide planning process.
- To support the Board of Planning and other Boards, Commissions, and the City Council and County Commissioners in their decision-making activities in the planning process.
- To engage in administrative and financial actions related to identified planning activities and to prioritize those activities.
- To upgrade staff skills and maintain staff exposure to the "state-of-the-art" in planning methodology and computer software.
- To maintain contact with, provide input to, and receive feedback from various local, state and federal agencies, committees and groups during the planning process.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Conformance with federal, state and local administrative and regulatory requirements as well as maintenance of the planning operation.

Members of the planning staff attended various professional meetings, workshops, and conferences at which planning, transportation, transit, bicycle/pedestrian and related topics were presented and discussed.

Specifically, the City/County (C/C) Planning Department and members of other local, state and federal departments and agencies actively participated in a diversity of meetings including the Billings Technical Advisory Committee (TAC), Policy Coordinating Committee (PCC), Billings & Yellowstone County Zoning Commissions and Boards of Adjustment, Board of Planning, Public Utilities, Transportation Boards, Community Development Board, Traffic Control Board, as well as others. The Planning Department also contracted out for grant writing services. The CTEP program was administered from this work element.

Members of the planning staff were trained in computer software programs for the geographic information system and its application to mapping data layers such as streets, land use, address, ownerships and environmental data. Staff also migrated to an application tracking software that integrates the existing City finance and land management software. Staff has also provided assistance in updating City Ward Boundaries and City limit boundaries.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

All administrative functions of the C/C Planning Department will be performed under this work element. Program management activities will include, but not be limited to the following:

1. Correspondence
2. Public Relations
3. Employee Guidance & Supervision
4. Program Organization
5. Consultant Liaison
6. Staff Meetings
7. Negotiations
8. Preparation of Contracts
9. Staff training

The planning staff will also review, update and produce numerous documents, guidelines, regulations, legislation, and codes as well as keep abreast of federal and state requirements as they relate to the overall planning processes. Staff will update the PL Agreement as necessary. Quarterly progress and expenditure reports will be prepared and transmitted to the Montana Department of Transportation (MDT) in order to maintain federal funding support. The FY 2006 UPWP will be continually appraised and monitored in terms of content and budget allocations and will be revised when deemed necessary. The Fiscal Year 2007 UPWP will be developed under this work element.

General administrative activities will include maintenance of files, library documents, daily correspondence and preparation of necessary periodic reports. Interagency committee participation is included in this work element. The Board of Planning, Board of County Commissioners and City Council will be kept informed of the activities of the staff and its progress in completing the approved UPWP.

The planning staff will participate in recognized and approved training programs in order to improve staff skills and capabilities. Planning expertise will be maintained through enrollment in appropriate planning and transportation-related courses at area colleges, workshops, seminars, and conferences. Staff will adapt software programs to effectively utilize traffic data and continue computer-training programs. The use of PL funds for out-of-state travel and/or registration fees for the above or other purposes will continue to be subject to prior approval of MDT.

All staff members will continue to participate in and encourage increased cooperation between state and local agencies, departments and governing bodies. The C/C Planning Department will serve both as a coordinator of and a participant in meetings and on committees. The Community Transportation Enhancement Program (CTEP) administration will be funded through this work element and our Alternate Modes Coordinator will continue as a permanent part-time position. The C/C Planning Department will transfer funds to the Cities Community Services Department for grant writing services.

C/C Planning Department involvement will include participation with such agencies as the Housing Authority, BSEDA, Air Pollution Control Board, legislative study committees, and other agencies. Staff will also continue an intern program; oversight of these individuals will take place in this work element. Staff will also begin to update the Public Involvement Program and the Memorandum of Agreement. Two computers and 1 printer will be purchased for the Transportation Planner and Transportation Technician.

STAFFING

22.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

The Planning Department will be responsible for administering the area-wide planning process for the City and County.

PRODUCT

An ongoing administrative program focused primarily at effective and expeditious implementation of this UPWP.

The continual enhancement of the Planning Department staff skills and knowledge.

Maintenance of a coordinated, comprehensive, and cooperative planning process that is endorsed and supported by the local community.

FUNDING SCHEDULE - ADMINISTRATION

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$161,000	\$69,000	\$230,000
TOTAL	\$161,000	\$69,000	\$230,000 *

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	60	40	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL**	LOCAL	TOTAL
MPO	\$142,500	\$95,000	\$237,500
TOTAL	\$142,500	\$95,000	\$237,500 *

* This total includes \$6,000 inter-agency agreement with Community Services Department for grant writing service and two computers & 1 printer totaling \$6,500.

**The matching ratio is Federal PL--86.58% and State match-13.42%.

101 SERVICE (4302)

OBJECTIVE

- To coordinate the dissemination of information and exchange of ideas between planning agencies and the interested public, decision-makers, and other departments, agencies, and organizations.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Members of the planning staff were involved in a wide range of service tasks. Planning services included presentations related to roadways and alternative transportation, responding to citizen inquiry and complaints regarding streets, subdivision layout, site distance, zoning request, conformance with the 2000 & 2005 Transportation Plan and the Heritage Trail Plan.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

Continue increasing community awareness of the interrelationships between land use development and transportation needs through dissemination of information as appropriate.

STAFFING

4.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

As Assigned.

PRODUCT

A responsive and flexible planning process and staff capable of providing short-term findings and recommendations.

FUNDING SCHEDULE - SERVICE**FUNDS PROGRAMMED - FISCAL YEAR 2005****FUNDING SOURCE**

AGENCY	PL	LOCAL	TOTAL
MPO	\$14,000	\$14,000	\$28,000
TOTAL	\$14,000	\$14,000	\$28,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	50	50	100

FUNDS PROGRAMMED - FISCAL YEAR 2006**FUNDING SOURCE**

AGENCY	PL*	LOCAL	TOTAL
MPO	\$14,500	\$14,500	\$29,000
TOTAL	\$14,500	\$14,500	\$29,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

102 CITIZEN INVOLVEMENT (4303)

OBJECTIVE

- To solicit information concerning community values and goals and to receive community input into the development of plans.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Numerous meetings with service clubs, civic groups, and professional organizations were attended by staff members to discuss all facets of local planning. The Planning Board uses extensive public input to review and receive comments on a wide range of planning issues throughout the County. Numerous meetings of neighborhood task force organizations and neighborhood councils were also attended to review and advise on Long-range planning issues and code enforcement. Staff monitored the public input process for geographic neighborhood for updates and creation of neighborhood plans.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

Meetings with various citizen groups will be coordinated and attended for the purpose of soliciting information and ideas on a broad range of planning issues within the Billings Urban Area and throughout Yellowstone County this would include development and revisions of Neighborhood Plans. Title VI issues and any updates to the program will be addressed as necessary.

The public hearing and citizen involvement process at Planning Board Meetings will be utilized to solicit public input and comment on the development of various planning documents. Other regulatory issues including zoning code and subdivision regulation revisions and implementation of the Transportation Plan, Blue Creek, Heights, Lockwood and N. W. Billings Neighborhood plans. Procedures to increase the level of public involvement will be followed through neighborhood planning activities.

STAFFING

4.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

A coordinated solicitation of public opinions and views in order to reflect the priorities of the Billings Urban Area citizens.

FUNDING SCHEDULE - CITIZEN INVOLVEMENT

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$15,000	\$15,000	\$30,000
TOTAL	\$15,000	\$15,000	\$30,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	50	50	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$16,000	\$16,000	\$32,000
TOTAL	\$16,000	\$16,000	\$32,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

41.12.200 GENERAL DEVELOPMENT & COMPREHENSIVE PLANNING

200 SOCIO-ECONOMIC DATA (4304)

OBJECTIVE

- To maintain records and make projections of population and dwelling unit data, land use information, employment data, and to maintain adequate financial records, files and reports.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Census information updated and placed in various appropriate databases. Data gathered and updated included:

- Building Permits, Demolition Permits, Electrical Permits, Subdivision Applications, Zoning Applications, Special Reviews, Variances, annexation data, population trends, land use trends, school enrollment, employment data and general economic indicators.

The planning staff reviewed the 2000 Census figures and recent updates. Staff will be utilizing updated 2000 census data and business license data to monitor and project demographic trends.

Information on the updated 2000 Census was made available to various local agencies and organizations and to the general public. Staff also participated in the “Rapid Response” team led by BSEDA to provide socio-economic information to prospective business recruits to the community, as well as other organizations such as the Elderly Housing Board.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

Continued maintenance and update of socio-economic data for both transportation and comprehensive planning activities. Census data will continue to be updated and cataloged; staff will work with the Census Bureau to accomplish this. Staff will correlate socio-economic data with development information in the neighborhood plan development. Also work will be continued with the Big Sky Economic Development Authority (BSEDA) on several Tax Increment Finance Districts and development of educational information.

STAFFING

5.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Various reports, files, and projections of socio-economic data necessary for current transportation and comprehensive planning activities, neighborhood plans, as well as support of City/County economic development activities.

FUNDING SCHEDULE - SOCIO-ECONOMIC DATA

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$20,000	\$20,000	\$40,000
TOTAL	\$20,000	\$20,000	\$40,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	50	50	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$20,000	\$20,000	\$40,000
TOTAL	\$20,000	\$20,000	\$40,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

201 GIS/LAND USE INVENTORY (4305)

OBJECTIVE

- To develop and maintain a Geographic Information System (GIS) for Yellowstone County, and to maintain current mapping within the GIS for countywide land use. This information will be used in developing land use and transportation plans.
- To provide current, accurate information pertaining to the quantity of residential, commercial, industrial, and public land in the County.
- To summarize and analyze development trends and to provide visual information to the City Council, County Commission, Planning Board and the public during the public input process for transportation and land-use decision making.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Several datasets, including the general land use map of the County were updated so as to maintain an inventory of existing conditions. This information was utilized in various planning studies and provided to other departments and the general public. Zoning data for the entire City and County zoning jurisdictions were updated to produce neighborhood land use and zoning maps and provided to neighborhood task force groups. Numerous other special purpose maps were prepared for meeting purposes including bicycle trail maps, annexation maps, and project influence areas. The zoning atlas was updated. Planning Department upgraded in-house GIS capability by upgrading two ArcMap (ESRI) license and training staff. A customized ArcGIS application was also developed for zoning, annexation and subdivision review purposes. Natural resource, Census 2000 and jurisdictional boundary information were updated or developed. A centerline street network layer and asset inventory was completed with other City and County Departments. Traffic count station locations were geo-positioned and linked with the City-County traffic count matrix.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

Property information and building data will be utilized as derived from the City Building Department, County Clerk and Recorder and Assessor's Office, and Montana Department of Revenue. The comprehensive, integrated database and computer mapping system will be intensively utilized by the planning staff. Various GIS databases will continue to be developed and centrally maintained, including information on neighborhoods, community assets, route planning, trail systems and transportation plans. The GIS software will be upgraded and expanded to ensure compatibility with available datasets and utilize the existing data sets more effectively. Staff will continue to support an aerial mapping project (Geo-rectified orthophotography) and center line data acquisition.

STAFFING

3.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

An ongoing GIS database/mapping system for Yellowstone County.

FUNDING SCHEDULE - GIS/LAND USE INVENTORY

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$17,000	\$17,000	\$34,000
TOTAL	\$17,000	\$17,000	\$34,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	50	50	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$17,000	\$17,000	\$34,000
TOTAL	\$17,000	\$17,000	\$34,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

202 COMPREHENSIVE PLANNING (4306)

OBJECTIVE

- To implement the goals and policies of the adopted 2003 Yellowstone County/City of Billings Growth Policy.

ACCOMPLISHMENTS - FISCAL YEAR 2005

The planning staff completed the process of revising the Yellowstone County Comprehensive Plan, the document is now referred to as the Yellowstone County – City of Billings 2003 Growth Policy. The Growth Policy identifies County issues and proposes strategies to address those issues within the next five years.

Implementation of the West Billings Plan and Growth Policy began with the preparation of a fiscal analysis for implementation, adoption of the Shiloh Corridor Overlay Zoning District, and revisions to the Subdivision Regulations. A deannexation policy was developed, and adopted.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

The planning staff, under the direction of the Board of Planning, will continue to work on long-range planning projects according to the priorities established by both the City of Billings and Yellowstone County. In particular, implementation the Growth Policy is a high priority. The Growth Policy recommends developing neighborhood plans that specifically address land use, transportation, recreation and capital improvement needs. Neighborhood plans for Lockwood, Billings Heights, Blue Creek and Garden Avenue will be developed this year. An emphasis will be placed on traffic flow, traffic calming issues and alternative modes.

STAFFING

19.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

A completion of the Heights and Lockwood Neighborhood Plan and development of Blue Creek and Garden Avenue Neighborhood Plans. The intent is to provide for the orderly, logical, and cost-effective growth and development of Yellowstone County, and to meet the statutory requirements of the Montana Code.

FUNDING SCHEDULE - COMPREHENSIVE PLANNING

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$46,400	\$69,600	\$116,000
TOTAL	\$46,400	\$69,600	\$116,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	40	60	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$46,800	\$70,200	\$117,000
TOTAL	\$46,800	\$70,200	\$117,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

203 SPECIAL ISSUES & AREAS (4307)

OBJECTIVE

- To respond to the need to address in greater detail, issues or problem areas which are identified through the Transportation/Comprehensive planning process.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Work was accomplished in areas of rural transportation and land planning outside the scope of the Growth Policy, in particular, the North By-Pass Environmental and Location Study. Staff continues to implement the Downtown Framework Plan including alternative route, aesthetics and pedestrian improvements for the City of Billings. A County Decay Ordinance was drafted and adopted. Staff also continued work on implementing infrastructure improvements for the Gateway Triangle area.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

This work element is specifically reserved for those projects identified as needs but were not addressed in long-range, comprehensive plans. Project priority is given to those projects identified in the Growth Policy. The West Billings Flood Hazard Assessment is one such project that is currently underway. This project will identify flood hazards that would impact the transportation system, future commercial and residential development alternative mode corridors. Staff will continue to implement the Growth Policy. Staff will identify other projects as deemed appropriate by the Planning Board, City Council and County Commission, and begin the necessary evaluation and recommendation process.

STAFFING

6.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Reports, regulation changes or plans relating to a specific issue or area.

FUNDING SCHEDULE - SPECIAL ISSUES & AREAS

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$13,500	\$31,500	\$45,000
TOTAL	\$13,500	\$31,500	\$45,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	30	70	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$13,200	\$30,800	\$44,000
TOTAL	\$13,200	\$30,800	\$44,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

204 ZONING ADMINISTRATION (4308)

OBJECTIVE

- To oversee, interpret and enforce current City and County zoning regulations.
- To effectively administer the regulations and provide efficient service to the elected officials and the public.

ACCOMPLISHMENTS - FISCAL YEAR 2005

During the past year, all applications for zone changes, special reviews, variances, and planned developments were reviewed and processed by the planning staff. Reports and recommendations were prepared on each case to the various boards, commissions, and governing bodies. Digital photos are now incorporated into all zoning reports. All applications for building permits were also reviewed for compliance with City and County zoning regulations. Special zoning studies and ordinance updates were prepared as requested by the governing bodies. A significant amount of time is also spent assisting the public with general zoning questions.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

To carry out the day to day activities required to effectively administer the zoning regulations. This will include ordinance updates as required. All zone change applications will be reviewed for compliance with the Growth Policy, Heritage Trail Plan and Billings Area Transportation Plan. Special review applications will be reviewed for land use compatibility, traffic, access, and overall site design. Traffic accessibility studies will be reviewed when required. Also, staff will work with County residents to create citizen petitioned zoning districts when requested. The signage element of the zoning code will be revised along with the Planned Unit Development component. Staff will also revise the Sign Code. Staff will continue to look at expansion of the zoning jurisdiction.

STAFFING

16.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Effective zoning regulations and administration for the City of Billings and Yellowstone County.
Effective enforcement of the zoning regulations for Yellowstone County.

FUNDING SCHEDULE - ZONING ADMINISTRATION

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$29,600	\$118,400	\$148,000
TOTAL	\$29,600	\$118,400	\$148,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	20	80	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$29,800	\$119,200	\$149,000
TOTAL	\$29,800	\$119,200	\$149,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

205 SUBDIVISION ADMINISTRATION (4309)

OBJECTIVE

- To maintain the current city and county subdivision regulations.
- To effectively administer the regulations and provide efficient service to the elected officials and the public.

ACCOMPLISHMENTS - FISCAL YEAR 2005

The Board of Planning and the planning staff reviewed all preliminary major and minor plat applications. Numerous conceptual and pre-application meetings were coordinated and attended by staff. All final plats were reviewed and processed. Also, a significant amount of time is spent assisting the public with general subdivision questions. Revisions to the City/County Subdivision Regulations are ongoing.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

To carry out the day to day activities required to effectively administer the subdivision regulations, and to keep the regulations current. All subdivision applications will be reviewed for compliance with local and state subdivision law, and for compliance with the Billings Area Transportation Plan. Traffic accessibility studies and general circulation data will be reviewed when a subdivision application is submitted. Revised Subdivision Regulations will be developed for the City and County.

STAFFING

16.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

An effective subdivision review process with regard to local and state law, the Growth Policy, and the Billings Area Transportation Plan.

FUNDING SCHEDULE - SUBDIVISION ADMINISTRATION

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$29,100	\$67,900	\$97,000
TOTAL	\$29,100	\$67,900	\$97,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	30	70	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$37,500	\$87,500	\$125,000
TOTAL	\$37,500	\$87,500	\$125,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

41.13.300 LONG RANGE TRANSPORTATION PLANNING

300 TRANSPORTATION SYSTEM DATA (4310)

OBJECTIVE

- To develop and maintain current transportation system data files and records.

ACCOMPLISHMENTS - FISCAL YEAR 2005

The traffic count program for FY 2005 was completed. Travel times/delay/speed studies were completed, calculations computed, and level-of-service values determined. Staff participated in the update of the City of Billings Capital Improvement Program (CIP) and updated the 2000 Transportation Plan. TransCAD software was updated. Accident information was compiled and analyzed. A Traffic Technician position was funded, also.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

The traffic count program for the Billings Urban Area as well as the Yellowstone County influence area will be conducted and the appropriate data recorded during FY 2006. All traffic count data will be submitted to the MDT by February 1, 2006. Accident data will be compiled and analyzed to determine high hazard locations. Staff will update, where appropriate, the City's Capital Improvement Program. The Traffic Technician position will continue to be funded in the Engineering Department. Stereo-imaging of street rights-of way will be maintained. Staff will collect and maintain bike/pedestrian information through the trail census.

STAFFING

6.5 Staff Months – City/County Planning
4.0 Staff Months – City/County Planning (Seasonal)
11.0 Staff Months - City Engineering (Contract Position)

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning/MDT

PRODUCT

Documentation as necessary.

Updated Traffic Count Program.

FUNDING SCHEDULE - TRANSPORTATION SYSTEM DATA

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$100,000	0	\$100,000
TOTAL	\$100,000	0	\$100,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	100	0	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$116,500	0	\$116,500
TOTAL	\$116,500	0	\$116,500

*The matching ratio is Federal PL--86.58% and State match-13.42%.

301 TRANSPORTATION PLAN (4311)

OBJECTIVE

- Develop (where necessary) and maintain data for the urban area in order to effectively monitor and evaluate the validity of the 2005 Transportation Plan.

ACCOMPLISHMENTS - FISCAL YEAR 2005

The planning staff completed work on the 2005 Transportation Plan. The Transportation Efficiency Act of 1998 (TEA-21) was reviewed, and numerous meetings were attended by staff to discuss implications and federal guidance. Development projects were reviewed for compliance and implementation of the Transportation Plan as well as BikeNet. The BikeNet Plan was updated and is now the Heritage Trail Plan

PROPOSED ACTIVITIES - FISCAL YEAR 2006

Staff will implement the 2005 Transportation Plan. This will include project review and presentation, community awareness and education as well as maintenance and ongoing review of the plan. PL funds are budgeted to fund approximately ¼ of the Shiloh Road Corridor coordinator/liaison position to help facilitate the timely expansion of the Shiloh Road project.

STAFFING

4.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Current updated Transportation Plan.

FUNDING SCHEDULE - TRANSPORTATION PLAN

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$45,000	0	\$45,000
TOTAL	\$45,000	0	\$45,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	100	0	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$49,000	0	\$49,000
TOTAL	\$49,000	0	\$49,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

** \$3,000 budgeted for Shiloh Road Project Coordinator.

302 PLANNING STUDIES (4312)

OBJECTIVE

- To update and develop site-specific plans and transportation studies where appropriate.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Work was largely completed on the Inner Belt Loop Planning Study. Preliminary work is being done to look at the feasibility of doing a Lockwood Planning Study.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

The MPO will undertake several individual transportation related planning studies on a site-specific basis including the Old Hardin Road Corridor, others may include, Garden Avenue and Main Street Corridor studies. These studies will include, but not limited to, land use, property ownership, alignments, and bicycle and pedestrian accommodations.

STAFFING

4.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Completed Urban Area wide Transportation Studies

FUNDING SCHEDULE – PLANNING STUDIES

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$42,000	\$28,000	\$70,000
TOTAL	\$42,000	\$28,000	\$70,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	60	40	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$45,000	\$30,000	\$75,000
TOTAL	\$45,000	\$30,000	\$75,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

41.15.500 TRANSPORTATION IMPROVEMENT PROGRAM

500 TRANSPORTATION IMPROVEMENT PROGRAM (4313)

OBJECTIVE

- To maintain a viable five-year program of transportation improvements for the Billings Urban Area.

ACCOMPLISHMENTS - FISCAL YEAR 2005

A Transportation Improvement Program (TIP) update was produced to reflect current project status. Determinations were prepared for conformity to the Clean Air Act.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

The Transportation Improvement Program (TIP) will be updated to reflect current project status. A certification statement will be included, as appropriate, to conform to the planning regulations. Based on the Transportation Plan, projects will be evaluated and ranked in accordance with the Priority Ranking Procedures, and in accordance with consistency/conformity procedures. Necessary data will be gathered from primary and secondary sources by the planning staff based upon the Memorandum of Understanding with the City of Billings Public Works Department, establishing areas of data responsibility.

Conformity determinations will be prepared as necessary to ensure conformity with the Clean Air Act.

STAFFING

2.5 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

A current transportation improvement program which reflects conformity with TEA-21, the Clean Air Act, and local priorities.

FUNDING SCHEDULE - TRANSPORTATION IMPROVEMENT PROGRAM

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$20,000	0	\$20,000
TOTAL	\$20,000	0	\$20,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	100	0	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$20,000	0	\$20,000
TOTAL	\$20,000	0	\$20,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

41.16.600 SPECIAL PROJECTS

600 ENVIRONMENTAL CONSIDERATIONS (4314)

OBJECTIVE

- Maintain current records of monitored air pollution levels and obtain other environmental data as necessary.
- Review proposed development and transportation system improvements with respect to environmental considerations.

ACCOMPLISHMENTS - FISCAL YEAR 2005

Air quality monitoring information was obtained from the County Air Pollution Control Board. Air quality mapping for the State Air Quality Bureau was revised. The Congestion Mitigation Air Quality (CMAQ) program was implemented. Staff continues to monitor carbon monoxide (CO) information in the Urbanized Area.

The Socio-Economic and Environmental (SEE) effects guidelines were used to review proposed developments and transportation system improvements.

PROPOSED ACTIVITIES - FISCAL YEAR 2006

The planning staff will continue to utilize the SEE effects guidelines to evaluate all major development proposals in terms of transportation systems. This would include the CMAQ program. Work will continue to maintain the Billings air quality designation. Staff will work with local refineries to target project eligibility under the DEQ funds spent in the community.

STAFFING

2.0 Staff Months – City/County Planning

FUNCTIONAL AGENCY RESPONSIBILITY

City/County Planning

PRODUCT

Current environmental data as necessary, as well as a comprehensive planning and transportation planning process which substantially addresses the socio-economic and environmental consequences associated with growth and development.

FUNDING SCHEDULE - ENVIRONMENTAL CONSIDERATIONS

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$20,000	0	\$20,000
TOTAL	\$20,000	0	\$20,000

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	100	0	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$20,000	0	\$20,000
TOTAL	\$20,000	0	\$20,000

*The matching ratio is Federal PL--86.58% and State match-13.42%.

41.17.700 OTHER ACTIVITIES

700 CONTINGENCY (4315)

OBJECTIVE

- To provide for the accounting of available un-programmed funds in the current UPWP.

ACCOMPLISHMENTS - FISCAL YEAR 2005

N/A

PROPOSED ACTIVITIES - FISCAL YEAR 2006

This work element will be utilized for accounting purposes only. No specific work activity will be charged to this work element.

STAFFING

N/A

FUNCTIONAL AGENCY RESPONSIBILITY

N/A

PRODUCT

N/A

FUNDING SCHEDULE - CONTINGENCY

FUNDS PROGRAMMED - FISCAL YEAR 2005

FUNDING SOURCE

AGENCY	PL	LOCAL	TOTAL
MPO	\$305	0	\$305
TOTAL	\$305	0	\$305

DISBURSEMENT PERCENTAGE

AGENCY	PL	LOCAL	TOTAL
MPO	100	0	100

FUNDS PROGRAMMED - FISCAL YEAR 2006

FUNDING SOURCE

AGENCY	PL*	LOCAL	TOTAL
MPO	\$96,745	0	\$96,745
TOTAL	\$96,745	0	\$96,745

*The matching ratio is Federal PL--86.58% and State match-13.42%.

SECTION II -- FUNDING

FUNDING SUMMARY

TABLE I

FEDERAL FISCAL YEAR 2006

WORK ELEMENT	FUNDING SOURCES FY 2006		
	PL*	LOCAL	EST. COST
100 Administration	\$142,500	\$95,000	\$237,500
101 Service	14,500	14,500	29,000
102 Citizen Involvement	16,000	16,000	32,000
200 Socio-Economic	20,000	20,000	40,000
201 GIS/Land Use/Pl. Studies	17,000	17,000	34,000
202 Comp Planning	46,800	70,200	117,000
203 Special Issues	13,200	30,800	44,000
204 Zoning	29,800	119,200	149,000
205 Subdivision	37,500	87,500	125,000
300 Transportation System	110,000	0	110,000
301 Transportation Plan	49,000	0	49,000
302 Planning Studies	45,000	30,000	75,000
500 T.I.P.	20,000	0	20,000
600 Environmental	20,000	0	20,000
700 Contingency	96,745	0	96,745
TOTAL	\$678,045.00	\$500,200.00	\$1,178,245.00

*The matching ratio is Federal PL--86.58% and State match-13.42%.

FUNDING COMPARISONS

TABLE II

WORK ELEMENT	FY 2006 ESTIMATED COST	FY 2005 ESTIMATED COST
100 Administration	\$237,500	\$230,000
101 Service	29,000	28,000
102 Citizen Involvement	32,000	30,000
200 Socio-Economic Data	40,000	40,000
201 GIS/Land Use	34,000	34,000
202 Comprehensive Planning	117,000	116,000
203 Special Issues & Areas	44,000	45,000
204 Zoning Administration	149,000	148,000
205 Subdivision Administration	125,000	97,000

300 Transportation System Data	110,000	100,000
301 Transportation Plan	49,000	45,000
302 Planning Studies	75,000	70,000
500 T.I.P.	20,000	20,000
600 Environmental Considerations	20,000	20,000
700 Contingency	96,745	305
TOTAL	\$1,178,245.00	\$1,023,305.00

TABLE III
FUNDING PERCENTAGES FEDERAL FISCAL YEAR 2006

WORK ELEMENT	RECIPIENT	PL	LOCAL	TOTAL
100 Administration	MPO	60	40	100
101 Service	MPO	50	50	100
102 Citizen Inv.	MPO	50	50	100
200 Socio-Econ. Data	MPO	50	50	100
201 GIS/Land Use Inv.	MPO	50	50	100
202 Comp. Planning	MPO	40	60	100
203 Special Issues & Areas	MPO	30	70	100
204 Zoning Administration	MPO	20	80	100
205 Subdivision Admin.	MPO	30	70	100
300 Trans. System Data	MPO	100		100
301 Transportation Plan	MPO	100		100
302 Planning Studies	MPO	60	40	100
500 T.I.P.	MPO	100		100
600 Environmental	MPO	100		100
700 Contingency	MPO	100		100

**TABLE IV
STAFF MONTHS BY WORK ELEMENT FISCAL YEAR 2006**

WORK ELEMENT	DIRECTOR (Mattix)	PLANNER II (Walker)	PLANNER I (Wilson)	PLANNING MANAGER (Beaudry)	PLANNER II (Lindstrand)	PLANNER II (Mattox)	CLERK (Deines)	PLANNER II (Spalding)	PLANNER II (Friday)	PLANNER II (Cromwell)	BIKE/PED. (Tussing)	TOTAL M.M.
100	5.5	1.5	1.5	4	1	.5	2	.5	.5	1	4.5	22.5
101	.5				.5	1		.5	.5	1		4
102	.5			.5	.5	1		1	.5			4
200	.5		2	1.5					1			5
201	.5			1.5	.5	.5			.5			3.5
202	2		1	1	2	7	1	2.5	1.5	1		19
203				.5	2	.5	.5	1	1	.5		6
204			4	.5	1.5		3.5	1.5	.5	5		16.5
205			1.5	1.5	3	.5	1.5	4	2.5	2		16.5
300		2.5	.5				.5		1		2	6.5
301	.5	2.5					.5		.5			4
302	.5	1.5	.5				.5		1	.5		4.5
500	.5	1.5					.5					2.5
600		1.5					.5					2
TOTAL	11	11	11	11	11	11	11	11	11	11	6.5	116.5

*This table indicates approximately how many man months individual staff members work in each work element.

OTHER STAFF		
WORK ELEMENT	CITY TRAF. TECHNICIAN	SEASONAL TRAFFIC COUNTER
300	11	4
TOTAL	11	4

SECTION III

INDIRECT COST PLAN

INTRODUCTION

The Office of Management and Budget Circular A-87 "Cost Principles for States and Local Governments" is used as governing criteria for establishing the allowed costs.

IDENTIFICATION OF COSTS

The costs are delineated below by type:

DIRECT	INDIRECT	BENEFITS
Salaries & Wages	Maintenance	FICA
Legal Notices	Reproduction	PERS
Travel	Supplies	Workmen's Compensation
Printing	Postage	Accident Insurance
Training	Subscriptions	Health Insurance
Consultants	Telephone	Sick Leave
Equipment	Utilities	Vacation
Mileage	Rent	Holidays
Moving/Interview	Audit	Maternity
	Messenger	Military
		Life Insurance
		Dental Insurance

ALLOCATION OF COSTS

Direct costs will be charged to the work program line item to which they apply.

An indirect cost rate of **14%** of the City and County's direct salaries and wages is proposed. The **14%** rate will be applied to the direct wages and salaries of each line item within the work program to cover all indirect expenses.

Benefits will be calculated at a rate of **48%** of the City and County's direct salaries and wages charged to each line item.

FUNDING SOURCES

The degree of participation by each funding agency is based on the pro-rations which have been determined for each line item. Each agency will be billed their share of the total charges made against each line item according to the approved pro-rations.

Funding sources and amounts contained in the UPWP are as follows:

City of Billings	\$330,000
Yellowstone County	\$230,000
PL*	\$678,045
TOTAL	\$1,238,045

*The matching ratio is Federal PL--86.58% and State match-13.42%.

SUMMARY

The indirect cost rate is a predetermined fixed rate which is not subject to adjustment. The base period used in determining the rate is the period from July 1, 2004 through June 30, 2005. The calculated rate is applicable to the grant period, which is October 1, 2005 through September 30, 2006.

LIST OF ACRONYMS

ADA	American Disability Act
CAC	Citizen Advisory Committee
CMAQ	Congestion Mitigation Air Quality
CTEP	Community Transportation Enhancement Program
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GIS	Geographic Information System
HPMS	Highway Performance Monitoring System
ISTEA	Intermodal Surface Transportation Efficiency Act
MDT	Montana Department of Transportation
MPO	Metropolitan Planning Organization
PCC	Policy Coordinating Committee
PEP	Private Enterprise Participation
PL	Planning Funds
TAC	Technical Advisory Committee
TDP	Transit Development Plan
TEA-21	Transportation Equity Act for the 21 st Century
TIP	Transportation Improvement Program
UPWP	Unified Planning Work Program
VTM	Vehicle Miles Traveled
YCBP	Yellowstone County Board of Planning

CHAPTER II

CITY OF BILLINGS TRANSIT DIVISION

SECTION I UNIFIED PLANNING WORK PROGRAM

44.21.00 Program Support and Administration

44.21.01	Program Administration
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OBJECTIVE

To provide program support, general administration, grant administration, and training in support of transit planning activities.

ACCOMPLISHMENTS FISCAL YEAR 2005

Conformance with federal, state, and local administrative requirements for maintenance of transit planning function. Attended training opportunities & enhanced knowledge and skills. Managed FTA Section 5303 grant activities, and prepared transit aspect of UPWP. Participated in TAC and other meetings.

PROPOSED ACTIVITIES FISCAL YEAR 2006

All administrative functions necessary in support of transit planning activities will be performed. Quarterly progress and expenditure reports will be prepared and transmitted to the Montana Department of Transportation, Urban Planning Division to maintain federal funding support. Furthermore, this UPWP will be revised when deemed necessary. The FY 2006 UPWP for transit planning activities will also be developed under this line item.

Staff participates in recognized and approved training programs in order to improve skills and capabilities. Planner will assimilate documents, regulations, and codes to keep abreast of federal, state, and local requirements as they relate to the transit planning process. To maintain interaction and feedback with appropriate citizen and

professional groups, staff will participate with the TAC and citizen advisory boards and others as needed. Grant administrative functions will also be performed.

STAFFING

170.0 Transit Planner Staff Hours

34.0 Clerical Support Staff Hours

25.5 Transit Manager Staff Hours

229.5 Total Staff Hours

FUNCTIONAL AGENCY RESPONSIBILITY

City Transit Division

PRODUCT

An ongoing administrative program to carry out the transit planning function.

FEDERAL PROGRAM PARTICIPATION

Federal Transit Act Section 5303 Metropolitan Planning Grant

FUNDING SCHEDULE - 44.21.01

Expenditures	Local	FTA	Total
Programmed FY 05	\$2,304	\$9,215	\$11,519
Estimated FY 2006	\$2,232	\$8,928	\$11,160

44.24.00**Short Range Transportation Planning**

44.24.01

New Transportation Service Evaluation and Analysis

OBJECTIVE

To facilitate considerations of means to ensure that citizens will have acceptable public transportation alternatives in the future, including during times of constrained financial resources.

ACCOMPLISHMENTS FISCAL YEAR 2005

Updated projections of future revenues and expenses. Assisted with annual and out-year budget and financial resources analysis, including multi-year spreadsheets. Arranged for a variety of on-going data gathering and analysis efforts to monitor system, including the installation of GPS units on buses. Continued to supervise consultant-assisted peer study effort to assess how MET is doing in comparison to other communities. Continued to solicit citizens' comments/participation to help assess the need for a Downtown Transfer Center. Identified the operating and capital needs required to ensure reliable fleet and effective system functioning and assisted with preparation of related grant applications, grant revisions, and budget documents. Considered farebox and other revenue changes.

PROPOSED ACTIVITIES FISCAL YEAR 2006

Continuation of activities undertaken in FY 2005 including arranging and assisting with financial analysis and planning and assessing future capital and operating requirements. Consider any possibly needed service modifications, with assistance of consultant as appropriate, including means to continue addressing needs with fewer resources. Assist with consultant-assisted study effort on downtown transfer center, including continued public and stakeholder involvement and input opportunities.

STAFFING

560.0 Transit Planner Staff Hours
112.0 Clerical Support Staff Hours
112.0 Transit Manager Staff Hours

784.0 Total Staff Hours

PRODUCT

Identification of and plans for efficient and effective transit service for the future, such as financial and capital analyses and possible system modifications.

FUNCTIONAL AGENCY RESPONSIBILITY

City Transit Division

FEDERAL PROGRAM PARTICIPATION

Federal Transit Act Section 5303 Metropolitan Planning Grant

FUNDING SCHEDULE - 44.24.01

Expenditures	Local	FTA	Total
Programmed FY 05	\$6,954	\$27,816	\$34,770
Estimated FY 2006	\$6,740	\$26,959	\$33,699

44.24.00**Short Range Transportation Planning**

44.24.02

Current Service Enhancement

OBJECTIVE

To improve service and rider ship in existing transit system.

ACCOMPLISHMENTS FISCAL YEAR 2005

Worked with operational staff in reviewing and implementing system improvements to existing routes and services and to assess system functioning. Assisted in assessing upcoming operational needs. Continued to develop a Marketing Enhancement Programs. Attended to regulatory documents as required for continued funding. Provided monthly ridership (including wheelchair and bike rack use) analysis, assessed ridership trends, and prepared other information on system functioning as requested. Analyzed internal administrative functioning including further implementation of computerization and/or technology improvements.

PROPOSED ACTIVITIES FISCAL YEAR 2006

Continuation of activities undertaken in FY 2005. Assist in identification and implementation of means to improve current service. This element may include activities such as assisting with marketing to attract and educate student and senior riders especially and to enhance public image of existing system and services as well as analyses of internal functions and operations. Other tasks may include monitoring public reaction to modified routes, schedules and marketing efforts and assist in assessing budgetary needs.

STAFFING

587.0 Transit Planner Staff Hours

117.4 Clerical Support Staff Hours

88.1 Transit Manager Staff Hours

792.5 Total Staff Hours

FUNCTIONAL AGENCY RESPONSIBILITY

City Transit Division

PRODUCT

Information relating to existing service/system enhancement, such as analyses of system functions and budget alternatives.

FEDERAL PROGRAM PARTICIPATION

Federal Transit Act Section 5303 (Formerly Section 8) Metropolitan Planning Grant.

FUNDING SCHEDULE - 44.24.02

Expenditures	Local	FTA	Total
Programmed FY 05	\$6,906	\$27,624	\$34,530
Estimated FY 2006	\$6,671	\$26,685	\$33,356

44.25.00**Transportation Improvement Program**

44.25.01

T.I.P.

OBJECTIVE

To maintain a viable five year program of transit improvements for the Billings Urban Area.

ACCOMPLISHMENTS FISCAL YEAR 2005

The TIP was updated to reflect current project status and include upcoming projects, information was provided to MPO to assist in community-wide Section 5310 project prioritization for inclusion in TIP. STIP process was monitored especially with regard to the discretionary grant.

PROPOSED ACTIVITIES FISCAL YEAR 2006

City Transit Division will develop information on the operating and capital projects for which MET Transit and MET Special Transit plan to pursue federal grant assistance for inclusion in the TIP to be prepared by the MPO. Monitor inclusion of TIP in STIP to ensure ability to obtain federal Section 5307 & 5309 grant assistance.

STAFFING

58.5 Transit Planner Staff Hours

11.7 Clerical Support Staff Hours

8.8 Transit Manager Staff Hours

79.0 Total Staff Hours

FUNCTIONAL AGENCY RESPONSIBILITY

City Transit Division will provide transit-related information to the County Planning Department for the MPO's inclusion in the TIP document.

PRODUCT

A current TIP as necessary for FTA grant approvals.

FEDERAL PROGRAM PARTICIPATION

Federal Transit Act Section 5303 (Formerly Section 8) Metropolitan Planning Grant.

FUNDING SCHEDULE - 44.25.01

Expenditures	Local	FTA	Total
Programmed FY 05	\$686	\$2,744	\$3,430
Estimated FY 2006	\$665	\$2,659	\$3,324

44.26.00 Implementation of Americans with Disabilities Act (ADA)

44.26.15 Implementation of Americans with Disabilities Act (ADA)

OBJECTIVE

To ensure optimal use of City of Billings funds in meeting elderly and disabled transportation needs for both specialized and fixed route transportation in accordance with Federal Americans with Disabilities Act (ADA) regulations.

ACCOMPLISHMENTS FISCAL YEAR 2005

Continued implementation of the paratransit Eligibility Certification process and familiarizing elderly and disabled citizens with use of fixed route system as appropriate. Continued monitoring of transit system's compliance with the ADA regulations and assisted with related community relations. Assessed financial functioning of paratransit service. Monitored procedures and policies involving lift-equipped fixed-route service and other accessibility features and requirements. Assisted in assessment of future vehicle needs and relevant procurement of vehicles as related to best serving elderly and disabled citizens. Assisted with continued integration of the paratransit function within the City's MET Transit System. Assisted in efforts to develop and resolve operational policy issues and to improve MET Special Transit's efficiency & cost-effectiveness, including monitoring implementation of Paratransit Scheduling software.

PROPOSED ACTIVITIES FISCAL YEAR 2006

Continuation of activities undertaken in FY 2005. Maintain positive relationship with disabled and elderly community and continued identification of means to address transit and special transportation needs, including assisting in efforts to assess both short and long term paratransit needs of the community and organizational and fiscal means to address those needs. Monitor and assess means to improve efficiency and effectiveness of paratransit service, including the update of the current paratransit software system. Continue to facilitate effective service provision and usage of lift-equipped fixed-route service.

STAFFING

258.0 Transit Planner Staff Hours
51.6 Clerical Staff Hours in support of Planner
657.0 Paratransit Coordinator Staff Hours
230.0 Clerical Staff Hours in support of Paratransit Coordinator
38.7 Transit Manager Staff Hours

1,235.3 Total Staff Hours

FUNCTIONAL AGENCY RESPONSIBILITY

City Transit Division

PRODUCT

Continued community consensus on how ADA regulations related to transit is to be complied with by the City of Billings. Continued community consensus on how to address specialized and lift-equipped and other transit needs of the community's disabled citizens through City funding.

FEDERAL PROGRAM PARTICIPATION

Federal Transit Act Section 5303 Metropolitan Planning Grant.

FUNDING SCHEDULE - 44.26.15

Expenditures	Local	FTA	Total
Programmed FY 05	\$9,479	\$37,916	\$47,395
Estimated FY 2006	\$9,666	\$38,664	\$48,330

SECTION II FUNDING

Table 4
Funding Summary and Staff Months by Element - City Transit Division
Federal Fiscal Year 2006

Work Element	Funding Source			Disbursement Percentage		Staff Hours
	City	FTA	Total Amount	City	FTA	
44.21.01	\$2,232	\$8,928	\$11,160	20	80	229.5
44.24.01	\$6,740	\$26,959	\$33,699	20	80	784.0
44.24.02	\$6,671	\$26,685	\$33,356	20	80	792.5
44.25.01	\$665	\$2,659	\$3,324	20	80	79.0
44.26.15	\$9,666	\$38,664	\$48,330	20	80	1235.3
SUB TOTAL	\$25,974	\$103,895	\$129,869	20	80	3,120.3
TOTAL	\$25,974	\$103,895	\$129,869	20	80	3,120.3

ALLOCATION OF COSTS

Expenditures identified include direct costs, benefits at the rate of 48% of direct salary or wages, and indirect costs at the rate of 14% of direct salary or wages. These rates for benefits and indirect costs were approved in a December 22, 2004 letter from the MDT Urban Planning Section.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Petitions for Reduction of Arterial Construction Fee Assessments
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM / ISSUE STATEMENT: The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially zoned properties being used as owner-occupied single family residences. The ordinance states *“The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied as a single-family residence. The property owner must annually request the exemption through the Public Works Department by August 31 of each year.”* The relief will be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on the R-9600 zoning rate instead of commercial zoning rates.

Public Works Administration staff developed a form for property owners meeting the criteria specified in Ordinance 05-5322 to petition the City Council for a reduction of their Arterial Construction Fee assessments annually. A copy of the form is available at the Public Works front counter, at the Finance Division front counter, at the City Administrator’s Office front counter, or by calling any of these offices. A copy of the form was also mailed to commercial property owners who use their commercially zoned parcels for their primary residence and who contacted the City last year.

As of August 31, 2005, the Public Works Department received eleven completed and signed petitions. Eight of the applicants meet the criteria specified in Ordinance 05-5322 and three applicants do not.

RECOMMENDATION

Staff recommends that the City Council approve a reduction of the Arterial Construction Fee assessments for the eight commercially zoned parcels that meet the criteria of the ordinance by capping the parcel square footage at 9,600 square feet and calculating the assessments based on

the R-9600 zoning rate instead of commercial zoning rates. We recommend no reduction to the Arterial Construction Fee assessments for the three properties that do not meet the criteria.

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

ATTACHMENTS: A – List of 2005 Petitions for Reduction of Arterial Construction Fee Assessments (1 pg)
 B – Copy of Petition for Reduction of Arterial Const. Fee Assessments Form (1 pg)

DATE	TAX CODE	ZONE	LAST NAME	FIRST NAME	PARCEL ADDRESS	PHONE	Comments
8/3/05	D05579-6	HC	Mattson	Dorene	1120 Lincoln Ln., #18	406-259-9138	Yellow "Mobi the co Visual mobile
8/4/05	D05202	HC	Hatveldt	Art	2104 Bench Blvd	406-259-7090	
8/3/05	D05200	HC	Moats	Melville & Vivian	2112 East Main Street	406-252-5049	
8/3/05	D05201	HC	Moats	Melville & Vivian	2112 East Main Street	406-252-5049	
8/9/05	D05525	NC	Goetz	David	637 Lincoln Ln.	406-208-8112	
8/8/05	A08541	CC	Popelka	Richard	721 Lake Elmo Drive	406-252-3383	
8/9/05	A11635-6	MCPZD	Nilson	Terry	922 North 30th St.	406-252-2500	
8/19/05	C01104	HC	Fisher	Lee E. & Patricia J.	704 Logan Lane	406-252-6033	
8/25/05	A230280	ELC / RMH	Kenney	George & Joyce	737 S Billings Blvd #Zero	not provided	Petion owner rented
8/31/05	C01112	HC	Hoven	Michael	1211 Main Street	406-256-7074	Visual revea Baker comm
8/30/05	D05199	HC	Kaufman	Austin	2111 Main Street	406-259-7653	



Petition for Reduction of Arterial Construction Fee Assessments

The City Council adopted Ordinance 05-5322 on April 11, 2005, in part to provide relief to commercially zoned properties being used as owner-occupied single family residences. The ordinance states *"The City Council may provide an exemption to commercially zoned properties that are currently owner-occupied as a single-family residence. The property owner must annually request the exemption through the Public Works Department by August 31 of each year."* The relief will be in the form of capping the parcel square footage at 9,600 square feet and calculating the assessment based on R-9600 zoning rates instead of commercial zoning rates. This ordinance change is not retroactive.

If your property meets the criteria above, and you wish to petition the City Council for a reduction of your Arterial Construction Fee assessments, please complete this form and return it to the Public Works Department, 510 N Broadway-4th Floor, Billings, MT 59101 **by August 31.**

.....
Date _____ Tax Code # _____ Taxable Year _____

Parcel street address _____

Parcel legal description _____

Parcel zoning classification _____

By signing below, I certify that I own the parcel identified above, that it is my primary residence, that I use the parcel solely as a single-family residence, and that all information provided on this form is true and correct. I understand that if the information supplied on this form is found to be false, I agree to pay back to the City of Billings the amount of the reduction to the Arterial Construction Fees on this parcel as a result of the false information PLUS penalty and interest. I further understand that I must apply annually for a reduction to the Arterial Construction Fee assessment by August 31. I agree to notify the Billings Public Works Department immediately should any information provided on this form change.

Property Owner Signature _____ Date _____

Property Owner Name (print legibly) _____

Mailing address _____

City _____ State _____ ZIP _____

Phone Number (optional) _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: W.O. 05-01A, 2005 Water and Sewer Replacement Projects, Contract Award
(Michigan Street Reconstruction)

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The project will include reconstruction of Michigan Street due to related improvements and installation of new utilities installed as part of the WO 05-01 Water and Sewer replacement project. This project will provide a reconstructed street facilities infrastructure due to the non-repairable street conditions. The project limits are from Poly Drive on the south to Rimrock Road on the north. These areas have been identified for utility rehabilitation/street replacement by City of Billings staff.

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

Project Number	<u>WO 05-01</u>
<u>Amount and Sources of Funds</u>	
Water Reconstruction Funds	\$ 30,043.00
Paving Program Funds	\$ 63,000.00
Total	\$ 93,043.00

Bids were opened on September 6, 2005, staff recommends delay until Sept. 26th Council meeting.

WO 05-01A (Michigan Ave. Reconstruction)

RECOMMENDATION

Staff recommends that Council delay awarding construction contract for W.O. 05-01A until the September 26, 2005 Council meeting.

Approved By: City Administrator _____ City Attorney _____
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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, September 12, 2005

TITLE: Public Hearing & Adoption – Emergency Ordinance on Camping

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: Two fraternal organizations – the Shrine and the Moose – are seeking exemptions from the City's RV and camper parking ordinance for special events to be held on their properties. The Shriners are conducting a Polka Festival October 7-10 and the Moose are holding a state convention on which additional information is being sought. It appears that an emergency Ordinance will be necessary to make the changes, because there will not be time to advertise the public hearings through the regular process.

ALTERNATIVES ANALYZED:

- Hold the public hearing and adopt an Emergency Ordinance allowing RV and camper parking in the lots of these two organizations for their specific events. Such an exemption was given during the Centennial cattle drive held in Billings, and will not affect long-term parking issues in the City.
- Do not hold the hearing or approve the Emergency Ordinance, and create potential violations at the events.

FINANCIAL IMPACT: None anticipated.

RECOMMENDATION

Pending receipt of further information, staff recommends that the Council hold a public hearing and authorize an Emergency Ordinance to allow parking lot camping at the events. Further information, including an Emergency Ordinance, will be included in the September 9 Friday Packet.

Approved By: City Administrator ____ City Attorney ____

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