

# CITY OF BILLINGS

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

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## AGENDA

COUNCIL CHAMBERS

December 19, 2005

6:30 P.M.

**CALL TO ORDER – Mayor Tooley**

**PLEDGE OF ALLEGIANCE – Mayor Tooley**

**INVOCATION – Councilmember Dave Brown**

**ROLL CALL**

**MINUTES – Not available at this time**

**COURTESIES**

**PROCLAMATIONS**

**BOARD & COMMISSION REPORTS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #6 through #12 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. Approval of Consultant Selection** of CTA Architects/Engineers for architectural and engineering design services for the Downtown MET Transit Operations Center.

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

**B. Modification of Trust Indenture** with Securities Building LLC, establishing reductions to its revolving loan as portions of the building are sold.

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

**C. Corporate Certificate of Authority** for procurement card approval, authorizing application for One Card, a new procurement card through U.S. Bank.

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

**D. Authorization** of new signatory documents with US Bank to reflect the change of mayor.

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

**E. Assignment** of West End Hangar Ground Lease from Julia Holdings LLC to First Interstate Bank to secure financing, \$0.00.

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

**F. Correction** to Professional Services Contract, W.O. 05-15: Howard Heights Storm Drain, Phases I & II, Interstate Engineering, Inc., \$125,700.00.

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

**G. Professional Services Contract** with PBS&J for the West Billings Flood Hazard Assessment, \$297,600.00.

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

**H. Bills and Payroll.**

(1) November 25, 2005

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

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

**REGULAR AGENDA:**

**2. PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property described as a 0.91-acre parcel of property located on the east side of Blue Creek Road at the intersection of Santiago Blvd., described as Tract 1C, C/S 566, Tract 1, 2<sup>nd</sup> Amended (and all adjacent right-of-way of Montana Highway #416 (Blue Creek Road), Jeffrey V. Essmann, petitioner. (Annex #05-10). Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

**3. PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC Chapter 26: Water and Wastewater Utilities; revising public utilities to public works, revising definition of “special benefit facilities”, revising definition of “harmful contribution”, revising remedies and penalties under Section 26-610 to allow the City to recover costs associated with discharge violations. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

**4. PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC by repealing Chapter 23, Sections 23-101 through 23-1501, declaring them to be null, void and of no effect, and adding a new Chapter 23 with sections to be numbered 23-101 through 23-1107, providing comprehensive subdivision regulations.

Planning Board recommends approval. (**Action:** approval or disapproval of Planning Board recommendation.)  
[\(Corresponding Staff Memo 4\)](#)

5. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC Sections 2-213, 2-214, and 2-222, updating procedure for amending agenda at the council meeting, moving board and commission reports to the work session and updating public participation language. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

6. **RESOLUTION OF INTENT TO ADOPT** the *Billings Heights Neighborhood Plan* as part of the Yellowstone County/City of Billings 2003 Growth Policy. Planning Board recommends approval. (**Action:** approval or disapproval of Planning Board recommendation.)

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

7. **AFFORDABLE HOUSING FUND APPLICATION** from homeWORD for a \$300,000.00 grant, to be funded from the HOME/CHDO Reserve and transfer of additional funds as needed from the Affordable Housing Fund. CD Board and Staff recommend approval. (**Action:** approval or disapproval of CD Board and Staff recommendations.)

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

8. **ACCEPTANCE** of donations to the Animal Shelter from the Louise Hobeck Trust and Walmart totaling \$47,072.90. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

9. **RESOLUTION** setting the annual salary of the Municipal Court Judge. (Delayed from 11/28/05). Staff recommends approval of adjusting the base salary to \$91,250.00 and providing longevity pay for years of service. (**Action:** approval or disapproval of Staff recommendation.)

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

10. **RESOLUTION** pursuant to BMCC Chapter 12: Eminent Domain, declaring public purpose and use, describing the properties to be taken and authorizing City officials to proceed with condemnation of six properties on Grand Avenue. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

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

11. **LEGAL ADVICE** on Tussing Settlement Agreement. Staff recommends the Council review the attorney's report and direct Staff regarding further action. (**Action:** direction to Staff.)

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

**12. MAYOR'S APPOINTMENTS: DELAYED FROM 12/12/05.**

	Name	Board/Commission	Term	
			Begins	Ends
1.	Lyn McKinney	Board of Adjustment	01/01/06	12/31/09
2.	Troy Boucher	Board of Adjustment	01/01/06	12/31/09
3.	Leon Pattyn	Board of Adjustment	01/01/06	12/31/09
4.	Tom Holden	Board of Appeals	01/01/06	12/31/09
5.	Mike Schmidt	Board of Appeals	01/01/06	12/31/09
6.	Russell Fagg	Board of Ethics	01/01/06	12/31/09
7.	Michael Dennis	Board of Health	01/01/06	12/31/08
8.	Cary Brown	City/County Planning Board	01/01/06	12/31/07
9.	Kathleen Gilluly	Community Development Board (Low Mod)	01/01/06	12/31/09
10.		Community Development Board (Low Mod)	01/01/06	12/31/09
11.	*Kathleen Walters	Community Development Board (at Large)	01/01/06	12/31/07
12.	Skip Godfrey	EMS Advisory Commission	01/01/06	12/31/09
13.	Reese Holle	EMS Advisory Commission	01/01/06	12/31/09
14.	Mike Hennessy	Housing Authority	01/01/06	12/31/10
15.	Erica Limberhand	Housing Authority	01/01/06	12/31/07
16.	David Jernigan	Human Relations Commission	01/01/06	12/31/09
17.	Ken Nicholson	Parking Advisory Board	01/01/06	12/31/09
18.	Scott Wetzel	Parking Advisory Board	01/01/06	12/31/09
19.	Pamela Godfrey	Parking Advisory Board	01/01/06	12/31/09
20.	Wanda Walker	Parks/Rec/Cemetery Board	01/01/06	12/31/09
21.	Mike Erickson	Parks/Rec/Cemetery Board	01/01/06	12/31/09
22.	Carol Green	Police Commission	01/01/06	12/31/08
23.	Rod Wilson	Public Utilities Board	01/01/06	12/31/09
24.	Patrick Dawson	Public Utilities Board	01/01/06	12/31/09
25.	Doug Kary	Traffic Control Board	01/01/06	12/31/09
26.	Walt Willett	Traffic Control Board	01/01/06	12/31/09
27.	Brian Roberts	Yellowstone Historic Preservation Board	01/01/06	12/31/07

11\* - Unexpired term of Dorothy Nelson (At Large)

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

**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**

***(NOTE: Additional information on any of these items is available in the City Clerk's Office)***

**Visit our Web site at:**  
**<http://ci.billings.mt.us>**

# A

AGENDA ITEM:

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 19, 2005

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**TITLE:** Approval of the RFP Committee's Recommendation to Utilize CTA Architects/Engineers for the Architectural and Engineering Design Services for the Downtown MET Transit Operations Center

**DEPARTMENT:** Aviation and Transit Department

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

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**PROBLEM/ISSUE STATEMENT:** Fifteen Request for Proposals were distributed to both local firms as well as those identified nationally for the design and construction of a Downtown MET Transit Operations Center. The successful consultant will provide design, mechanical, electrical, structural, civil engineering and construction administration services for this project. This project utilized the RFP process as outlined by the Federal Transit Administration (FTA) to select the most qualified architectural/engineering firm from those submitting proposals.

Three proposals were received on October 31, 2005, and reviewed by a selection committee consisting of a Councilperson, Aviation/Transit Commission member, and City staff. According to the FTA mandated procedures, the committee was required to consider only the overall qualifications of the firms when reviewing the proposals and deciding on a priority ranking of firms. The Federal procedures then require the City to negotiate an acceptable fee structure with the first ranked firm if possible. CTA's proposed fee structure is acceptable as it is identical to the one currently in use in our organization. The committee decision was a unanimous one, that the City Council award the project to the team headed by CTA Architects & Engineers. The decision was based upon a number of criteria, including CTA's familiarity with the MET Transit Division through various past projects; the team's overall strength, which included significant experience in transit operations center design; a very strong project methodology and approach which utilizes CTA's significant in-house personnel/expertise; as well as additional acoustic and environmental engineering capabilities. In addition, CTA has done a number of past projects which involve the FTA and its various regulations, policies, and procedures, and this familiarity is very helpful.

**ALTERNATIVES ANALYZED:** The City Council has three options to consider: to award the project to CTA, to consider one of the other proposals or not award and re-advertise .

**FINANCIAL IMPACT:** The City has allocated funds for this project through the CIP process. This project will be funded with a combination of FTA Discretionary Funds and local funds. The costs for the Consultant's charges will be arrived at on a time and material basis based upon the proposed rate structure submitted by CTA, which has been reviewed and found to be acceptable within the common accepted and used industry range. The total Federal and local share funds available for the Downtown Transit Center, including professional services, are \$5.483 million.

**RECOMMENDATION**

Staff recommends that Council approve the RFP committee's recommendation to award the project to the team headed by CTA Architects & Engineers.

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

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

# B

## AGENDA ITEM:



### CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, December 19, 2005

**TITLE:** Modification of Securities Building LLC Trust Indenture  
**DEPARTMENT:** Administration - Finance Division  
**PRESENTED BY:** Patrick M Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** Securities Building LLC intends to sell individual portions of its building and the existing trust indenture to the City does not provide for partial lien releases. The Finance Division recommends that the City modify its Trust Indenture with Securities Building LLC to allow for partial lien releases as Securities Building LLC sells portions of its building. The modified agreement will also include a formula that shall be used to calculate required loan payments to the revolving loan fund for each sale.

**FINANCIAL IMPACT:** The Securities Building LLC has two loans from the City's revolving loan fund, one is secured by the parking lot and the other is secured by the building. Each loan has a current balance of \$208,508.23. The parking lot loan will continue on the existing payment schedule and building loan trust indenture will be modified to allow for partial lien releases. The modification will also require a calculated loan payment prior to releasing a portion of the lien. As each condominium is sold, the related loan payment will be calculated as the ratio of the allocable square footage sold to the total building square footage owned by Securities Building LLC, excluding the basement.

#### **RECOMMENDATION**

Staff recommends that Council approve the modified trust indenture.

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

#### **ATTACHMENT**

Attachment A – Modification of Trust Indenture  
Attachment B – Schedule of Allocable Square Footage

**ATTACHMENT A**  
**MODIFICATION OF TRUST INDENTURE**

**THIS MODIFICATION OF TRUST INDENTURE** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between **SECURITIES BUILDING, LLC**, with address at 2708 First Avenue North, Billings, Montana 59101 (hereinafter referred to as "Grantor"), and the **CITY OF BILLINGS**, a Montana Municipal Corporation , with address at P.O. Box 1178, Billings, Montana 59103 (hereinafter referred to as "Lender").

**RECITALS**

A. On May 1, 2003, William D. Honaker and Marcia G. Honaker executed and delivered to Lender a Promissory Note, in the original principal amount of \$250,000 each (the "Note"), secured by a trust indentures on certain lands in Yellowstone County, Montana, evidenced by a Trust Indenture dated May 1, 2003 , from **WILLIAM D. HONAKER** and **MARCIAG. HONAKER**, as Borrowers, to Director of Administrative Services, City of Billings, Trustee, for the benefit of the **CITY OF BILLINGS**, as Beneficiary, recorded on May 2, 2003, under Document No. 3228160, records of the Clerk and Recorder of Yellowstone County, Montana, (hereinafter referred to as the "Trust Indenture").

B. On August 9, 2005, **SECURITIES BUILDING, LLC** assumed and agreed to pay all outstanding amounts due under the aforesaid Trust Indenture.

C. **SECURITIES BUILDING, LLC** now desires to sell individual portions of the property which is subject to the aforesaid Trust Indenture as condominium units and has asked the **CITY OF BILLINGS**, as Beneficiary, to consent to this modification of the Trust Indenture and to agree to release its secured interest in each unit as it is sold, and the **CITY OF BILLINGS** is agreeable to this arrangement on condition that a pro rata payment of outstanding principal is made by **SECURITIES BUILDING, LLC** at the time each unit is released.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree to amendment to Paragraph 9 of the aforesaid Trust Indenture as follows:

9. Termination and Release. As portions of the secured property are sold by Borrower, Borrower may prepay a pro rata portion of the total principal amount due under the Promissory Note and request that the City release that portion of the secured property from the terms and conditions of this Trust Indenture, and the City will give Borrower a partial reconveyance of that portion of the property. The amount of the prepayment required for a partial release or partial reconveyance of the Trust Indenture by multiplying the loan's outstanding unpaid principal balance as of that date by the square footage of the building being sold divided by the total square footage in the building which is owned by **SECURITIES BUILDING, LLC** as of the date of the sale. This formula can also be stated as follows:

*(Loan principal balance due as of the date of sale) x  
(square feet in building sold / total square feet owned by Securities Building LLC)*

This Trust Indenture and all of the rights and interest of the City hereunder shall terminate when all the Secured Obligations have been fully performed, observed, paid and satisfied. Upon termination as herein provided, the City shall release its rights and interest hereunder, all without recourse upon, or warranty by, the City and at the cost and expense of the Borrower.

**IN WITNESS WHEREOF**, the parties have executed this Modification of Trust Indenture as of the day and year first above written.

## **SECURITIES BUILDING, LLC**

By \_\_\_\_\_  
William D. Honaker  
Registered Agent and Member  
Securities Building LLC

STATE OF MONTANA )  
:ss.  
COUNTY OF YELLOWSTONE )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by William D. Honaker.

\_\_\_\_\_(Signature)

(SEAL) \_\_\_\_\_ (Printed Name)  
Notary Public for the State of Montana  
Residing in \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

STATE OF MONTANA )  
County of Yellowstone ) : ss.

On this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the Mayor and City Clerk, respectively, of the City Of Billings who signed the foregoing instrument and acknowledged to me that they executed the same.

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(Signature)

(SEAL) \_\_\_\_\_ (Printed Name)  
Notary Public for the State of Montana  
Residing in \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

## Attachment B

### SECURITIES BUILDING LLC SCHEDULE OF ALLOCABLE SQUARE FOOTAGE

<u>Area</u>	<u>#</u>	<u>Allocable Square Feet</u>
1st Floor		
Walkers	1A	4,915
Commercial	1B	2,066
2nd Floor		
Commercial	2A	2,092
Commercial	2B	3,709
3rd Floor		
Commercial	3A	3,410
Commercial	3B	2,412
4th Floor		
Loft units	4A	1,072
Loft units	4B	1,038
Loft units	4C	1,079
Loft units	4D	702
Loft units	4E	969
Loft units	4F	949
5th Floor		
Loft units	5A	1,072
Loft units	5B	1,038
Loft units	5C	1,079
Loft units	5D	702
Loft units	5E	969
Loft units	5F	949
		30,222

Example:

1st Sale:

Area 3A is sold and the loan balance is \$200,000.00, the required pay down would be \$22,566.34, calculated as follows:

$$(\$200,000.00 \times (3,410 / 30,222)) = \$22,566.34$$

2nd Sale:

Area 2B is sold and the loan balance is \$175,000.00, the required pay down would be \$24,208.38, calculated as follows:

$$(\$175,000.00 \times (3,709 / (30,222 - 3,410))) = \$24,208.38$$

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C

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Procurement Card Approval

**DEPARTMENT:** Administration – Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** The Finance Division would like to implement a different Procurement Card with U.S. Bank, the One Card, which will reduce our annual fees to \$0 and increase the City's revenue by receiving a yearly rebate. The One Card can also be used for travel expenditures which will greatly increase the efficiency in booking time and effort for all departments. The current procurement card is with U.S. Bank whom the City of Billings is under contract with for banking services.

**RECOMMENDATION**

Staff recommends that City Council approve the attached Corporate Certificate of Authority required by U.S. Bank which shows that the City Administrator has authority to sign the One Card Application for the City of Billings.

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

**ATTACHMENT**

A – Corporate Certificate of Authority

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

D

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 19, 2005**

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**TITLE:** Authorization of Changes in Signatories on US Bank Accounts  
**DEPARTMENT:** Administration – Finance Division  
**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** US Bank requires new signature cards with any changes or additions in signatories. New signature cards must be signed to reflect the change of mayor as he is an authorized signer on all banks accounts. The newly authorized signatures will go into affect January 3, 2006, as this is the date the new mayor will be sworn to office.

**RECOMMENDATION**

Staff recommends that City Council authorize the new signatories and that they be effective January 3, 2006.

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

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E

**AGENDA ITEM:**



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**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 19, 2005**

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**TITLE:** Assignment of West End Hangar Ground Lease from Julia Holdings, L.L.C. to First Interstate Bank to Secure Financing

**DEPARTMENT:** Aviation and Transit

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

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**PROBLEM/ISSUE STATEMENT:** At the November 28, 2005 Council meeting, the Council approved the Assignment and Transfer of a West End Hangar Ground Lease from Martin Elshire to Julia Holdings, L.L.C. In order to finance the purchase of the hangar property located on this leasehold, Julia Holdings, L.L.C. is requesting that the Lease be assigned to First Interstate Bank as part of the security for the financing arrangement. The City has approved a number of these financing assignments in the past.

**FINANCIAL IMPACT:** There would be no financial impact to the City, as Julia Holdings, L.L.C. will still be required to pay the annual ground lease rentals as established in the existing Lease.

**RECOMMENDATION**

Staff recommends that Council approve the Assignment of the West End Hangar Ground Lease with Julia Holdings, L.L.C. to First Interstate Bank for the purpose of securing financing.

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

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## AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

**TITLE:** Correction to Professional Services Contract - WO 05-15 Howard Heights Storm Drain

**DEPARTMENT:** Public Works/Engineering

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

**PROBLEM/ISSUE STATEMENT:** City Council approved the Professional Services Contract with Interstate Engineering, Inc. on November 28, 2005 in the amount of \$119,490. Bidding services were not included but need to be in the amount of \$6,210. This will raise the Professional Services Contract amount from \$119,490 to \$125,700.

**ALTERNATIVES ANALYZED:**

1. Approve the Professional Services Contract with Interstate Engineering, Inc.
2. Do not approve the Professional Services Contract with Interstate Engineering, Inc.

**FINANCIAL IMPACT:** The total estimated cost for Phase I of the improvements, including the professional services contract to design both Phase I and Phase II, is \$470,000. The improvements for Phase II will be completed in 2009. Both Phase I and Phase II are referenced as ENGD004 in the current CIP. The funding breakdown for Phases I and II is as follows:

**Phase I Improvements & Design of Phases I & II**

Gas Tax Funds	\$430,000
Storm Drain Funds	<u>\$ 40,000</u>
Total	\$470,000

**Phase II Improvements**

Gas Tax Funds	\$100,000
Storm Drain Funds	<u>\$275,000</u>
Total	\$375,000

**RECOMMENDATION**

Staff recommends that Council approve the Professional Services Contract for W.O. 05-15 for the design of Phases I & II with Interstate Engineering, Inc. in the amount of \$125,700.00.

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

# G

**AGENDA ITEM:**



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## **CITY COUNCIL AGENDA ITEM**

**CITY OF BILLINGS, MONTANA**

**Monday, December 19, 2005**

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**TITLE:** West Billings Flood Hazard Assessment Contract with PBS&J  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Candi Beaudry, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** The Council will consider the contract for professional services to conduct a West Billings Flood Hazard Assessment to determine the volume and extent of potential flooding in this location. The consultant for the project, PBS&J, is a nationally-recognized floodplain mapping firm with offices in Missoula, Bozeman and Helena. The firm was selected through a competitive proposal process and is considered most qualified of the three firms that submitted proposals.

**ALTERNATIVES ANALYZED:** City Council may authorize the Mayor to execute the contract, refuse authorization, or request modification of the contract prior to execution.

**FINANCIAL IMPACT:** The City was awarded \$297,600 through a Department of Housing and Urban Development Special Projects Grant. There will be no additional costs to the City.

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a contract with PBS&J for the amount not to exceed \$297,600 to complete the West Billings Flood Hazard Assessment.

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

### **ATTACHMENT**

A:      Contract for Professional Services

## **INTRODUCTION**

The Council will consider the contract for professional services to conduct a West Billings Flood Hazard Assessment to determine the volume and extent of potential flooding in this location.

## **BACKGROUND**

In April, 2005, the City of Billings was awarded a \$297,600 special projects grant through the Department of Housing and Urban Development. The funds will be used to conduct a detailed Flood Hazard Assessment to identify the 100-year floodplain and floodways in the West Billings area. This area, which encompasses both City and County jurisdictions, has been subject to catastrophic flooding. The most recent notable event was in 1937 when floodwaters originating from Cove and Little Cove Creek flowed along the railroad tracks and inundated downtown Billings. Since that time, agricultural and development activities have obliterated the natural drainages, making it difficult to identify the potential location of the floodplain. The study will entail state-of-the-art mapping techniques that are necessary to detect small changes in elevation.

A Request for Proposals to conduct the flood assessment was advertised on August 8 and September 4, 2005. Three, nationally-recognized floodplain mapping firms responded to the request. The selection committee, composed of the Planning Division Manager, a member of the Yellowstone County Planning Board, a member of the Yellowstone County Board of County Commissioners, the Yellowstone County Floodplain Administrator, a City Engineer, and a City Councilmember participated in the selection of the firm. PBS&J was selected on the bases of response to the request, qualifications and experience with local conditions and similar flooding characteristics.

## **ALTERNATIVES ANALYSIS**

The City has recognized the need for a flood hazard assessment of the West Billings area since the devastating flood of 1937. Several studies have been conducted since then, although none have been of the level required to accurately identify the location and extent of 100-year flood events. As the area continues to develop and annex to the City of Billings, it becomes necessary to more accurately delineate the floodplain or rely on older, less detailed studies. The federal appropriation of \$297,600 in 2005 enables the City to conduct a study of sufficient detail to ensure the most appropriate development for areas subject to flooding. City Council may authorize the Mayor to execute the contract, refuse authorization, or request modification of the contract prior to execution.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a contract with PBS&J for the amount not to exceed \$297,600 to complete the West Billings Flood Hazard Assessment.

### **ATTACHMENT**

A: Contract for Professional Services

**Contract for Professional Services  
WEST BILLINGS FLOOD HAZARD STUDY**

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In consideration of the mutual promises herein, City of Billings and PBS&J agree as follows.  
This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 7 pages (Basic Services of Contractor);
- Appendix B consisting of 1 page (Methods and Times of Payment);
- Appendix C consisting of 2 pages (Schedule of Professional Fees);
- Appendix D consisting of 1 page (Project Schedule);
- Appendix E consisting of 3 pages (Certificate(s) of Insurance)

**PART I  
SPECIAL PROVISIONS**

**Section 1. Definitions.**

In this Contract:

- A. "Administrator" means the Division Manager of the Planning Division of the Planning and Community Services Department or her designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means PBS&J.

**Section 2. Scope of Services.**

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

**Section 3. Time for Performance.**

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix D.
- C. This Contract shall terminate at midnight on November 30, 2006.

**Section 4. Compensation; Method of Payment.**

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than TWO HUNDRED NINETY SIX THOUSAND ONE HUNDRED NINE DOLLARS (\$296,109.00) in accordance with this Section.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

**Section 5. Termination of the Contractor's Services.**

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

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to cure the default within 30 days after receiving the notice.

## **Section 6. Duties Upon Termination**

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

## **Section 7. Insurance.**

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.
  - 2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$500,000 per accident.
  - 4. Professional liability in the amount of \$1,000,000.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except

Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

### **Section 8. Assignments.**

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

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

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

### **Section 10. Notices.**

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

Billings:	Candi Beaudry, AICP Planning Division Manager Planning and Community Services Department 510 North Broadway – 4 <sup>th</sup> Floor Billings, Montana 59101	FAX: (406) 657-8327
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Contractor: Daniel March, P.E.  
PBS&J, Inc.  
3810 Valley Commons Drive, Ste. 4  
Bozeman, Montana 59718 FAX: (406) 587-7278

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

## **Section 11. Contract Budget.**

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

## **Section 12. Force Majeure.**

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

## **Section 13. Financial Management System.**

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

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

- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

**Section 14. Funding Requirements.**

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

**Section 15. Subcontracts.**

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

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefore.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

## **PART II** **GENERAL CONTRACT PROVISIONS**

### **Section 1. Relationship of Parties.**

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

### **Section 2. Nondiscrimination.**

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

### **Section 3. Permits, Laws, and Taxes.**

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

**Section 4. Nonwaiver.**

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

**Section 5. Amendment.**

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

Contractor: Assistant Department Manager or Department Manager  
(title of position)

Billings: City Council or Authorized Designee

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

**Section 6. Jurisdiction; Choice of Law.**

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

**Section 7. Severability.**

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

**Section 8. Integration.**

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

**Section 9. Liability.**

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

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.

B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

#### **Section 10. Inspection and Retention of Records.**

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

#### **Section 11. Availability of Funds.**

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

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

Contractor

City of Billings

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Charles F. Tooley,  
Mayor

Date: \_\_\_\_\_

ATTEST:

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Marita Herold, CMC/AAE  
City Clerk

Date: \_\_\_\_\_

STATE OF MONTANA )  
:ss.  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires: \_\_\_\_\_

## PBS&J, Inc.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF MONTANA )  
:ss.  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

---

Notary Public for the State of Montana  
Residing at Billings, Montana  
My Commission Expires: \_\_\_\_\_

## **Appendix A**

### **Basic Services of Contractor**

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#### **Section 1. Contractor's Rights and Duties.**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Contractor's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Contractor shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Contractor's work shall be in accordance with the standards of sound engineering practices and City, State, and National standards and policies currently in use.
- E. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- F. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Contractor. Reports will be submitted in a timely manner to permit prompt resolution of problems.
- G. Name a Task Director who shall be the liaison between Billings and the Contractor. For this project the Task Director designated for the Contractor is Daniel March working under the Principal-in-Charge, Paul Callahan.

#### **Section 2. Billings Rights and Duties.**

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Contractor and Billings. For this project, the Task Director designated is Candi Beaudry, AICP, Planning Division Manager.

### Section 3. Scope of Work.

#### 3.1 Task 1 - Reconnaissance and Coordination

A. Scope: The contractor shall conduct a detailed field reconnaissance of the study area to determine conditions along the floodplains, types and numbers of hydraulic structures, apparent maintenance or lack thereof of existing hydraulic structures, locations of cross sections or areas to be surveyed, and other parameters needed for the hydrologic and hydraulic analyses.

This task shall also include all coordination, communication, and research required to comply with FEMA standards. Of particular importance is the need for (1) coordination in establishing uniform topographic & data products, (2) communication of intermediate and final study results, (3) communication of hydrologic and hydraulic with the topographic mapping partners, and (4) research of existing data. Coordination will also include the communication with the affected communities, other state and federal agencies, and internal/external groups who may be impacted by the study.

B. Standards: All work under Task 1 shall be performed in accordance with the most recent standards specified in Section 3.6 of this Section.

C. Deliverables: The Contractor shall make the following product available to City of Billings:

- A report summarizing the findings of the field reconnaissance and coordination;

#### 3.2 Task 2 - Field Surveys and Topographic Data Development

A. Responsible Party: Contractor

B. Scope: The Contractor shall conduct field surveys, including obtaining channel and floodplain cross sections, transects, identifying or establishing permanent bench marks, and obtaining the physical dimensions of hydraulic structures. Specifically, the Contractor shall generate or obtain new topographic data for the study area using LiDAR survey methods in the study subarea 1 (Attachment A). For study subarea 3, the Contractor shall utilize existing topographic data. The Contractor shall develop topographic maps, Digital Elevation Models (DEMs), and contour line features in ESRI-compatible format for the subject flooding sources using the data collected under this task.

C. Standards: All work under Task 2 shall be performed in accordance with the most recent standards specified in Section 3.6 of this Section.

D. Deliverables: The Contractor shall make the following products available to City of Billings:

- Digital (ESRI-compatible format line features and DEM) and hardcopy versions of the topographic maps;
- Report summarizing methodology and results;
- Triangular Irregular Network (TIN) data on CD-ROM;
- Checkpoint analyses to assess the accuracy of TIN data including Root Mean Square Error calculations to support vertical accuracy;
- Identification of remote sensing data voids and methods used to supplement data voids; and
- National Geodetic Survey data sheets for Network Control Points used to control remote-sensing and ground surveys; and
- Survey notebook containing cross sections and structural data; and
- Digital (ESRI-compatible format line features) and hardcopy mosaic of the aerial flight will be used as the floodplain base map.

### 3.3 Task 3 – Hydrologic Analyses

A. Responsible Party: Contractor

B. Scope: The Contractor shall perform hydrologic analyses necessary for the production of FEMA-compliant floodplain maps. The Contractor shall calculate or verify the applicability of the existing peak flood discharges for the 10-, 2-, 1-, and 0.2- percent- annual-chance storm (10-, 50-, 100-, and 500-year) events. These flood discharges will be the basis for subsequent hydraulic analyses under Task 4.

If GIS-based modeling is used, the Contractor shall document automated data processing and modeling algorithms. Digital datasets (such as elevation, basin, or land use data) are to be documented.

C. Standards: All work under Task 3 shall be performed in accordance with the most recent standards specified in Section 3.6 of this Section.

D. Deliverables: The Contractor shall make the following products available to the City of Billings:

- Digital copies of all hydrologic modeling (input and output) files for the 10-, 2-, 1-, and 0.2-percent-annual-chance storm (10-, 50-, 100-, and 500-year) events;
- Digital and hardcopy versions of the Summary of Discharges Table presenting discharge data for the flooding sources for which hydrologic analyses were performed;

- Digital and hardcopy versions of draft Hydrologic Analyses report; and
- Digital and hardcopy versions of all backup data used in the analysis, including work maps.

For GIS-based modeling, deliverables include all input and output data, intermediate data processing products, and GIS data layers.

### 3.4 Task 4 – Hydraulic Analyses

- A. Responsible Party: Contractor
- B. Scope: The Contractor shall perform hydraulic analyses for the study subarea 1 shown in Attachment A. The modeling will include the 10-, 2-, 1-, and 0.2-percent-annual-chance (10-, 50-, 100-, and 500-year) events based on peak discharges computed under Task 3.

The Contractor shall use the cross-section and field data collected under Task 2 to perform the hydraulic analyses. The hydraulic analyses will be used to establish flood elevations for the subject flooding sources.

The Contractor shall document automated data processing and modeling algorithms for GIS-based modeling. Digital datasets are to be documented.

- C. Standards: All work under Task 4 shall be performed in accordance with the most recent standards specified in Section 3.6 of this Section.
- D. Deliverables: The Contractor shall make the following products available to City of Billings:

- Digital profiles of the 10-, 2-, 1- and 0.2-percent-annual-chance water-surface elevations representing existing conditions;
- Digital and hardcopy versions of all hydraulic modeling (input and output) files;
- Digital and hardcopy versions of table with range of Manning's "n" values;
- Digital and hardcopy versions of all backup data used in the analyses;
- Digital and hardcopy versions of draft Hydraulic Analyses report.
- A licensed copy of the hydraulic modeling software along with registration codes or keys and hardcopies of operation manuals.

For GIS-based modeling, deliverables include all input and output data, intermediate data processing products, GIS data layers, and final products in the format of the DFIRM database structure.

### 3.5 Task 5 - Floodplain Mapping

- A. Responsible Party: Contractor
- B. Scope: The Contractor shall delineate the 1- and 0.2-percent-annual-chance (100- and 500-year) floodplain boundaries for the flooding sources for which detailed hydrologic and hydraulic analyses were performed. The Contractor shall incorporate all new or revised hydrologic, hydraulic modeling and shall use topographic information acquired under Task 2 to delineate the floodplain on a digital work map.
- C. Standards: All work under Task 5 shall be performed in accordance with the most recent standards specified in Section 3.6 of this Section.
- D. Deliverables: The Contractor shall make the following products available to the City of Billings:
  - Digital (in ESRI-compatible format) work maps showing the 1- and 0.2-percent-annual-chance floodplain boundary delineations, cross sections, BFEs, flood insurance risk zone labels, and all applicable base map features;
  - DFIRM mapping files, prepared in accordance with the requirements in *Guidelines and Specifications for Flood Hazard Mapping Partners*;
  - Metadata files describing the DFIRM data, including all required information shown in *Guidelines and Specifications for Flood Hazard Mapping Partners*;
  - Complete set of plots of DFIRM panels showing all detailed flood hazard information at a suitable scale;
  - An explanation for the use of existing topography for the studied reaches, if appropriate.
  - If automated GIS-based models are applied, all input data, output data, intermediate data processing products, and GIS data layers shall be submitted.

### 3.6 Standards

The standards relevant to Tasks 1 through 5 are provided in Tables 3-2 and 3-3. Information on the correct volume, appendix, section, or subsection of FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners* (April 2003) to be referenced for each mapping activity are summarized in Table 3-3. The Contractor is responsible for checking and using the most recent updates.

These Guidelines are available for viewing or download from the FEMA Flood Hazard Mapping Web site at [http://www.fema.gov/mit/tsd/dl\\_cgs.htm](http://www.fema.gov/mit/tsd/dl_cgs.htm).

**Table 3-2. Applicable Standards for Project Tasks**

<b>Applicable Standards</b>	<b>Tasks</b>				
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<i>Guidelines and Specifications for Flood Hazard Mapping Partners</i> , April, 2003		<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
American Congress on Surveying and Mapping (ACSM) procedures		<b>X</b>			
Global Positioning System (GPS) Surveys: National Geodetic Survey (NGS-58), “Guidelines for Establishing GPS-Derived Ellipsoid Heights,” November 1997		<b>X</b>			
EM 1000-1-1000, <i>Photogrammetric Mapping</i> , March 31, 1993		<b>X</b>			
EM 1110-2-1003, <i>Hydrographic Surveys</i> , October 31, 1994			<b>X</b>		
Numerical Models Accepted by FEMA for NFIP Usage, January 11, 2002			<b>X</b>	<b>X</b>	
<i>Content Standards for Digital Geospatial Metadata</i> (Federal Geographic Data Committee, 1998)					<b>X</b>

**Table 3-3. Project Tasks and Applicable Sections of Guidelines and Specifications for Flood Hazard Mapping Partners**

Task Number	Task Description	Guidelines Volume, Section/Subsection, and Appendix
1 & 2	Field Surveys and Reconnaissance	Volume 1, Sections 1.2, 1.3, 1.4 (specifically Subsection 1.4.2.1) Appendix A, Sections A.5, A.6, A.7, and A.8 Appendices B, C, and M
2	Topographic Data Development	Volume 1, Section 1.4 (specifically Subsection 1.4.2.1) Appendix A, Sections A.2 and A.3 Appendix M
3	Hydrologic Analyses	Volume 1, Section 1.4 (specifically Subsections 1.4.2.2 and 1.4.2.4) Appendix C, Sections C.1 and C.7 Appendices E, F, G, H, and M
4	Hydraulic Analyses	Volume 1, Section 1.4 (specifically Subsections 1.4.2.2 and 1.4.2.4) Appendix C, Sections C.3 and C.7 Appendices B, E, F, G, H, and M
5	Floodplain Mapping	Volume 1, Section 1.4 (specifically Subsection 1.4.2.3) Appendix C, Sections C.4 and C.6 Appendices K, L, and M

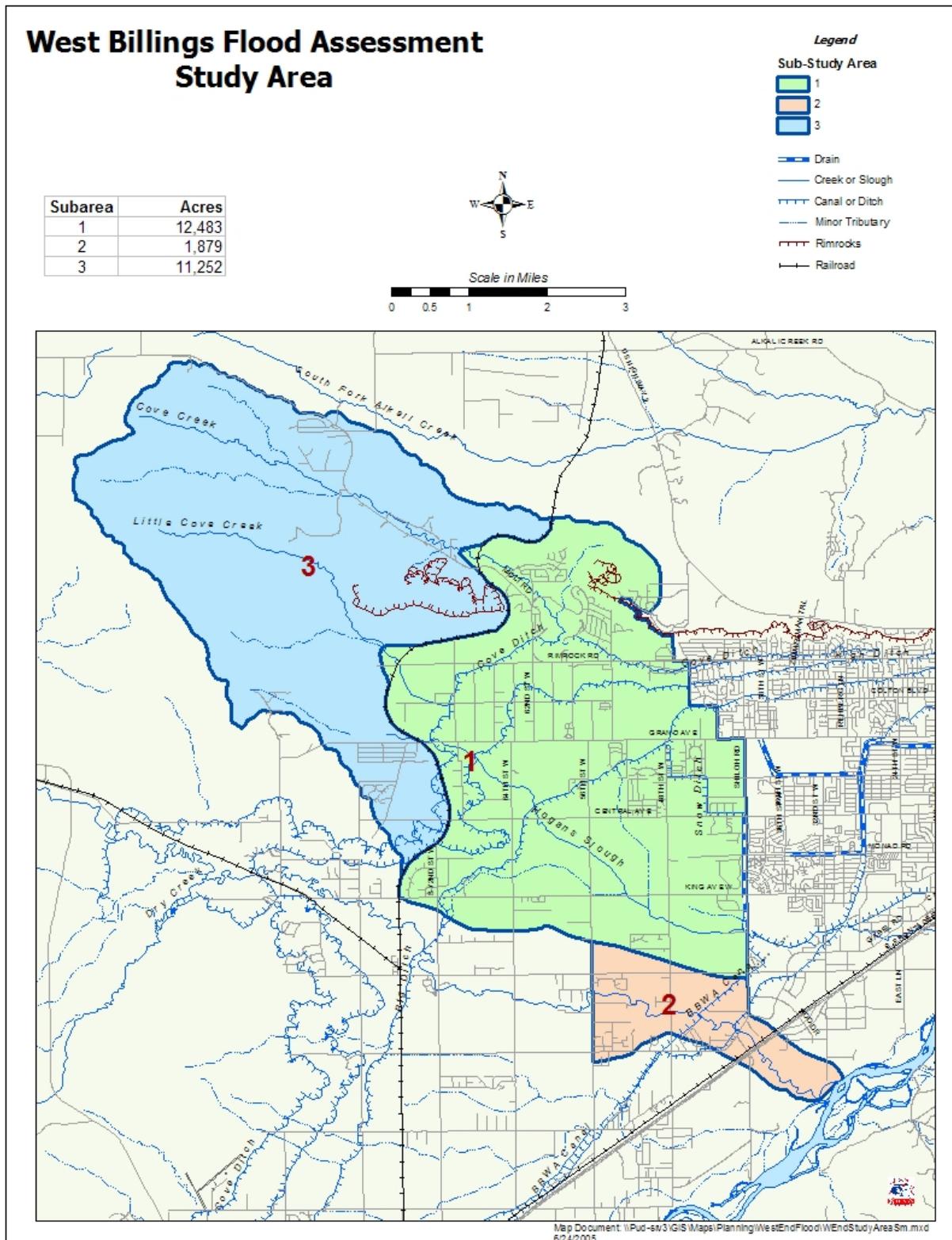
### **3.7    3.7 Certification**

The following certification will be required:

Tasks 3, 4 and 5. (Hydrologic Analyses, Hydraulic Analyses, Floodplain Mapping)

- A Registered Professional Engineer or Licensed Land Surveyor will certify hydrologic and hydraulic analyses and data in accordance with 44 CFR 65.6(f).
- A Registered Professional Engineer or Licensed Land Surveyor will certify topographic information in accordance with 44 CFR 65.5(c).

ATTACHMENT A



## **Appendix B**

### **Methods and Times of Payment**

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#### **Section 4. Payments for Basic Services.**

Billings shall authorize payment to the Contractor for services performed under Appendix A of this Agreement. Partial payment shall be due the Contractor upon receipt of the Contractor's monthly pay estimate, said estimate being proportioned to the work completed by the Contractor.

Billings shall deduct ten percent (10%) 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 documents by Billings, and determination that the scope of work has been satisfactorily completed.

A. For services rendered prior to construction, Appendix A, the Contractor shall be paid based upon actual time accrued, but not to exceed the following amounts:

Task 1 – Reconnaissance and Coordination	\$7,250
Task 2 – Field Surveys and Topographic Data Development	\$130,734
Task 3 – Hydrologic Analysis	\$54,185
Task 4 – Hydraulic Analysis	\$66,765
Task 5 – Floodplain Mapping	\$16,275
Task 6 – Project Administration	\$13,400
Task 7 – Modeling Software	\$7,500
Total	\$296,109

B. Final payment shall be the above stated basic fee less all previous payments.

#### **Section 5. Payments for Extra Services when Authorized by Billings.**

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable fees in Appendix C.

#### **Section 6. Corrections.**

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

## **Appendix C**

### **Schedule of Professional Fees**

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

The itemized schedule provided below includes direct labor costs, normal payroll and overhead costs, transportation, furnishing equipment and materials normally required for performance of the work and reasonable profit. Direct project costs not itemized herein shall be paid for at actual cost.

## PBS&J FEE SCHEDULE

**2006**

<b>ITEM</b>	<b>RATE</b>	<b>ITEM</b>	<b>RATE</b>
<b>Personnel</b>		<b>Equipment</b>	
Principal	\$140.00/hr	CPU Time	\$20.00/hr
Senior Project Manager	\$125.00/hr	Modeling / Specialized Software	\$20.00/hr
Project Manager	\$110.00/hr	Photoionization Detector	\$50.00/day
Sr. Engineer	\$100.00/hr	Landfill-gas Meter	\$50.00/day
Sr. Scientist	\$95.00/hr	LEL / O2 Meter	\$30.00/day
Project Engineer / Scientist	\$90.00/hr	Oil / Water Interface Probe	\$44.00/day
Staff Scientist / Engineer	\$80.00/hr	pH, Temp., Cond. DO Meter	\$40.00/day
Engineer, EIT	\$75.00/hr	Turbidimeter	\$30.00/day
Sr. Environmental Technician	\$70.00/hr	Groundwater Sampling Trailer (Grundfos Pump, Generator & Decon. Equip).	\$200.00/day
Technician II	\$60.00/hr	Portable Generator & Grundfos Controller	\$150.00/day
Technician I	\$55.00/hr	Portable Generator	\$50.00/day
Technical Drafting with AutoCAD system	\$75.00/hr	Hach Test Kit	\$30.00/day
3-Person Survey Crew (with Total Station)	\$121.00/hr	Petro Flag Samples	\$22.00/samp.
2-Person Survey Crew (with Total Station)	\$100.00/hr	12v Sample Pumps	\$30.00/day
3-Person Survey Crew (w/PLS w/Total Station)	\$137.00/hr	Groundwater Bailers	\$8.00/each
2-Person Survey Crew (w/PLS w/Total Station)	\$116.00/hr	Water / Soil Sampling Decontamination	\$10.00/sample
GIS Specialist II	\$80.00/hr	Vinyl Tubing	\$.50/foot
GIS Specialist I	\$75.00/hr	Filters	\$20.00/each
Sr. Clerical	\$60.00/hr	Electric Water Level Tape	\$30.00/day
Clerical	\$50.00/hr	Transducer Water Level Data Logger	\$125.00/day
Expert Witness (8 hr minimum)	\$170.00/hr		
<b>Travel</b>			
Truck (mileage less than 75 miles per day)	\$50.00/day		\$300.00/wk
Truck (mileage more than 75 miles per day)	\$.65/mile		\$750.00/mo
Per Diem	\$29.00/day		
Lodging	At cost		
<b>Communications</b>			
Copies (in-house black & white)	\$0.10/page	Flow Meter (Open Channel Meter)	\$50.00/day
Copies (in-house color 8.5" x 11")	\$1.50/page	Cut Throat Flume	\$30.00/day
Copies (in-house color 11" x 17")	\$2.50/page	10 HP Water Pump (425 gpm capacity)	\$150.00/day
Long Distance Faxes	\$1.50/page	Pitot Tube Closed Channel Flow Meter	\$30.00/day
Microfiche Prints	\$0.50/page	Air Pump (low volume)	\$30.00/day
CD Data Copy	\$10.00/CD	Peristaltic Pump	\$30.00/day
<b>Plotting (draft/final plots *)</b>			
<b>Size</b>	<b>Linework</b>	<b>Rastor</b>	
A - 8.5"x11"	\$2.00	\$3.00	
B - 11"x17"	\$5.00	\$7.00	
C - 17"x24"	\$8.00	\$10.00	
D - 24"x36"	\$10.00	\$15.00	
E - 36"x48"	\$15.00	\$20.00	
F - Oversize	\$15.00+	\$25.00+	
<b>* Working plots @ half cost.</b>			<b>Misc. Expenses &amp; Consumable Supplies</b>
			Cost+15%

### IN-HOUSE STAFF

AutoCAD Technician, Biologists, Construction Engineering Technician, Engineers (registered-MT & ID), Environmental Engineers, Environmental Planner, Environmental Scientists, Geologists, Geotechnical Engineer, GIS Specialists, GPS Technician, Hydrogeologists, Hydrologists, Soil Scientist (Certified-ARCPACS), Statisticians, Survey Crews, Watershed Specialists Surveyor (PLS – MT, WA, CA), Water Resource Engineer, Water Rights Specialists, Wetland Specialists

## **Appendix D**

### **Project Schedule**

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Based on a notice to proceed date no later than December 31, 2005, the completion date for the Contractor's work shall be:

- A. Draft Flood Plain Maps – November 1, 2006
- B. Final Flood Plain Maps – November 30, 2006

Dates are based on contractor's ability to collect LiDAR data prior to January 31, 2006. LiDAR data cannot be obtained when snow is on the ground or in ditches.

Delays affecting the completion of the work within the time specified of more than ninety (90) days, not attributable to or caused by the Parties hereto, may be considered as cause for the renegotiation or termination of this Contract.

If the Contractor is behind on this Contract due to no fault of Billings, then the Contractor hereby acknowledges the right of Billings to withhold future Contracts to the Contractor in addition to any other remedy until this Contract is brought back on schedule or otherwise resolved.

**Appendix E**  
**Certificate(s) of Insurance**

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(Attach Certificate(s) of Insurance)

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

H

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$1,421,842.98 have been audited and are presented for your approval for payment. A complete listing of the claims dated November 25, 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:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Public Hearing and First Reading of an Ordinance expanding Ward I  
**DEPARTMENT:** Planning and Community Services Department  
**PRESENTED BY:** Candi Beaudry, AICP, Planning Division Manager

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**PROBLEM/ISSUE STATEMENT:** On December 12, 2005, the City Council approved the annexation of 1.709 acres, including a .906-acre parcel located east of Blue Creek Road and a portion of Blue Creek Road right-of-way. (Annexation #05-10). The petition for annexation was submitted by Jeffrey Essmann, sole owner of property. After annexation, 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 I will be held on December 19, 2005. The second reading of the ordinance is scheduled for Council action on January 9, 2006.

**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 I.

**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 I 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 SE1/4 of Section 20, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: Tract 1C of Amended Tract One of the Second Amendment to Certificate of Survey No 566 Recorded July 9, 1975, Under Document No. 992687, Records of Yellowstone County, Montana; including all adjacent right-of-way of Montana Highway No. 416 / Blue Creek Road. Containing 1.709 +/- gross and 0.906 net acres.

(# 05-10) 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 19th day of December, 2005.

PASSED by the City Council on the second reading this 9th day of January, 2006.

THE CITY OF BILLINGS:

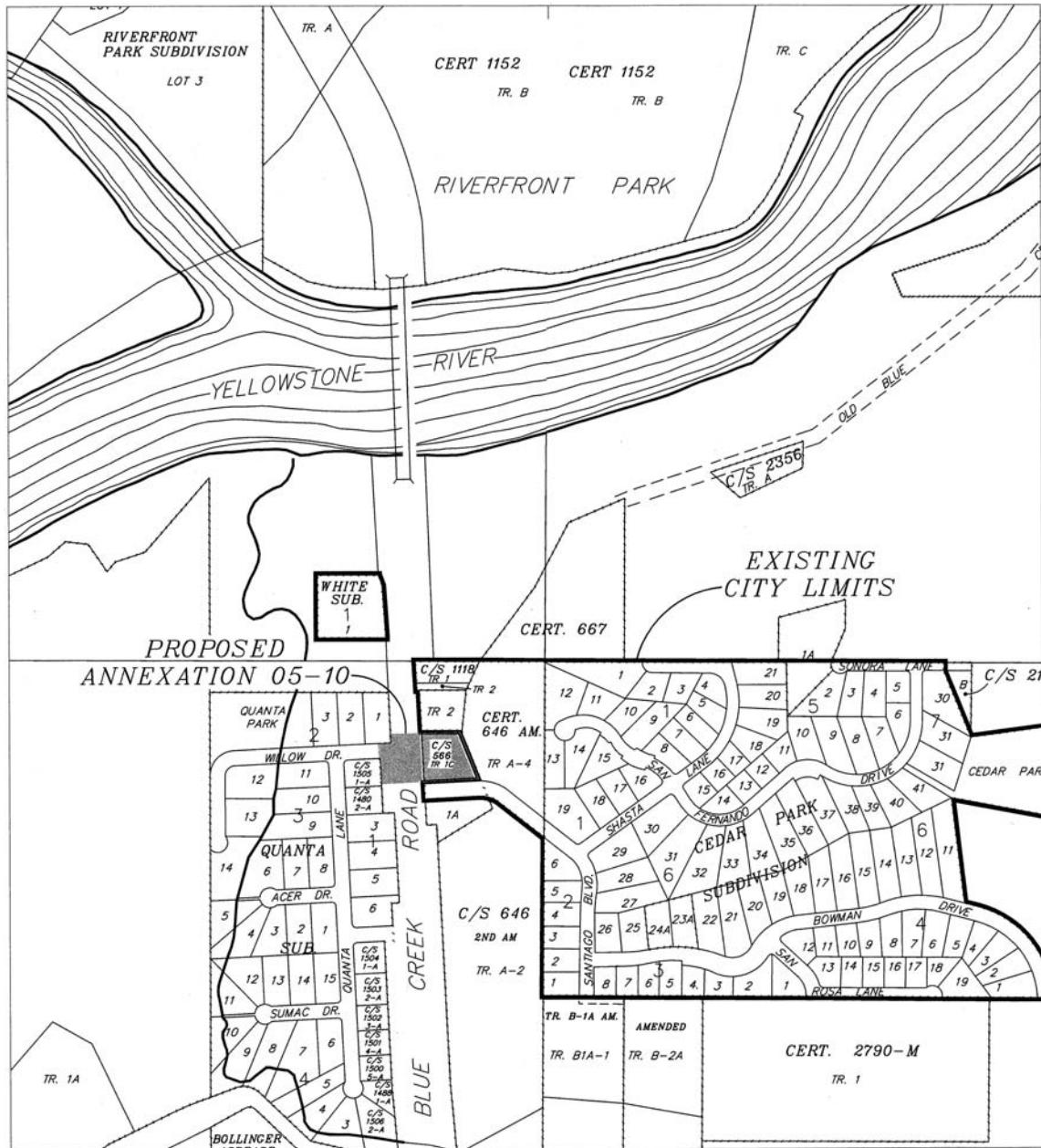
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Charles F. Tooley, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE CITY CLERK

# EXHIBIT A



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

## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 19, 2005**

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**TITLE:** Public Hearing and First Reading Ordinance Revision –  
Water/Wastewater Utilities

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** Due to the Public Utilities/Works organizational changes and need for revisions in other areas of the utilities operations, staff is asking the Council to amend various sections of Chapter 26 of the Billings Montana City Code. The revisions will 1) change all references to Public Utilities to Public Works or city; 2) revise various definitions; 3) add provisions establishing the procedures for compensation agreements between the city and developers covering developer-funded utility construction; and 4) amend the pretreatment portion of the code to allow the City to recoup costs related to problem discharges to the sanitary sewer system. The compensation agreement program allows for the city to reimburse developers where developers construct facilities that are normally constructed by the city. The revisions to the pretreatment program allow the city to recover costs of investigating and responding to problem discharges to the sanitary sewer system.

**ALTERNATIVES ANALYZED:** The alternatives for consideration are:

- Adopt the ordinance.
- Do not adopt the ordinance – Not adopting the changes will cause confusion by referring to the now non-existent Public Utilities Department/Director. In addition, staff will not be able to recoup costs associated with problem discharges to the sanitary sewer system and the compensation agreement program will not be “officially” established.

**FINANCIAL IMPACT:** There are no financial impacts associated with approval of the changes. Not approving the changes will result in the City being unable to recover the costs of investigation and cleanup of problem discharges to the sanitary sewer system.

## **RECOMMENDATION**

Staff recommends that Council conduct a public hearing and adopt the first reading of the ordinance amending sections of Chapter 26 of the Billings Montana City Code with a second reading of the ordinance to be held January 9, 2006.

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

## **ATTACHMENTS**

Attachment A – Ordinance No. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 2-538, 26-104, 26-109, 26-202, 26-404, 26-500, 26-501, 26-502, 26-503, 26-504, 26-505, 26-602, 26-610 AND BY ADDING NEW SECTIONS TO BE NUMBERED 26-504 AND 26-506; UPDATING DEFINITIONS; SETTING COMPENSATION CONDITIONS AND PROCEDURES FOR PARTIAL REIMBURSEMENT OF CERTAIN DEVELOPER WATER AND WASTEWATER FACILITY CONSTRUCTION COSTS; AND, REVISING REMEDIES AND PENALTIES.

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

**Section 1.** That the Billings, Montana City Code be amended by revising Section 2-538 to read as follows:

**“Sec. 2-538. Organization.**

The public utilities board shall elect from its membership one person to serve as chairperson and the public ~~utilities~~ works department head shall serve as secretary.”

**Section 2.** That the definition of “Water Service Line” in Section 26-104 of the Billings, Montana City Code be amended to read as follows:

**“Sec. 26-104. Definitions.**

Unless the context specifically indicates otherwise, the meanings of terms used in this article on municipal water and wastewater utilities and in the rules and regulations authorized herein shall be as follows:

...

*Water Service Line* means all privately-owned facilities, including...on the customer's side of the point of delivery, except the ~~public utilities department's~~ city's water meter and any other equipment owned by the city.”

**Section 3.** That Section 26-109 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-109. Meters for nonusers of city water system.**

Meters or other means of gauging or metering water used on premises not using the city water service but connected to the city wastewater system for wastewater service shall be installed at the expense of the owners of such premises in accordance with city rules and regulations. Said meters shall be accessible to the ~~public utilities department~~ city and its

employees to facilitate the determination of the wastewater charges to be paid by the owners or occupants of such premises.”

**Section 4.** That Section 26-202 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-202. Adoption of service area.**

The official water or wastewater service area for the city is that area of the city within the boundaries of the city, any areas presently served outside the city and any subsequently approved amendments thereto. A map depicting the water service area adopted herein, and any enlargements that may be from time to time approved by the city council, shall be made available at all times for public inspection during regular working hours at the Utilities Utility Service Center, 2251 Belknap Avenue, Billings, Montana. A map depicting the wastewater service area shall be developed and maintained in the same manner.”

**Section 5.** That Section 26-404 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-404. Application and permit fee.**

- (a) Licensed septic haulers shall make application for septic or trucked waste disposal permits and manifests ~~at the public utilities department~~ on a special form furnished by the city. Permits or manifests will be issued upon compliance with the provisions of this article and any regulations adopted hereunder. The septic disposal permit fee shall be the fee set by city resolution.
- (b) The city may refuse to grant or may revoke a permit for the disposal of septic or trucked waste into the waste disposal station to any applicant who has willfully and repeatedly violated the provisions of this article. Only septic pumped from septic tanks situated within Yellowstone County and which receive primarily segregated domestic wastes or wastes from sanitary conveniences shall be allowed to be discharged into the waste disposal station. Only approved trucked waste shall be allowed to be discharged into the waste disposal station.”

**Section 6.** That the title to Article 26-500 of the Billings, Montana City Code be amended so that such title shall read as follows:

**“Article 26-500. REIMBURSEMENT AND COMPENSATION OF WATER AND WASTEWATER EXTENSION AND REPLACEMENT COSTS”**

**Section 7.** That Section 26-501 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-501. Purpose.**

The intent and purpose of this article is to provide ~~an~~ equitable procedures for the reimbursement and compensation of a portion of the costs of constructing certain water and wastewater facilities to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.”

**Section 8.** That Section 26-502 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-502. Definitions.**

For the purposes of this article, the following words and phrases used herein are defined as follows:

*Compensation agreement* means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for water and wastewater facilities constructed by and initially paid for by the developer.

*Customer* means any person receiving water and/or wastewater service either directly or indirectly from the city water and/or wastewater system.

*Developer* means an applicant who requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities which will be installed by the applicant to serve properties owned by the applicant.

*Extension* means the act or process of extending special benefit facilities for the purpose of providing water and/or wastewater service to properties situated within the city's approved water or wastewater service areas.

*Off-site special benefit facilities* means special benefit facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

*Perimeter special benefit facilities* means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

*Reimbursement agreement* means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water and wastewater facilities constructed by and initially paid for by the developer.

*Special benefit facilities* means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to; water lines ~~eighteen (18)~~ twelve (12) inches or smaller in diameter, water booster pumping stations serving small areas, wastewater lines ~~twenty-four (24)~~ twelve (12) inches or smaller in diameter, and wastewater pumping stations serving small areas.”

**Section 9.** That Section 26-503 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-503. Requirement for payment of reimbursement fee.**

Any prospective customer owning property located outside a developer's subdivision and desiring to connect a service line or lines to any special benefit facility which has been extended at the developer's expense, shall pay a reimbursement fee to the city. This fee shall be determined by the ~~public utilities director~~ ~~city~~ and shall be based upon either the prospective customer's pro rata share of the costs of the special benefit facility involved or upon some other cost formula established by agreement between the developer and the city at the time of approval of the developer's extension. This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee shall not include any interest charges. This fee applies only to connections and does not apply to additional extensions of existing special benefit facilities.”

**Section 10.** That Section 26-504 of the Billings, Montana City Code be renumbered to Section 26-505 so that such section title shall read as follows:

**“Sec. ~~26-504~~ 26-505. Reimbursement agreements.”**

**Section 11.** That Section 26-505 of the Billings, Montana City Code be renumbered to Section 26-507 so that such section title shall read as follows:

**“Sec. ~~26-505.~~ 26-507. Applicability.”**

**Section 12.** That the Billings, Montana City Code be amended by adding a section to be numbered 26-504 to read as follows:

**“Sec. 26-504. Compensation by city.**

Developers are responsible for the cost of their fair share portion of all special benefit facilities that front the development or are necessary to bring service to the development. In situations where no other property outside the development is participating in the cost of a project the city will participate in a proportionate share of the cost of eligible portions of the construction.

- (1) Compensation by the city must be made according to the city's approved Water/Wastewater Extension Policy and Utilities Fees Practice. These policies require necessary funds to be included in the current, approved Capital Improvements Projects budget in order to be eligible for compensation back to the developer. The construction must also comply with all city, state and federal laws, rules and regulations including, but not limited to, standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc..

Developers may choose to proceed with an extension or replacement project without waiting for its inclusion in the Capital Improvements Projects. In this case the developer is responsible for paying the entire cost of the construction. A compensation agreement will define the provisions covering payment of the city's portion of the project costs.”

**Section 13.** That the Billings, Montana City Code be amended by adding a section to be numbered 26-506 to read as follows:

**“Sec. 26-506. Compensation agreements.**

- (a) Developers who meet the following conditions shall be entitled to compensation by the city:

  - (2) Developer shall provide to the city sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.
  - (3) Developer shall enter into a compensation agreement with the city at the time the city approves the developer's application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the developer.
  - (4) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.
  - (5) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.
- (b) All compensation payments to developers shall be subject to the following terms and conditions:

  - (1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's Water/Wastewater Extension policy, the city's Utilities Fees Practice, and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at his expense.

- (2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.
- (3) Compensation is limited to costs attributable to water and/or wastewater facilities described in the compensation agreement, less all administrative costs incurred by the city. In no event will compensation exceed the actual cost to the developer of extending or replacing the water and/or wastewater facilities.
- (4) Compensation shall not include any interest charges.”

**Section 14.** That the definitions of “Department” and “Harmful contribution” in Section 26-602 of the Billings, Montana City Code be amended to read as follows:

**“Sec. 26-602. Definitions.**

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this article and the rules and regulations as follows:

...

*Department* means the public utilities works department of the City of Billings.

...

*Harmful contribution* means an actual or threatened discharge...any condition of its Montana Pollutant Discharge Elimination System permit; or which causes the city to expend effort and resources beyond that normally required.”

**Section 15.** That Section 26-610 of the Billings, Montana City Code be amended so that such section shall read as follows:

**“Sec. 26-610. Actions for violation; enforcement.**

(a) *Notice to violators.* Any person found to be violating the provisions of this article shall be served by the city with written notice stating the nature of the violation and action needed for its satisfactory correction. The offender shall immediately take action to permanently cease all violations as directed by the city. The issuance of a correction notice does not constitute a defense to a criminal charge which is concurrently or subsequently filed for the same violation.

(b) *Harmful contributions or interference with the wastewater system.*

(1) The administrator may cancel a significant industrial user's permission to discharge wastewaters into the WWS, reject such wastewater, may cease wastewater treatment service, and/or suspend a significant industrial user's industrial discharge permit when such suspension is necessary, in the opinion of the administrator, to stop or preclude a harmful contribution to the WWS or a discharge which interferes with or has a deleterious effect upon the WWS.

(2) Any significant industrial user notified of a suspension or cancellation of wastewater treatment service and/or the industrial discharge permit shall immediately

stop or eliminate the contribution or discharge. In the event of a failure by such significant industrial user to comply voluntarily with the suspension order, the administrator shall take such steps as are deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the WWS system, danger to individuals or harm to the receiving water. The administrator may reinstate the industrial discharge permit and/or the wastewater treatment service only upon proof of compliance with the suspension order, including payment of any fees or penalties. A detailed written statement submitted by the significant industrial user describing the causes of the harmful contribution and the measures actually taken to prevent any future occurrence shall be submitted to the city within five (5) business days from the date of occurrence.

(c) *Revocation of permit/termination of service.* Any significant industrial user who violates the following conditions of this article, the city's rules or regulations or applicable state and federal laws is subject to permit revocation or service termination, or both, in accordance with the procedures set forth in said rules and regulations or this section:

- (1) Failure to factually report wastewater constituents and characteristics or permit violations.
- (2) Failure to report significant changes in operations or wastewater constituents and characteristics.
- (3) Refusal or physical obstruction of reasonable access to the user's premises for the purposes of inspection, monitoring, review of records concerning wastewater or any purpose listed under section 26-607(G).
- (4) Violation of conditions of the industrial discharge permit.
- (5) Failure to obtain or maintain a valid industrial discharge permit.
- (6) Failure to file required reports or give notices.
- (7) Failure to comply with a city order or compliance schedule.
- (8) Failure to provide for protection against spills, slug discharges or accidental discharges.
- (9) Use of excessive discharge per section 26-604(e).
- (10) Failure to properly sample discharge with intent to deceive.
- (11) Failure to pay the applicable charges and fees.

(d) *Remedies.* If any person violates any order of the administrator or otherwise fails to comply with any provisions of this article or rules and regulations or the orders, rules, regulations and permits issued hereunder, or discharges sewage, industrial wastes or other wastes, into the WWS or into state waters contrary to the provisions of this article, federal or state pretreatment requirements, or contrary to any order of the city, or to the extent that the discharge constitutes a harmful contribution, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the WWS occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work

caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.

(e) *Misdemeanor.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both. Each day in which any such violation occurs or persists shall be deemed a separate and distinct offense.

(f) *Penalty for false statement and tampering.* Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.

(g) *Civil penalty.* Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits or permit conditions issued hereunder shall forfeit and pay to the city a civil penalty of one thousand dollars (\$1,000.00) per violation. Each day in which any violation occurs or persists shall be deemed a separate and distinct violation. Said civil penalty, if not immediately paid, is enforceable by petition to a court of competent jurisdiction. In addition to the civil penalty contained herein, violators shall be liable to the city for any expense, loss or damage to the city or to the WWS including, but not limited to, investigative/monitoring expenses, fines, penalties, loss or damage, cleaning, repair or replacement work caused by and in connection with the violation. The city shall bill the violator for such expenses. Refusal to pay the assessed costs shall constitute a separate and distinct violation.”

(h) *Remedies cumulative.* The remedies provided for in state and federal law, this section and this article, including but not limited to, criminal prosecution, recovery of costs, administrative fines, and treble damages, shall be cumulative. One or all of the penalties, sanctions, fines and remedies may be imposed at the discretion of the city.

Section 16. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 17. **REPEALER.** All resolutions, ordinances and sections of the City Code inconsistent herewith are hereby repealed.

Section 18. **EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006.

CITY OF BILLINGS

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Public Hearing and Ordinance for the Amended City Subdivision Regulations (Article 23, BMCC)

**DEPARTMENT:** Planning and Community Services

**PRESENTED BY:** Juliet Spalding, Planner II

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**PROBLEM/ISSUE STATEMENT:** In an effort to implement recent legislative changes to the Montana Subdivision and Platting Act, address the commonly heard concerns about our current regulations, and to realize several of the goals of the 2003 Growth Policy, Planning staff is presenting the Amended City Subdivision Regulations (Article 23, BMCC). The City-County Planning Board held a public hearing and reviewed the proposed amended regulations on November 22, 2005. The City Council must hold a public hearing on the proposed amended regulations and decide whether to adopt them.

**FINANCIAL IMPACT:** There are no foreseen financial impacts to the City for adopting the Amended City Subdivision Regulations.

**RECOMMENDATION**

Planning Board recommends that Council adopt the City Subdivision Regulations, as Amended.

**ATTACHMENTS**

- A: Table of Contents of the Amended City Subdivision Regulations
- B: Recommended Amendments to Working Draft 2

## **INTRODUCTION**

The 2005 Legislature approved Senate Bill 116 in April, enacting a number of changes to the Subdivision and Platting Act (Title 76-3, Montana Code Annotated) and requiring adoption of updated local subdivision regulations by October, 2006. In response to this mandate and in order to implement some of the goals of the 2003 Growth Policy, Planning staff, in collaboration with other City staff and community members, is presenting a new draft set of City Subdivision Regulations for public hearing and adoption.

## **PROCEDURAL HISTORY**

- April, 2005: State Legislature approved Senate Bill 116 requiring updates to local subdivision regulations.
- March, 2004 – May, 2005: Planning staff drafted revised City Subdivision Regulations.
- April, 2005 – June, 2005: Planning staff and other City staff reviewed draft regulations.
- June 21, 2005 – August 16, 2005: Technical Review Committee made up of key staff and development community representatives reviewed draft regulations in a series of weekly meetings.
- November 7, 2005: City Council Work Session.
- November 22, 2005: Planning Board held a Public Hearing on the new regulations.
- December 19, 2005: City Council will hold a Public Hearing and may act on the 1<sup>st</sup> Reading of Ordinance.
- January 9, 2006: City Council to act on the 2<sup>nd</sup> Reading of Ordinance.

## **BACKGROUND**

The City's Subdivision Regulations (Article 23, BMCC) are in need of revision for several reasons. First, with the adoption of Senate Bill 116, the 2005 State Legislature mandated, among other things, significant changes to subdivision review procedures. Additionally, the 2003 Growth Policy established several goals that can be achieved through these updates. Also, the new regulations have been drafted to address concerns and constraints of the current regulations that City staff and development community have faced in recent years.

The Table of Contents for the new regulations is found in Attachment A. Key changes and updates to the regulations are highlighted by Chapter below. In addition to these changes, the new regulations will include more figures and appendices in an effort to illustrate and clarify the text. A copy of the entire 138-page ordinance can be acquired from the City Clerk's office, or found on the City Planning Website at: <http://www.ci.billings.mt.us/Government/planning/index.php>

**Chapter 1: General Provisions:** This chapter outlines the purpose of the regulations. New to this chapter are provisions on construction timing in relation to plat approval, and regulations on entering into contracts for deed prior to final plat filing.

**Chapter 2: Definitions:** This chapter is updated with new words/concepts defined and illustrated when possible.

**Chapter 3: Subdivision Review Procedures:** This chapter addresses several updates mandated by Senate Bill 116. A few of the key changes are:

- Outlines review procedures for major subdivisions, first minor subdivisions, subsequent minor subdivisions, subdivisions qualifying for expedited review (new to regulations), and amended plats.
- Outlines new mandated requirements for preapplication meetings, preapplication completeness and sufficiency reviews, and the subsequent public hearing option.

**Chapter 4: Development Standards:** This chapter combines Chapter 6 (Design Standards) & Chapter 7 (Required Improvements) of the existing regulations to create an easy to read composite of all the development requirements. The updated chapter also attempts to resolve over-used variances and other recent issues in design standards such as:

- Requiring 2 accesses for major and subsequent minor subdivisions.
- Reducing right-of-way and street width requirements (i.e. residential local access streets require 56 feet of right-of-way and 34-foot street surfaces).
- Requiring installation of boulevard sidewalks.

**Chapter 5: Guarantee of Public Improvements:** This chapter reviews the acceptable financial securities to guarantee required subdivision improvements. Changes to the existing regulations include the omission of SID's as an acceptable security, and the addition of the bond option.

**Chapter 6: Subdivisions for Rent or Lease:** This chapter reviews development standards for subdivisions that create spaces for manufactured homes and recreational vehicles. Updated standards include guidelines for spacing of units and buffering similar to those designed for the Cherry Creek Manufactured Home Park.

**Chapter 7: Cluster Subdivisions and Planned Neighborhood Developments:** This chapter is new to the regulations but authorized and encouraged by State law.

- Provides guidelines and incentives for development of cluster subdivisions and Planned Neighborhood Developments (PND).
- PND is intended to replace the Planned Unit Development provisions found in the Zoning Code to make the review process more streamlined and design-oriented, and to allow conditional approval of these developments (the zone change process only allows approval or denial).

**Chapter 8: Condominiums and Townhomes:** This chapter clarifies the distinction between these forms of housing, and outlines the development standards for each.

**Chapter 9: Environmental Assessment:** This chapter outlines the requirements and exemptions for the Environmental Assessment document. At this time, because we have an adopted Growth Policy, city-wide zoning, and a Capital Improvements Plan, all subdivisions are exempt from the EA requirement in the city.

**Chapter 10: Dedication of Parks, Trails and Open Space:** This chapter establishes the parkland dedication rules for major subdivisions as authorized by State law. Updates from the existing regulations include:

- Provisions for condominium and multi-family development dedication.
- School land dedication in lieu of park land dedication.

- Standards for linear parkland dedication for trail corridors and storm water detention ponds in parks.

**Chapter 11: Administrative Provisions:** This chapter addresses administrative processes involved with subdivision review including variances, corrections and adjustments, appeals, and penalties for violation. Changes to the existing regulations include:

- Requires subdivider to provide justification for variance requests.
- Addresses procedures for corrections to recorded final plats, as well as corrections to plats, conditions and supporting documents after preliminary plat approval.

## **STAKEHOLDERS**

The amended regulations were presented to the Homebuilders' Association by Planning Director, Ramona Mattix. Those in attendance were supportive of the amendments, but also suggested adding a provision that requires the preparation of a geotechnical report during the subdivision stage, rather than when applying for building permits. They felt this would be a much more cost effective solution. After discussing this proposal with the City Building Official and several geotechnical engineers, staff and the Planning Board are recommending this provision be added to Appendix F "Required Supporting Documents for Major Preliminary Plat Applications" and Appendix G "Required Supporting Documents for Minor Preliminary Plat Applications."

There were no public comments at the Planning Board's Public Hearing held on November 22, 2005. However, the Planning Board members offered several minor amendments and points of clarification to the draft document. These suggested amendments are listed in Attachment B, and will be included in a Final Draft for the second reading of the ordinance if the Council chooses to adopt them.

## **RECOMMENDATION**

Planning Board recommends that Council adopt the City Subdivision Regulations, as Amended.

## **ATTACHMENTS**

A: Table of Contents of the Amended City Subdivision Regulations

B: Recommended Amendments to Working Draft 2

NOTE: A complete copy of the proposed ordinance is on file in the City Clerk's Office.

## Attachment A

# CITY OF BILLINGS, MONTANA SUBDIVISION REGULATIONS

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## **Attachment B**

### **Recommended Amendments to Working Draft 2**

The following amendments were recommended by the Planning Board at their November 22, 2005 meeting. Additions to the text are shown underlined, and text removed is shown with strike-through. If the Council chooses to adopt them, these amendments will be included in a final draft of the Amended City Subdivision Regulations for the 2<sup>nd</sup> reading of the ordinance on January 9, 2006.

#### Chapter 2: Definitions

- **ADJOINING PROPERTY OWNERS:** Persons who are owners of record and/or owners under contract for deed of properties...
- **CHECKPRINT:** A paper copy of the final plat submitted by the subdivider for review of errors and omissions and compliance with Administrative Rules of Montana and conditions of approval by staff...
- **COVENANT (DEED RESTRICTION):** A limitation contained in a deed that restricts or regulates the use of the real property, and are not enforced by the governing body.
- **PLAT:** d. Exempt Plat: Certificates of Survey (C/S), Subdivision plats, Amended C/S, or Amended Subdivision plats that are exempt from subdivision review but subject to survey requirements in accordance with 76-3-201 and 76-3-207, MCA.
- **SUBDIVISION, FIRST MINOR:** A subdivision of a parcel which has never been subdivided or created by a subdivision or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973, that contains...

#### Chapter 3: Subdivision Review Procedures

- Section 23-302.H.1.h. and consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan.
- Section 23-303.H.2.f. and consistency with the adopted Growth Policy, ...
- Section 23-305.F.2.f. and consistency with the adopted Growth Policy, ...

#### Appendix F: Required Supporting Documents for Major Preliminary Plat Applications

- Add new #6. (Renumber #6-8)  
6. Geotechnical Report  
The applicant shall provide a geotechnical report that includes:
  1. A summary of hazards present and recommended actions.
  2. A description of proposed construction.
  3. A description of the investigation methods, including field investigations, laboratory analysis and report preparation.
  4. A description of the site conditions, including soil, bedrock, groundwater and other physical features present that may limit development.
  5. Analysis of engineering properties and recommendations in relation to foundations; over-excavation and engineered fill; bearing capacity; lateral loads on basement walls; soil friction factor; earthwork; site grading and runoff control; foundation and retaining wall drainages; slabs on grade; reinforcing, utilities testing and concrete considerations; and ventilation and radon.

6. Summary of engineering limitations.
7. The report shall be accompanied by figures and tables sufficient to convey the results of each test hole and an overall site plan showing the location of each test hole. The spacing of test holes will be dependent of the horizontal and vertical variation of the subsurface material. In all cases, the spacing should result in a representation of all soils present on the subdivision.

Appendix G: Required Supporting Documents for Minor Preliminary Plat Applications

- Add new #6. (Renumber #6-8) See above Geotechnical Report language.

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

**AGENDA ITEM:**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Public Hearing and Ordinance to Amend Council Meeting Procedures  
**DEPARTMENT:** Administration  
**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** At its October 17 work session, the City Council discussed making a number of changes to its operating procedures. Discussion focused on the Council taking a more active role in setting the regular meeting agenda, having the consent agenda follow most of the other regular meeting agenda items and revising work session procedures. Since most of these items are covered by City Code, the Council must adopt an ordinance to change the procedures.

**ALTERNATIVES ANALYZED:**

- Adopt the proposed ordinance
- Amend and adopt the proposed ordinance
- Do nothing

**FINANCIAL IMPACT:** None

**RECOMMENDATION**

Staff recommends that Council approve the proposed ordinance on first reading. Second reading is scheduled for January 9, 2006.

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

**ATTACHMENTS**

A:      October 17 work session summary notes  
B:      Ordinance

## **INTRODUCTION**

At its October 17 work session, the City Council discussed making a number of changes to its operating procedures. Discussion focused on the Council taking a more active role in setting the regular meeting agenda, having the consent agenda follow most of the other agenda items and revising work session procedures. Since most of these items are covered by City Code, the Council must adopt an ordinance to change the procedures.

## **BACKGROUND**

The summary notes from the October 17 work session are attached. Since no formal votes may be taken at work sessions, staff attempted to capture all of the proposed procedural changes that Council discussed and that seemed to have widespread acceptance. The Council procedures are contained in the City Code, so staff drafted an ordinance to make the changes that Council discussed.

The City Council expressed a desire to be more involved with setting the regular meeting agendas. The proposal that seemed the most acceptable was for the Council to meet at 5:15 p.m. on the 2<sup>nd</sup> and 4<sup>th</sup> Mondays of each month (before each regular Council meeting) to review proposed agenda items and to set the agenda for the regular meeting that occurs two weeks later. For example: the Council will have regular meetings on January 9 and January 23, 2006; the Council will meet at 5:15 p.m. on January 9 to review the draft agenda for January 23. The present City Code Section 2-213 says “The city administrator shall prepare a draft regular meeting agenda and shall provide the same to the mayor and city councilmembers in accordance with an agreed process (emphasis added) designed to provide them with sufficient time and opportunity to review the draft agenda and request changes therein prior to its finalization.” Staff believes that the present Code does not need to be changed because it presently allows sufficient flexibility for the Council to conduct the proposed agenda review meetings by announcing its intention to meet at a designated time and place and conduct the intended business. The advantage of this approach is that it allows the Council to try out this new process and if changes are needed, they can be accomplished by announcing and advertising the changes without requiring a Code amendment. If Council wants to hold agenda review meetings, it should propose and adopt a motion to conduct them, naming the time, place and intended business. The City Clerk will publicize those meetings with the regular notifications that she makes for all other scheduled city meetings.

State law requires the City Council to schedule an opportunity for public input on its agenda items and any city matter that is of significant interest to the public. Effective public input depends on prior notice. Therefore, the proposed ordinance amends Section 2-213 to allow the Council to add items to its published agenda only if they are ministerial or not of significant interest to the public.

Section 2-214 would be amended to reorder the agenda so that the consent agenda follows the regular business items, such as those that require public hearings or may be controversial or require a lot of Council discussion. It would also remove Board and Commission reports from the regular agenda and put those reports at the work sessions.

Section 2-222, which covers work session procedures, would be amended to require the City Administrator to prepare an agenda and minutes for each meeting. State Code requires minutes

of all meetings, and again, the only way to ensure effective public input is to prepare and advertise an agenda. The proposed ordinance adds a requirement for a public comment agenda item.

The other procedural change that the Council discussed was whether to allow motions and votes at work sessions. The present Code prohibits these actions. Directing staff to research an issue or prepare material for future Council action is considered a ministerial act and could be allowed at work sessions. Since there was not a clear Council consensus whether to allow motions and votes, it was not added to the proposed ordinance. If Council wants to amend the proposal, it could add a provision that allows it to make motions and take votes on giving directions to staff on items that will be returned to the Council for final action at a future, regular Council meeting.

### **RECOMMENDATION**

Staff recommends that Council approve the proposed ordinance on first reading. Second reading is scheduled for January 9, 2006.

### **ATTACHMENTS**

- A: October 17 work session summary notes
- B: Ordinance

**ATTACHMENT A**  
**October 17, 2005 work session summary notes**

**TOPIC Council Meeting Format**  
**PRESENTER Councilmember Ulledalen**

**NOTES/OUTCOME**

- Councilmember Ulledalen started the discussion by emphasizing the recent huge agendas and asked how productive the Council can be after 10 PM. He asked if the Work Sessions are productive and suggested eliminating one work session and adding a third agenda. He also suggested reversing the order of the agendas, placing the public hearings (regular agenda) at the beginning of the meeting.
- Mayor Tooley suggested a work session before every Council meeting each week and every once in a while add a business session. Councilmember Clark said the work sessions were important during the budget process. Councilmember McDermott said two meetings a month is disappointing because there is a need for shorter meetings. Deputy City Administrator Bruce McCandless said the primary concern for weekly meetings is the constant agenda preparation and lead time would be shorter. The current schedule is staff driven unless there is a Council initiative. Councilmember Boyer concurred that the Council is not productive after 10 PM. Councilmember Ruegamer's comments for shortening the meetings were: Boards and Commission reports are too lengthy, allow testimony instead and find a way to consolidate similar comments. Councilmember Brewster said items of importance should be higher on the agenda.
- Mayor Tooley noted that Councilmember Jones feels that the consent agenda is best in the beginning because staff stays in case an item is separated and staff input is needed. Councilmember McDermott said work sessions could be used to go over agenda and ask procedure questions. She said the Council lost control of the agenda. Councilmember Brewster noted that debating issues is more appropriate on TV (Channel 7). Councilmember Veis suggested Board and Commission reports are at the Work Sessions. Councilmember Ulledalen said that he does not pay attention to the Board and Commission reports.
- Councilmember McDermott said past Council candidates were impressed by the Colorado Springs method where the City Administrator assigns a liaison from the Council to meetings. Councilmember Ulledalen said the focus should be on the public hearings with the consent agenda at the end of the meeting. Councilmember Clark said the Council has lost control of the agenda and he does not like that. Councilmember Brewster agreed the Council needs more control.
- Mayor Tooley noted in past history the Council has held 4-8 meetings per month. Councilmember Ulledalen said if there is no controversy with the Boards and Commissions, then cut back on the presentations. Councilmembers Clark and Brewster both spoke about an agenda meeting at the end of the work session. Councilmember Ruegamer said the work sessions should be no more than 2 hours with 15 minutes or less for presentations. Councilmember Brewster pointed out timing issues. Councilmember Veis suggested starting earlier. Councilmember Gaghen said that impedes the public access. Councilmember Brown said there must be discussion and it is important to keep the consent up front because a number of people leave during the meeting.

- Councilmember Veis said Staff comes to work session wanting direction. Councilmember Boyer said there is a need for more background information.
- There was discussion of how computers can be used more effectively for the agenda process. Mayor Tooley suggested the work session remain at 5:30 PM and the agenda meeting follow at 6:30 PM. It was suggested that work sessions be prior to council meetings. Mr. McCandless explained that each item was reviewed at the agenda meetings and the councilmembers were asked what needed to be revised.
- Councilmember Veis suggested agenda meetings at 5:15 PM before council meetings, moving board and commission reports to work sessions, placing consent agenda at end, setting the consent agenda at the meetings and putting the agenda change resolution on the next council meeting agenda. Work Sessions would remain every alternate Monday at the same time and place and would include board and commission reports.
- Councilmember Clark spoke about the Mayor's Board and Commission appointments. Mayor Tooley noted the applications are always in the packets. Councilmember Ulledalen said the Council should help recruit the board members. Councilmember McDermott said a liaison would help. Planning Manager Candi Beaudry said to combine boards requires major structural changes. It was decided not to have liaisons.
- Councilmember Ulledalen said another location for meetings is the MSU-B Conference Center. He noted that Missoula is using a hospital facility – Mansfield Center.

## ATTACHMENT B

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 2-213, 2-214, AND 2-222; UPDATING PROCEDURE FOR AMENDING AGENDA AT THE COUNCIL MEETING, MOVING BOARD AND COMMISSION REPORTS TO THE WORK SESSION, AND UPDATING PUBLIC PARTICIPATION LANGUAGE.

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

*Section 1.* That Section 2-213 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 2-213. Proposed agenda.

(a) The city administrator shall prepare a draft regular meeting agenda and shall provide the same to the mayor and city councilmembers in accordance with an agreed process designed to provide them with sufficient time and opportunity to review the draft agenda and request changes therein prior to its finalization.

(b) The city administrator shall prepare the final agenda of business to be considered at the regular meeting with recommendations and proposed ordinances and resolutions attached and shall transmit copies of the same to the mayor and councilmembers on or before close of business on the Monday preceding the regular meeting at which the matters are to be considered. Agenda items may only be removed from the agenda by the consent of a three-fourths majority of the councilmembers present.

(c) Only matters that appear on the agenda shall be considered by the council at its regular meeting; ~~Matters that are ministerial or deemed not of significant interest to the public~~ may be added by consent of a three-fourths majority of all councilmembers present.

*Section 2.* That Section 2-214 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 2-214. Order of business for regular meetings.

At all regular meetings of the city council the order of business shall be as follows:

- (1) Call to Order;
- (2) Pledge of Allegiance;
- (3) Invocation;
- (4) Roll call;
- (5) Correcting, if necessary, and approving minutes of the last meeting or meetings;
- (6) Courtesies;
- (7) Proclamations;
- (8) ~~Board, commission, and~~ Council reports;

(9) Administrator reports;

(10) Public comment on "non-public hearing" items on the published agenda. This section of the agenda is used for public comment on any item on the agenda that is not listed for an individual public hearing. Speakers are requested to indicate their desire to speak and which item or items on which they wish to offer comment by filling in their name, address and agenda item number or subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the mayor or presiding officer of the meeting.

(11) Regular agenda. This section of the agenda constitutes an individually numbered listing of business items either:

- a. Requiring a public hearing prior to council action,
- b. Giving a special informational presentation, or
- c. Any item that may be either controversial in nature or requires separate time by the council to fully discuss the matter prior to rendering a final and binding decision.

(12) Consent agenda. This section of the agenda is used for items of a routine or non-controversial nature that do not statutorily require a public hearing, yet still require action by the city council. The collective list of items on the consent agenda is considered by the city council in one motion. Individual consent agenda items may be separated by request of a councilmember for individual consideration by the city council and subsequently voted upon individually.

(13) Public comment on "non-agenda" items. This section of the agenda is used for public comment on any matter or subject that is not included on the published agenda for that meeting. Speakers are requested to indicate their desire to speak and what item or topic on which they wish to offer comment by filling in their name, address and subject on a prepared "sign in" sheet. The length of time a speaker may speak is limited and is set by the mayor or presiding officer of the meeting. The city council does not take any formal action on these items, but may direct the city administrator to assign staff for follow up on an item.

(14) Council initiatives. This section of the agenda is reserved for individual councilmember requests for future legislative or staff action. These shall be limited to giving direction to staff to assist in formulating policies, work plans, etc. for future consideration of the city council. An initiative moves forward by majority vote of the city council.

(15) Adjourn.

The order of business may be altered for any meeting by a majority vote of the councilmembers present. The order of business for any special meeting shall be specified in the notice calling for the special meeting.

*Section 3.* That Section 2-222 of the Billings, Montana City Code be amended so that such section shall read as follows:

Sec. 2-222. Rules of procedure for work sessions.

The proceedings of the city council while meeting in work sessions shall be governed by the following rules:

- (1) The meeting shall be convened and adjourned by the mayor.
- (2) The city administrator or designee shall prepare an agenda for each meeting. Minutes shall be taken and distributed in accordance with Sections 2-215 and 2-216.
- (3) No motions will be entertained nor votes taken.
- (4) The mayor shall be responsible for recognizing those who would like to speak and generally enforcing a productive decorum.
- (5) Reports from boards and commissions will be heard.

(6) Presentations on agenda items will be provided by city staff.

(7) ~~A public comment period shall be provided at each meeting. The presiding officer may set time limits for the comments.~~

(5) ~~No public comment or testimony will be taken.~~

(6) ~~No parties to decisions scheduled to come before the city council for a vote will be recognized or otherwise provided an opportunity to engage the city council in discussion.~~

*Section 4. EFFECTIVE DATE.* This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

*Section 5. REPEALER.* All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

*Section 6. SEVERABILITY.* If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

PASSED, ADOPTED and APPROVED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

#### CITY OF BILLINGS

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk

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**AGENDA ITEM:****CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Monday, December 19, 2005**

**TITLE:** Billings Heights Neighborhood Plan - Public Hearing and Resolution of Intent to Adopt

**DEPARTMENT:** Ramona Mattix, AICP, Planning & Community Services Director

**PRESENTED BY:** Lora Mattox, Neighborhood Planner, Planner II

**PROBLEM/ISSUE STATEMENT:** The Billings Heights Neighborhood Plan is a guide for land use and community development and will serve as a guiding document for making decisions that will affect the future of the Heights. Extensive research, public input and local government review ensures that this Neighborhood Plan sets forth attainable goals based on current public values. The strategies to achieve these goals rely on commonly-accepted planning, engineering and organizational practices, as well as, state-of-the-art approaches to contemporary issues.

**FINANCIAL IMPACT:** A primary objective of community planning is to reduce the cost of services by assessing future public needs and establishing cost-effective methods to address those needs. This Neighborhood Plan sets out a rational course for managing City resources wisely. Examples of cost-effective policies and strategies include:

- Promote infill through development incentives
- Foster partnerships to leverage public funds

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy. A copy of the plan is on file in the City Clerk's Office.

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

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 05-01
- B. Resolution of Intent to Adopt the Billings Heights Neighborhood Plan

**INTRODUCTION** The 2003 Growth Policy states as a land use issue that the existing neighborhood plans lack sufficient detail to address neighborhood character and preferred land use patterns. To address this need, the City Council instructed the Planning and Community Services Department to initiate the neighborhood planning process for the Heights. Prior to this, the Heights has not completed a neighborhood plan. The neighborhood is served by the Heights Neighborhood Task Force to address current issues facing the area.

The neighborhood planning process involved local residents to identify issues impacting the area and goals, objectives and actions to address these issues. Also, as part of the Heights Neighborhood Plan, residents identified preferred land use patterns and created a map to help guide future land use. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. Policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

### **PROCEDURAL HISTORY**

- 3/1/2004 City Council approves Planning Division recommendation to initiate Heights Neighborhood Plan.
- 5/18/2004 Planning Division hosts a neighborhood planning kickoff meeting in the Heights. Resident volunteers to guide the planning process.
- 5/25/2004 The Planning Division began researching, assembling and compiling background data and begins public involvement process.
- 1/18/2005 Neighborhood wide meeting held to discuss topics under each focus area.
- 2/22/2005 Began draft neighborhood plan.
- 5/24/2005 Volunteer steering committee draft plan review begins
- 9/20/2005 Neighborhood wide meeting to review draft plan with residents
- 9/22/2005 Discussion of plan with the Board of County Commissioners
- 10/25/2005 Heights Neighborhood Task Force presentation
- 11/22/2005 The Yellowstone County Planning Board adopts resolution 05-01 recommending adoption of the Billings Heights Neighborhood Plan as part of the 2003 Growth Policy to the City Council and the Board of County Commissioners.

**BACKGROUND** In 2003, the Yellowstone County and City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the growth policy. The Billings Heights Neighborhood Plan contains the following elements:

1. Neighborhood goals, objectives and actions
2. Information describing an inventory of the existing characteristics and features of the neighborhood, including land uses, population, housing needs, economic conditions, local services, public facilities, natural resources, other characteristics and features proposed by the neighborhood residents, planning board and adopted by the governing bodies
3. Projected trends for the life of the growth policy for each of the following elements: land use; population; housing needs; economic conditions; local services; natural resources;

and other elements proposed by the neighborhood residents, planning board and adopted by the governing bodies

4. A description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives above
5. A strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges
6. An implementation strategy that includes:
  - a) a timetable for implementing the neighborhood plan;
  - b) a timetable for reviewing the neighborhood plan at least once every 5 years and revising the policy if necessary

In developing the Heights Neighborhood Plan, the Planning Department relied heavily on public input to establish the issues, goals, objectives and policies set forth in the document. To identify neighborhood issues, the Planning Department held a series of meetings with area residents.

The Department also worked with the Heights Steering Committee and developed a website dedicated to the Heights Neighborhood Planning effort. This website contains information on meetings, maps and announcements. In addition, an online survey was developed to allow residents and businesses in the Heights to answer questions associated with the nine focus areas identified by residents. The nine focus areas of discussion include:

- Transportation
- Public Safety
- Land Use
- Parks & Recreation
- Schools & Education
- Housing
- Economic Development
- Infrastructure
- Community Facilities

A neighborhood wide meeting was held on January 18, 2005 to review issues identified through resident meetings and survey results. The meeting contained a PowerPoint® presentation on the current status of the planning effort and a presentation of issues with breakout meetings for each issue in the Neighborhood Plan. Over 30 people attended this meeting. Presentations on the draft goals and objectives were made to Heights residents on September 20, 2005 and October 25, 2005 and discussion was held with the Board of County Commissioners on September 22, 2005.

A working draft of the Heights Neighborhood Plan was made available to the general public on September 6, 2005 in both hard copy and online. The Planning Board held the formal public hearing on the Neighborhood Plan on November 22, 2005. Taking into consideration the comments received at the public hearing, the Planning Board forwarded its recommendations to the Yellowstone County Commissioners and the Mayor and City Council of Billings (Planning Board Resolution No. 05-01).

**STAKEHOLDERS** All Heights residents, landowners and business owners have a stake in the adoption and implementation of the Billings Heights Neighborhood Plan. The Planning & Community Services Department received written comments from individuals. The comments have been taken into consideration and the document was modified as appropriate.

**RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution of Intent to Adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 05-01
- B. Resolution of Intent to Adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County and City of Billings 2003 Growth Policy.

## ATTACHMENT A

RESOLUTION NO. 05-01

### RESOLUTION TO RECOMMEND ADOPTION OF THE BILLINGS HEIGHTS NEIGHBORHOOD PLAN

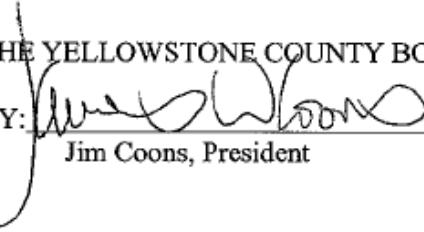
WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Yellowstone County Board of Planning, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction;

WHEREAS, on the 22<sup>nd</sup> day of November, 2005, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Billings Heights Neighborhood:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the Billings Heights Neighborhood Plan.

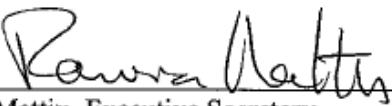
APPROVED AND PASSED by the Yellowstone County Board of Planning this 22nd day of November, 2005.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY: 

Jim Coons, President

ATTEST:

BY: 

Ramona Mattix, Executive Secretary

**ATTACHMENT B**

**RESOLUTION NO. 05-\_\_\_\_\_**

**RESOLUTION OF INTENT TO ADOPT THE BILLINGS HEIGHTS  
NEIGHBORHOOD PLAN AS PART OF THE YELLOWSTONE COUNTY  
- CITY OF BILLINGS 2003 GROWTH POLICY.**

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desires to adopt a Neighborhood Plan consistent with the 2003 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 22nd day of November, 2005, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan and on the 19<sup>th</sup> day of December, 2005, the Billings City Council held a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 05-01, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Billings Heights Neighborhood Plan as part of the Yellowstone County – City of Billings 2003 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 19th day of December, 2005.

THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Charles F. Tooley, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC      CITY CLERK

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## AGENDA ITEM:



## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, December 19, 2005

**TITLE:** Staff Recommendation for Affordable Housing Fund Application

**DEPARTMENT:** Community Development Division

**PRESENTED BY:** Brenda Beckett, Community Development Manager  
Vicki Lapp, CD Program Coordinator

**PROBLEM/ISSUE STATEMENT:** The Community Development Division received a proposal from homeWORD in response a Request for Proposals issued by the Department. The proposal was to assist homeWORD in building a 20 unit, multi-family rental complex located on 8<sup>th</sup> Avenue South & South 28<sup>th</sup> Street. The organization is proposing all 20 units be targeted for families at or below 50% of Area Median Income. Eight of the units will be fully accessible, also included in the project are an on-site laundry, roof top garden, a family courtyard, and a Community Room for community-wide use. The project will remain affordable for 46 years.

**ALTERNATIVES ANALYZED:** Alternatives would be (1) To fully fund the project at \$300,000; thereby assisting in providing 20 units of quality, affordable housing. (2) Fund the project with a smaller amount of funds and (3) Not assist in funding the project. By not funding this project at all, the City would lose out on 20 units of affordable housing, built in an area that sorely needs them, as well as not meeting needs addressed in the recent Housing Needs Analysis.

**FINANCIAL IMPACT:** CDBG and HOME funds are provided by HUD to the City for affordable housing projects. HOME Federal Regulations require 15% of the total grant amount be set aside for use by Community Housing Development Organizations (CHDO). Total estimated project cost is \$5,242,400. CDBG/HOME Financial is picture is as follows:

Balance of HOME funds	\$ 171,639
CHDO funds available	<u>\$ 160,582</u>
<b>TOTAL</b>	\$ 332,221
<b>This request</b>	<b><u>-300,000</u></b>
Balance	\$ 32,221

Total Affordable Housing Fund balance that would be available to other projects, if this one is funded is \$259,162.

**RECOMMENDATION**

CD Board and Staff recommend City Council approve the \$300,000 request from homeWORD as a grant and transfer additional needed funds from the Affordable Housing Fund to the CHDO Reserve in order to fully fund the request out of HOME CHDO Reserve funds.

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

Attachment: Development Agreement

## **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. This report lists the critical concerns identified related to rental housing. They were affordability, condition and rental deposits and application fees. Mail survey respondents indicated that low income residents, elderly residents and single mothers/parents with children were three of the four top groups of people in the community that have the greatest unmet housing need. With the variety of bedroom sizes, including the larger ones this project is proposing, it would help to meet those needs.

The 2005 Housing Needs Assessment indicates that twice as many renters as homeowners are cost burdened or paying more than 30% of their income for their housing costs. It also showed 2/3 of the renter households are considered low income and 32% of the total renter households are cost burdened, and living in overcrowded and/or substandard housing.

There are 5,637 renter households under 50% MFI. This report indicates 67.5%, of the renter households with incomes at or below 50% AMI (which is the income group this project is targeting) are cost burdened. This translates into approximately 3,805 households that could benefit from this project.

33.7% of the survey respondents indicated that affordable rental housing was a need poorly or not met, and 31.8% said affordable rental units were the most needed housing type in our community; the 2nd most needed housing type, only behind affordable single family homes for purchase. The Census Tract the project is located in is 70 - 100% LMI.

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

- Promote New Affordable Housing Opportunities
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Additionally, this project would create in-fill development in an existing lower-income neighborhood as well as provide new development in the South 27<sup>th</sup> Street Corridor.

## **PROCEDURAL HISTORY**

- January 20, 2005 -- homeWORD attended the Southside Task Force meeting to announce their interest in developing an affordable housing project in their area.
- May 2005 -- homeWORD attended a second Southside Task Force meeting to discuss more formally a project concept and their community design process. At this meeting the Task Force voted to write a letter of support for the project.
- July 11, 2005 -- homeWORD submitted bid to Community Development in response to RFP issued for the sale of City-owned land on South 28th and 8th Avenue South.
- July 25 – 29, 2005 -- homeWORD conducted a door-knock campaign throughout the neighborhood surrounding the proposed project location. This campaign was to gather residents thoughts on what they liked and disliked in their neighborhood, as well as let residents know about the proposed project. Invitations to the Design Charette were issued as well.

- July 25, 2005 -- City Council approved the donation of the City-owned lots located on 8<sup>th</sup> Avenue South & South 28<sup>th</sup> Street to homeWORD.
- August 12 – 13, 2005 -- homeWORD sponsored a two day Design Charette to obtain community input into the design of the project.
- October 18, 2005 -- homeWORD submitted their project proposal to Community Development.
- Nov. 1, 2005 -- homeWORD and staff met with City Administrator to negotiate Payment in Lieu of Taxes. The project concept was presented to the CD Board the same day. That evening homeWORD also held a public hearing to present the ideas gathered at the Design Charette to the neighborhood.
- December 6, 2005 -- Staff recommendation is made to CD Board.
- December 19, 2005 -- CD Board recommendation is made to City Council.

## **BACKGROUND**

Task Force and Community Input – homeWORD has made 3 presentations to the South Side Task Force, including the last public hearing. Letters of support for the project submitted with the application include the Task Force Chair, City Council members, as well as a Realtor and various other community members.

HOME Section 504 Requirements call for one unit be specifically designed for sensory impaired with an additional unit handicap accessible. These requirements will be met through all of the units being fully handicap accessible; with one of those being accessible for individuals with sensory impairments.

### Organizational Strengths

homeWORD has successfully managed six state HOME grants over the past nine years and 2 City of Billings HOME grants. All of their projects have come in on time and on budget. They own and operate 6 affordable housing rental projects. homeWORD submitted an extensive management plan with their application and they have very well-thought out and well-developed management policies and procedures; all of which comply with the Montana Residential Landlord Tenant Act.

### Other considerations during the project review

The property is located within the City limits and is located in the South 27<sup>th</sup> Street Zoning District which will require a Special Review to allow for a multi-family development. Parking & landscaping are required and are being included in the site plan. Utilities are available at the site.

During completion of the Environmental Review (ERR) process, a Noise Assessment will be required due to the proximity of 27<sup>th</sup> Street; which is considered a major roadway. Some mitigation may be required through the installation of additional insulation on the side facing 27<sup>th</sup> Street, as well as requiring air conditioners be installed in the units. Other possible mitigation may be required due to the location of the Conoco-Phillips Refinery, which will be determined during the ERR process as well.

## **Financial Plan**

Sources of funds to complete the project financing are as follows:

City of Billings HOME CHDO funds	\$ 300,000
Low Income Housing Tax Credits	\$ 3,562,004
Permanent Loan	\$ 332,516
Deferred Developer's Fee	\$ 140,000
Various other grant sources	\$ 314,980 (these sources include St. Vincent Foundation, Conoco-Phillips, MDU, as well as NorthWestern Energy)

homeWORD is proposing to acquire a permanent loan in the amount of \$332,516. This loan is amortized over a 30 year period at 8% interest. This would mean an annual payment of \$27,900 dollars, which is reflected in the proforma and is also the maximum mortgage the property can support. It is also typical of these types of project to defer part of the Developer's Fee; which homeWORD is proposing.

## **HOME Requirements Review**

Total square feet of the project is 29,844. Cost per square foot is \$110. This is consistent with other recent projects that have been funded. homeWORD is proposing all 20 units be HOME assisted. HOME per unit subsidy is \$15,000; well below the maximum subsidy allowed by Federal Regulation. homeWORD is requesting 6% of total project costs from City. The subsidy is appropriate.

Other, similar projects that have been funded include the Acme for \$143,400. 19 units are HOME assisted and cost per unit was \$7,547. The Housing Authority of Billings, Town Square apartments was funded at \$187,000 for 16 units. This translates into \$11,688 per unit cost. The Schwend apartments final cost per unit was \$27,533.

The HOME 25% match requirement is being met through volunteer labor, a percentage of the Architect's fees are being donated and the land donation. Also a portion of the property tax exemption will be used when that is approved. homeWORD has negotiated with the City and is proposing an annual Payment in Lieu of Taxes and payment of assessments in the amount of \$1,115.00, plus a \$25.00 increase annually.

## **Low Income Housing Tax Credits(LIHTC) Restrictions & Requirements**

This application will be submitted in January for Low Income Housing Tax Credits. LIHTC require that owners target no less than 40% of the units to be rented to 60% AMI or less. homeWORD has elected to provide 100% of the units at 50% or below AMI. They also require projects must remain rent and income restricted for a minimum period of 15 years. homeWORD is proposing this project be restricted for 49 years. The LIHTC rent and income restrictions are enforced through Restrictive Covenants that are recorded against the title of the property at closing.

In reviewing the application for the following cost limitations, homeWORD has following the LIHTC as well as industry standard allowed percentages with regard to construction contingency, Developer's Fees, builder's overhead and General Requirements. All are a percentage of the construction costs minus the land costs. The breakdown is as follows:

	LIHTC allowed	homeWORD
Construction Contingency	N/A	5%
Developers fee	15%	15%
Builder's Overhead	2%	2%
General Requirements	6%	6%

### **ALTERNATIVES ANALYSIS**

Alternatives would be (1)To fully fund the project at \$300,000; thereby assisting in providing 20 units of quality, affordable housing. (2) Fund the project with a smaller amount of funds and (3)Not assist in funding the project. By not funding this project at all, the City would lose out on 20 units of affordable housing built in an area that sorely needs them, as well as not meeting needs addressed in the recent Housing Needs Analysis.

### **STAKEHOLDERS**

- Stakeholders include the South Side Task Force, who have indicated unanimous support for this project.
- Low Income families and individuals in the community. This project is targeted to families and individuals under 50% AMI
- Disabled individuals and families in the community. All of the units in the proposed project will be handicap accessible.
- Surrounding property owners. By funding this project, a new, high-quality family housing complex with numerous amenities to complement the neighborhood will be constructed. This will have a positive impact on the surrounding property owners through increasing the value of their homes and the neighborhood as a whole.

### **CONSISTENCY WITH ADOPTED POLICIES OR PLANS**

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

- Promote New Affordable Housing Opportunities
- Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.

Additionally, this project would create in-fill development in an existing lower-income neighborhood as well as provide development in the South 27<sup>th</sup> Street Corridor.

### **SUMMARY**

An overall review of the funding for the project reveals it to be consistent with other similar projects that the City has funded. The HOME subsidy amount being requested is consistent with the number of HOME assisted units, and is not over the subsidy limitation. Match requirements are being appropriately met, as well as Section 504 requirements and ADA accessibility. homeWORD will contract with a local management company for the day-to-day management services. This project is also consistent with our Consolidated Plan.

There is a demonstrated need for these types of units, as evidenced through data from the recent Housing Needs Assessment. The owner/developer has extensive experience, both in developing and managing Low Income Housing Tax Credit projects and is knowledgeable of the HOME program requirements as well. The City has had partnered successfully with homeWORD with a number of projects and a positive relationship has been developed.

**RECOMMENDATION**

CD Board and Staff recommend City Council approve the \$300,000 request from homeWORD as a grant and transfer additional needed funds from the Affordable Housing Fund to the CHDO Reserve in order to fully fund the request out of HOME CHDO Reserve funds.

**City of Billings**  
**HOME Investment Partnerships Program**  
**HOME CHDO**  
**CONSTRUCTION DEVELOPMENT AGREEMENT**

This AGREEMENT, dated the \_\_\_\_\_ day of \_\_\_\_\_, between the **CITY OF BILLINGS**, a Montana municipal corporation, whose address is P. O. Box 1178, Billings, MT 59103, and **homeWORD, Inc.** a 501(c)3 non-profit organization(Developer) whose address is 127 North Higgins, #307; Missoula, MT 59802

WHEREAS, the Developer desires to work with the City and build affordable housing on developer-owned property in the City of Billings, Yellowstone County, Montana commonly known as the Southeast corner of 8th Avenue South & South 28th Street or:

*Lots 13 – 19, Block 231, Billings Original Town in the City of Billings, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.*

WHEREAS, the City has concurrently entered into a HOME Contract with HUD whereby the City will receive and administer HOME moneys to provide financing, in part, for the new construction project to be undertaken by the Developer.

WHEREAS, Developer is desirous of obtaining such financing on the Project and is willing to assume obligations to the City under the HOME Contract on the terms and conditions, as provided herein.

WHEREAS, the Developer desires to build the structure for affordable rental housing, and the Developer desires to use HOME funds for new construction;

WHEREAS, the Developer will make an annual Payment in Lieu of Taxes to the City in the amount of \$1,500 annually, beginning upon issuance of certificate of occupancy for units to be developed, with an increase of \$25.00 annually beginning in year two(2) of occupancy of the units.

WITNESSETH THAT the City of Billings and the Developer, mutually agree as follows:

**PURPOSE**

The purpose of this Agreement is to provide HOME CHDO Reserve funding for project activities approved by the City under its Home Investment Partnerships Program (HOME); and to achieve the purposes of Title II of the *Cranston-Gonzalez National Affordable Housing Act* (Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839), as amended.

**B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED HERETO:**

The Developer agrees to comply with all appropriate federal, state, and local laws applicable to activities undertaken through this agreement, including: Program requirements under the HOME Investment Partnerships Program 24 CFR Part 92, and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of federal funds for this program, Developer's project application statements, as well as the Uniform Relocation Act and Section 104 (d). Incorporated by reference is Title VI of the Civil Rights Act of 1964.

Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the Americans with Disabilities Act.

### **C. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS**

1. The Developer will comply with all applicable parts and requirements of the *National Affordable Housing Act of 1990* (as amended), as now in effect or as they may be amended during the term of this Agreement; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The Developer agrees to comply with Scope of Services section of this document together with the attachments thereto marked Exhibits 1 through 3, all of which are attached and incorporated herein by reference, as if fully set forth.
3. The Developer agrees that all contracts entered into by the Developer for the completion of the activities described in Section K of this Agreement will contain provisions requiring Developers to comply with all applicable HOME requirements. These contract provisions are to be included in all subcontracts and will be attached to the final Development Agreement as an Exhibit.
4. The Developer expressly agrees to repay to the City of Billings any funds paid on behalf on the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward in a timely manner.
5. Period of Affordability. The Developer agrees that all units constructed under the final Development Agreement will initially be rented to a low to moderate income tenant under the terms of the Deed Restriction Agreement which will be filed with the Yellowstone County Clerk & Recorder at the time it is negotiated. For purposes of that Agreement, the period of affordability, during which time Developer agrees to monitor and report on the project as required by the City of Billings and the HOME Program, is as follows:
  - a. Period Of Affordability: 20 years, as required by the HOME regulations for new construction of rental housing

### **D. SURVIVAL OF CERTAIN CONTRACT TERMS**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

## **E. COMPENSATION**

The City of Billings shall compensate the Developer for all eligible project costs as identified in the Scope of Services section of this Contract in the total amount of \$ 300,000. Notwithstanding anything to the contrary here, the City's obligation to make periodic or final payment to the Developer shall be conditioned upon the receipt by City of grant funds sufficient to make such payment.

## **F. PAYMENT METHOD**

Payment for reimbursement of actual and proper expenditures of funds shall be made in accordance with the Development Agreement between City and Developer. City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. City may withhold payment of the final five percent (5%) of the total Contract amount until the Developer has submitted and City has accepted all required financial and performance report information required pursuant to either the Grant or City requirements.

## **G. DEVELOPER AN INDEPENDENT DEVELOPER**

The Developer shall be an independent Developer, and may not be the agent or employee of City, and shall have no authorization, express, implied, or apparent, to bind City to any agreements, settlements, liability, or understanding except as expressly set forth herein.

## **H. PERSONNEL**

The Developer represents that it has, or shall secure, at its own expense, all personnel required in performing the services under this Development Agreement. All of the services required hereunder shall be performed by the Developer, or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the Developer and any subcontractors shall be properly licensed therefore.

## **I. TIME OF PERFORMANCE**

This Contract shall become effective upon its execution. The Project shall commence as soon as practicable after the execution of this Contract and shall be undertaken and performed in accordance with the schedule set forth in the Development Agreement between the City and Irma House, Inc. Irma House, Inc. agrees that time is of the essence in the performance of its obligations under this Agreement, and that completion of the Project shall occur no later than the termination date plus authorized extensions as set forth in the Development Agreement between the City and Developer.

## **J. TERMINATION DATE**

This contract shall terminate no later than twenty-four months after execution, plus authorized extensions as set forth in the Development Agreement between the City and the Developer.

## **K. SCOPE OF ACTIVITIES**

The Developer will carry out the activities as set forth below. The major components pertaining to this Development Agreement include:

1. New construction of 20 units of affordable rental housing of various bedroom sizes. Also included in the project will be an on-site laundry, roof top garden, a family courtyard, and a Community Room for community-wide use.

## **L. PROJECT BUDGET**

The project budget is included in Exhibit A (2). The Developer may modify this budget only after having requested and received the City's written approval of the adjustment. Requests for the City's funds will not be processed until documentation has been received that the balance of funds needed to complete the project have been obtained.

## **M. LIAISON AND NOTICE**

Vicki Lapp, CD Program Coordinator, is the City's liaison with the Developer.

Heather McMilin is the Developer's liaison with the City.

Notice will be sufficient if given in writing and mailed to the parties' liaison at the addresses described above.

## **N. OWNERSHIP AND PUBLICATION OF MATERIALS**

All reports, information, data, and other materials prepared by any subcontractor pursuant to this Agreement are to be the property of the Developer, and the City, which each have the nonexclusive and unrestricted authority to release, publish or otherwise use in whole or in part, information relating to it. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written permission of the City of Billings and the Developer.

## **O. ACCESS TO RECORDS**

The Developer will supply to the City copies of all pertinent records, including, but not limited to, contracts, approved invoices and lien releases. The City will retain records of the Developer's performance under this Agreement and will allow access to these records at any time during normal business hours by the Developer, the U.S. Department of Housing and Urban Development, and the Comptroller General. These records will be kept at the Community Development Office, 510 N. Broadway, Billings, Montana.

### **Project Records Required:**

1. Documentation that the project meets applicable property standards for HOME rehabilitation activities;

2. Documentation that the rents charged in each HOME assisted unit conforms to HOME Program requirements;
3. For each household renting a HOME assisted unit, a copy of the rental application, income verification, and rental agreement and subsequent annual income verifications.
4. Copies of invoices submitted for payment
5. Verification of matching contribution from owner

The records described above must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

## **P. PROGRESS REPORTING**

The Developer will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City of Billings.

## **Q. AVOIDANCE OF CONFLICT OF INTEREST**

The Developer will comply with the provisions of 24 CFR § 92.356; and with § 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, regarding the avoidance of conflict of interest.

No officer, employee, or agent of the Developer or immediate relative (spouse, parent, sibling, child) shall be an investor, officer, employee or agent of the City or Developer or receive any compensation from the Developer during the term of this agreement.

## **R. MODIFICATION AND ASSIGNABILITY OF AGREEMENT**

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement. This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein. The City & Developer accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof.

## **S. CONSTRUCTION AND VENUE**

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

## **T. INDEMNIFICATION**

The Developer waives any and all claims and recourse against the City, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Developer's or any contractor, subcontractor or sub-recipient's performance of this Agreement.

Further, Developer will indemnify, hold harmless, and defend the City against any and all claims, demands, damages, costs, expenses, or liability arising out of the Developer or any contractor, subcontractor or sub-recipient's performance of this Agreement. In the event that the City of Billings is named as a co-defendant in any action relating to activities to be performed by the Developer or sub-recipient under this Agreement, the Developer will notify the City in writing of such fact.

## **U. TERMINATION OF AGREEMENT**

This Agreement may be terminated as follows:

Termination Due to Loss of Funding. The parties hereto expressly recognize that Developer is to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to City under the HUD HOME Contract for the purpose of contracting for the services provided for herein or with program income; and therefore, Developer expressly understands and agrees that all its rights, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by City. In the event that such funds or any part thereof are not received by City, City may immediately terminate or amend this agreement.

Termination for Cause. If, through any cause, Developer shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Developer of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. It is understood that the Developer and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if City shall so request in writing. If the Agreement is terminated by the City as provided herein, the Developer will be reimbursed in an amount equal to the actual expenses incurred as of the date of termination.

Notwithstanding the above, the Developer shall not be relieved of liability to City for any damages sustained by City by virtue of any breach of contract by the Developer, and the City may withhold any payment to the Developer for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer is determined.

Return of Material. In event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the

Developer under this Agreement, shall, at the option of the City, become its property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Compensation. In the event of termination, Developer shall be paid an amount which bears the same ratio to the total compensation as the services actually performed up to the effective date of termination bear to the total services of Developer covered by this Contract, less payments of compensation previously made: provided, however, that if less than sixty (60) percent (60%) of the services covered by this Agreement have been performed upon the effective date of such termination, Developer shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Agreement) incurred by Developer during the Agreement period which are directly attributable to the incomplete portion of the services covered by this Agreement.

Remedies. Where either party violates or breaches contract terms, the other party, in its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

## **V. CONTRACT SUSPENSION**

If the Developer fails to comply with any contractual provision, City may, after notice to the Developer, suspend the Agreement and withhold further payments or prohibit the Developer from incurring additional obligations of contractual funds, pending corrective action by City or a decision to terminate in accordance with provisions herein. City may determine to allow such necessary and proper costs which the Developer could not reasonably avoid during the period of suspension provided such costs were necessary and reasonable for the conduct of the project.

## **W. UNIFORM RELOCATION ACT**

The Developer will be subject to compliance with the federal Uniform Relocation Act, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement.

## **X. COMPLIANCE WITH LAWS**

- 1. Median Income Level:** The City & Developer agree that 100% of the units to be built under the final Development Agreement will be occupied by households at 50% or less of Area Median Income. In the event that less than 100% of the units rented to households at or below 50% of the area median income at any given time, this imbalance shall be corrected by assuring future units rented in the project will be rented to a household at or below 50% of area median income until the imbalance is corrected and the 100% benefit level is achieved.
- 2. Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office.

3. **Insurance Coverage:** The Developer shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Developer or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

- a. Public Liability Insurance in an amount not less than \$1,000,000 for injuries, including accidental death to any one person;
- b. Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$100,000, whichever is greater.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above, before the work under the final development agreement is begun. The Public Liability Insurance certificate shall be maintained during the life of the agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit. All insurance certificates shall name the City as an insured party and contain the following language, "The company agrees that it will give the City of Billings, Montana 10 days prior written notice of its intent to cancel or materially change the described policy. " This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable. The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Developer will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with State Law.

4. **Construction Contracts:** The Developer agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The Developer will provide the City with the names of contractors and subcontractors prior to entering into contracts. The City, within five (5) working days, will provide the Developer a written notice if the contractors are ineligible.
5. **Lead-Based Paint:** The Developer agrees that any construction of residential structures with assistance provided under the final agreement shall be subject to HUD Lead-Based Paint Regulations at 24CFR 570.608, and 24CFR Part 35 which results in the prohibition of the use of lead-based paint for this project. Lead Based Paint requirements do not apply, as this is new construction
6. **Environmental Review:** The Developer will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the Developer does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction;
7. **Religious Organization:** The Developer will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
8. **Drug-Free Work Place:** The Developer certifies that it will provide a drug- free work place.
9. **Montana Residential Landlord-Tenant Act:** homeWORD agrees to comply with the Montana Residential Landlord-Tenant Act law at MCA 70-24-104.

**10. Federal Labor Standards:** This project is required to comply with the Federal Labor Standards Act. Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant of the Davis-Bacon Act (40 U.S.C 276a-276a-5) shall be paid to all laborers and mechanics employed in the development of this project. The City of Billings will require certification as to compliance with the provisions of this section prior to making any payment under such contract.

## Y. GRANT CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Contract shall be subject to the applicable provisions of the HUD Contract. Accordingly, the Developer hereby assumes all obligations under the Contract as a condition to Developer's obligation to perform under this Agreement.

N WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

Judy Smith Date  
homeWORD, Inc

STATE OF MONTANA )  
COUNTY OF YELLOWSTONE ):ss  
 )

On the \_\_\_ day of \_\_\_\_\_, 2005 before me, \_\_\_\_\_, a Notary Public for the State of Montana, personally appeared **Judy Smith, Executive Director, homeWORD, Inc.** and that he executed the within instruments and acknowledged to me that that he executed the same as their free act and deed.

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 \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

Attest:

## CITY OF BILLINGS

Marita Herold  
City Clerk

CHARLES F. TOOLEY  
Mayor

STATE OF MONTANA )  
County of Yellowstone ) :ss )

On this \_\_\_\_\_ day of \_\_\_\_\_ 2005, before me, a Notary Public for the State of Montana, personally appeared **Charles F. Tooley, Mayor, City of Billings** known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

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 \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

## Attachments:

1. Scope of Services & Project Restrictions
2. Budget
3. Contract Provisions

## EXHIBIT 1

### homeWORD, Inc. Southside Project

#### SCOPE OF SERVICES & PROJECT RESTRICTIONS

##### **1. Project Description & Objectives**

The City of Billings (City) will provide the Developer with a total of \$300,000 in HOME Investment Partnership Program CHDO Reserve Affordable Housing Funds with which to construct an affordable rental housing project of 20 units of varying bedroom sizes. See grant application narrative for a more specific description of project activities.

The project to be built will comply with affordability restrictions and design standards as specified below. At least 100% of the units must be initially rented to low-income households (50% or less AMI) as defined by HOME Program regulations and verified through documentation provided by individuals renting the property.

##### **2. Benefit to Low Income**

At least 100% of the rooms built will be rented to a household who qualifies as a low-income family as defined by HOME Program regulations. Low -income households are defined as those households whose income is equal to or less than 50% of the area median income for their particular family size. In the event that less than 100% of the units constructed in each phase are rented to households at or below 50% of the area median income at any given time, this imbalance shall be corrected by assuring future units in the project will be rented to a household at or below 50% of the area median income level until the imbalance is corrected and the 100% benefit level is achieved. The current HOME Program income guidelines are listed below. The City will provide the Developer with written notice of future modification to the income guidelines.

MEDIAN FAMILY INCOMES 2005	
HOUSEHOLD SIZE	50% Area Median Income
1	\$18,850
2	\$21,550
3	\$24,250
4	\$26,950
5	\$29,100
6	\$31,250
7	\$33,400
8+	\$35,550

### **3. Property Standards**

Upon completion of construction, the building will, at a minimum, meet the Uniform Building Code, all applicable local and state building codes and standards, as well as the Model Energy Code, as much as is practicable, and Section 8 Housing Quality Standards.

### **4. Rent Policy**

1. The rent policy is that 100% of the rooms will be targeted to families with incomes at or below 50% AMI for the City of Billings.
2. The rents will not exceed the HOME limits as set annually by HUD.
3. The rents will be fixed.
4. All utilities will be included in the lease so no utility allowance will be needed.
5. 30 days written notice shall be given for all rental increases.
6. The facility will allow rental subsidy.
7. If a family income increases beyond 80% AMI, rent on the unit will increase to the lesser of 30% of their adjusted monthly income or the market rate. If the income of a very low-income family increases to more than 50% of median but less than 80%, the unit is reclassified as a High HOME rent unit and charged accordingly. Units will be rented to tenants with low or very-low income as unqualified tenants vacate units.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Accept Donations for the Animal Shelter

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** The Louise Hoback Trust, based in Wyoming, has donated \$43,072.90 to the Billings Animal Shelter. Also, Wal Mart has donated \$4,000.00 to the Billings Animal Shelter. The City Council must accept all donations. Once the Council accepts the donations, the City Administrator has been authorized by the Council to amend the budget for donations so that the funds may be spent for the intended purpose.

**FINANCIAL IMPACT:** The donations will increase the resources available for the Animal Shelter. The funds must be used for the benefit of the Animal Shelter.

**RECOMMENDATION**

Staff recommends that Council accept a \$43,072.90 and \$4,000.00 donation to the Animal Shelter from the Louise Hoback Trust and Wal Mart.

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**SUBJECT:** Municipal Judge Salary

**DEPARTMENT:** Municipal Court

**PRESENTED BY:** Tina Volek, Interim City Administrator

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**PROBLEM/ISSUE STATEMENT:** The base salary for the municipal judge has not been adjusted since July 1, 1999.

**RECOMMENDATION**

Staff recommends that Council approve adjustment of the base salary for the position of municipal judge to \$91,250.00, and to provide longevity pay for years of service.

This item was continued from the November 28, 2005 Council meeting.

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

**ATTACHMENTS**

A – Memo to City Administrator

B – Resolution No. 02-17861

C – Department head salary matrix

D – Salary survey of state judges in courts of limited jurisdiction

E – Proposed resolution for adjustment of base salary

ATTACHMENT E

RESOLUTION NO. 05-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL, AUTHORIZING A CHANGE  
IN THE ANNUAL SALARY OF THE POSITION OF MUNICIPAL JUDGE

WHEREAS, Municipal Judge Mary Jane Knisely has been duly elected by the citizens of the City of Billings as the Municipal Judge in 1997, 2001 and 2005; and

WHEREAS, Municipal Judge Mary Jane Knisely has performed commendably for the City of Billings; and

WHEREAS, the position of Municipal Judge is crucial to the success of City law enforcement efforts, and

WHEREAS, it is in the best interest of the citizens of Billings that the position of Municipal Judge continue to attract quality candidates willing to serve in this fundamental position, and

WHEREAS, the City Council has the authority pursuant to MCA Section 3-6-203(2001) and Billings Montana City Code Section 10-205 to establish the salary of the Municipal Judge,

NOW, THEREFORE, WE THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, do hereby resolve as follows:

1. That the base salary for the Municipal Judge, Mary Jane Knisely, shall be set at \$\_\_\_\_\_.
2. That the base salary for Municipal Judge, Mary Jane Knisely, shall continue to be reviewed annually for adjustment.
3. That the base salary for Municipal Judge, Mary Jane Knisely, shall continue to be adjusted annually with the same COLA authorized by the City Council for non-union management employees of the City through the budget adoption process.
4. That the Municipal Judge, Mary Jane Knisely, shall receive the longevity benefits authorized for City employees.

PASSED AND APPROVED this \_\_\_\_\_ day of December, 2005.

THE CITY OF BILLINGS

By: \_\_\_\_\_  
Charles F. Tooley, Mayor

ATTEST:

BY: \_\_\_\_\_  
Marita Herold, CMC/AAE  
City Clerk

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## AGENDA ITEM:




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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** W.O. 00-15 Resolution Authorizing Condemnation of Property on Grand Avenue  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The City Engineer's Office has been negotiating with property owners on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West to purchase the necessary right-of-way to construct the Grand Avenue widening project for the last two years. Appraisals of the necessary right-of-way were completed by The Appraisal Group with offers being made to each affected property owner. Each property owner refused the offer due to the depreciated value of the signs within the right-of-way. Our office went to City Council at a work session and requested the ability to offer full value of the signs. Once this was done, all but five property owners agreed to the new offer. We have come to an impasse with these five property owners representing six different properties.

**ALTERNATIVES ANALYZED:**

- Approve resolution authorizing condemnation of the six properties on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West.
- Do not approve resolution authorizing condemnation of the six properties on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West.

**FINANCIAL IMPACT:** Final value will be set through the condemnation process.

**RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of six properties on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West.

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

**ATTACHMENT**

A.      Resolution Authorizing Condemnation of Property on Grand Avenue

## **INTRODUCTION**

Work Order 00-15 was designed to widen Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. The City Engineer's Office has negotiated for the necessary right-of-way for two years. The right-of-way was identified on the design plans and must be acquired prior to construction.

## **PROCEDURAL HISTORY**

If the resolution authorizing condemnation on Grand Avenue is approved, city staff will proceed with condemnation. The City Engineer's Office will proceed with resurfacing of Grand Avenue in the Spring of 2006 to allow time for the condemnation.

## **BACKGROUND**

Appraisals for all the necessary right-of-way were obtained and negotiations were started with the property owners. In a Council Work Session it was approved to offer land value plus full value for any signs within the requested right-of-way. Unfortunately, right-of-way negotiations have reached an impasse with the following five property owners.

1. Randy Reger owns the Dairy Queen property at 12<sup>th</sup> Street West and Grand. Randy Reger and Jeff Keil own the vacant lot at 12<sup>th</sup> Street West and Grand.
2. Merle Johns owns the property at 1144 Grand.
3. Ben Brown owns the property at 1142 Grand.
4. Philip Keith owns the property at 1112 Grand.

Each property owner was made an offer based on the appraisals. The Dairy Queen property was made an offer for the whole property due to the fact that the necessary right-of-way would eliminate 100% of the parking for the building.

## **ALTERNATIVES ANALYSIS**

Approve resolution authorizing condemnation of property on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. Under this option, City Staff would proceed with the condemnation process.

Do not approve resolution authorizing condemnation of property on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West. Under this option, the city would proceed with a project with the right-of-way that has been acquired.

## **RECOMMENDATION**

Staff recommends that Council approve the resolution authorizing condemnation of six properties on Grand Avenue from 8<sup>th</sup> Street West to 12<sup>th</sup> Street West.

## **ATTACHMENT**

- A. Resolution Authorizing Condemnation of Property on Grand Avenue

**ATTACHMENT A**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,  
MONTANA, PURSUANT TO BILLINGS CITY CODE CHAPTER 12,  
EMINENT DOMAIN, DECLARING PUBLIC PURPOSE AND USE,  
DESCRIBING THE PROPERTIES TO BE TAKEN AND AUTHORIZING  
CITY OFFICIALS TO PROCEED.**

**WHEREAS**, the City of Billings finds it necessary to acquire certain real property to allow it to utilize such property for purposes of traffic lane widening improvements on Grand Avenue between 8<sup>th</sup> Street West and 12<sup>th</sup> Street West in the City of Billings; and

**WHEREAS**, the real property to be acquired, and the construction easements necessary, to complete these improvements is described in Exhibit "A" attached hereto and by this reference incorporated herein; and

**WHEREAS**, the City officials have attempted to purchase said real property at a mutually agreeable purchase price but have been unable to obtain the consent of all of the owners to sell said real property; and

**WHEREAS**, pursuant to Chapter 12, Section 12-102 of the Billings City Code, it is necessary to pass a Resolution initiating eminent domain procedures; and

**WHEREAS**, said use is a public use and will benefit the general public and will be used for public purposes; and

**WHEREAS**, it is necessary to condemn said real property by exercise of the right of eminent domain to make land available for said completion of traffic lane widening improvements on Grand Avenue between 8<sup>th</sup> Street West and 12<sup>th</sup> Street West in Billings; and

**WHEREAS**, it is necessary to condemn the right of way in said private real property in fee simple as described in Exhibit "A" for the purpose of traffic lane widening improvements on Grand Avenue between 8<sup>th</sup> Street West and 12<sup>th</sup> Street West in the City of Billings; and

**WHEREAS**, the City officials should be authorized to proceed with the condemnation proceedings as provided by law.

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

1. **PUBLIC USE:** The City hereby declares that the above-described interests in real property shall be condemned at its fair market value under the City's eminent domain powers to enable the City to acquire said property, and necessary construction easements, for the purposes of traffic lane widening improvements on Grand Avenue between 8<sup>th</sup> Street West and 12<sup>th</sup> Street West in the City of Billings;

2. **PUBLIC PURPOSE AND NECESSITY:** It is hereby declared that said real property is being acquired for a public purpose, for public use and is necessary to the project.

3. **DESCRIPTION OF PROPERTY, EXTENT OF INTEREST:** The right of way in fee simple, a perpetual easement and temporary easement described in Exhibit "A" shall be taken for public purpose.

4. **AUTHORIZATION TO PROCEED:** That the appropriate City officials are hereby directed and authorized to proceed with condemnation of said real property as provided by law.

**PASSED AND ADOPTED** by the City Council of the City of Billings, Montana, at a regular session thereof held on the 19<sup>th</sup> day of December, 2005.

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CHARLES F. TOOLEY, Mayor

ATTEST:

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MARITA HEROLD, CMC/AAE City Clerk

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF GRAND AVENUE PROPERTY ACQUISITION**

1. A tract of land located in the Northerly 100 feet of Lot 11, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.  
Beginning at the northwest corner of Lot 11; thence N89°46'05"E along the north line of said lot, 58.44 feet; thence S0°22'55"E along the east line of said lot, 19.09 feet; thence S89°02'27"W, 39.75 feet; thence S46°22'56"W, 25.67 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 37.22 feet to the Point of Beginning, containing 1,300 square feet, more or less.
2. A tract of land located in Lot 12, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.  
Beginning at the northwest corner of Lot 12; thence N89°46'05"E along the north line of said lot, 59.99 feet; thence S0°22'55"E along the east line of said lot, 18.33 feet; thence S89°02'27"W, 59.99 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 19.09 feet to the Point of Beginning, containing 1,120 square feet, more or less.
3. A tract of land located in Lots 13 and 14, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.  
Beginning at the northwest corner of Lot 13; thence N89°46'05"E along the north line of Lots 13 and 14 a distance of 119.98 feet; thence S0°22'55"E along the east line of Lot 14 a distance of 16.80 feet; thence S89°02'27"W, 119.99 feet to the west line of Lot 13; thence N0°22'55"W along the west line of said lot, 18.33 feet to the Point of Beginning, containing 2,110 square feet, more or less.
4. A tract of land identified as Lot 3, of the Sunset Subdivision Fifth Filing, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.
5. A tract of land located in Lots 18 and 19, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.  
Beginning at the northwest corner of Lot 18; thence N89°46'54"E along the north line of Lots 18 and 19 a distance of 114.49 feet; thence S0°22'55"E along the east line of Lot 19 a distance of 14.66 feet; thence S89°33'59"W, 144.49 feet to the west line of Lot 18; thence N0°22'55"W along the west line of said lot, 15.09 feet to the Point of Beginning, containing 1,705 square feet, more or less.

6. A tract of land located in Lot 20, Block 4, Sunset Subdivision, situated in Government Lot 2, Section 5, Township 1 South, Range 26 East, P.M.M., Yellowstone County, Montana.

Beginning at the northwest corner of Lot 20; thence N89°39'31"E along the north line of said lot, 79.96 feet; thence S0°22'55"E along the east line of said lot, 36.80 feet; thence N42°46'33"W, 30.12 feet; thence S89°33'59"W, 59.65 feet to the west line of said lot; thence N0°22'55"W along the west line of said lot, 14.66 feet to the Point of Beginning, containing 1,395 square feet, more or less.

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## AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, December 19, 2005**

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**TITLE:** Advice on Tussing Settlement Agreement

**DEPARTMENT:** Administration

**PRESENTED BY:** Bruce McCandless, Deputy City Administrator

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**PROBLEM/ISSUE STATEMENT:** At its December 12 meeting the Council plans to engage an attorney to review the Tussing settlement agreement and advise the Council. The Council requested that the attorney convey the information to it no later than December 19. The Council will review the advice and direct staff if further action is needed.

**FINANCIAL IMPACT:** The financial impact is determined by what action the Council takes.

**RECOMMENDATION**

Staff recommends that Council review the attorney's report and direct staff regarding any further actions.

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

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, DECEMBER 19, 2005**

**SUBJECT:** Boards & Commissions –Appointments and Reappointments

**DEPARTMENT:** City Administrator's Office

**PRESENTED BY:** wynnette Maddox, Administration

**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for Boards and Commission positions that are either vacant or up for re-appointment. Term expiration dates on these vacancies are December 31, 2005 and the positions must be filled.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Mayor Tooley recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	Lyn McKinney	Board of Adjustment	01/01/06	12/31/09
2.	Troy Boucher	Board of Adjustment	01/01/06	12/31/09
3.	Leon Pattyn	Board of Adjustment	01/01/06	12/31/09
4.	Tom Holden	Board of Appeals	01/01/06	12/31/09
5.	Mike Schmidt	Board of Appeals	01/01/06	12/31/09
6.	Russell Fagg	Board of Ethics	01/01/06	12/31/09
7.	Michael Dennis	Board of Health	01/01/06	12/31/08
8.	Cary Brown	City/County Planning Board	01/01/06	12/31/07
9.	Kathleen Gilluly	Community Development Board (Low Mod)	01/01/06	12/31/09
10.		Community Development Board (Low Mod)	01/01/06	12/31/09
11.	*Kathleen Walters	Community Development Board (at Large)	01/01/06	12/31/07
12.	Skip Godfrey	EMS Advisory Commission	01/01/06	12/31/09

13.	Reese Holle	EMS Advisory Commission	01/01/06	12/31/09
14.	Mike Hennessy	Housing Authority	01/01/06	12/31/10
15.	Erica Limberhand	Housing Authority	01/01/06	12/31/07
16.	David Jernigan	Human Relations Commission	01/01/06	12/31/09
17.	Ken Nicholson	Parking Advisory Board	01/01/06	12/31/09
18.	Scott Wetzel	Parking Advisory Board	01/01/06	12/31/09
19.	Pamela Godfrey	Parking Advisory Board	01/01/06	12/31/09
20.	Wanda Walker	Parks/Rec/Cemetery Board	01/01/06	12/31/09
21.	Mike Erickson	Parks/Rec/Cemetery Board	01/01/06	12/31/09
22.	Carol Green	Police Commission	01/01/06	12/31/08
23.	Rod Wilson	Public Utilities Board	01/01/06	12/31/09
24.	Patrick Dawson	Public Utilities Board	01/01/06	12/31/09
25.	Doug Kary	Traffic Control Board	01/01/06	12/31/09
26.	Walt Willett	Traffic Control Board	01/01/06	12/31/09
27.	Brian Roberts	Yellowstone Historic Preservation Board	01/01/06	12/31/07

11\* - Unexpired term of Dorothy Nelson (At Large)

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

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