

CITY OF BILLINGS

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

AGENDA

COUNCIL CHAMBERS **May 8, 2006** **6:30 P.M.**

CALL TO ORDER – Deputy Mayor Boyer

PLEDGE OF ALLEGIANCE – Deputy Mayor Boyer

INVOCATION – Councilmember Richard Clark

ROLL CALL

MINUTES – April 24, 2006

COURTESIES – Fire Dept.

STATEMENT OF PROCLAMATIONS

- #### ▪ May 14 – 20: Police Week

ADMINISTRATOR REPORTS – Tina Volek

- ## ▪ Council report

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1- #6 thru #8

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. Contract Amendment #1, Professional Services for Hazardous Waste Collection Events. Philip Services. \$40,000.00.

COLLECTION EVENTS, 1999 (Corresponding Staff Memo A)

B. Amendment #10, Professional Services for Airport Miscellaneous Capital Paying Projects. Morrison-Maierle, Inc., \$39,233.00.

Capital Funding Project (Corresponding Staff Memo B)

C. Professional Services Contract with CTA Architects and team for the Downtown Transit Operations Center. \$571,913.25.

Downtown Transit Study (Corresponding Staff Memo C)

D. Resolution amending Resolution 06-18391, correcting the legal description of right-of-way to be vacated for Broadwater Ave. in Legacy Subdivision.
[\(Corresponding Staff Memo D\)](#)

E. Resolution relating to financing of certain proposed sidewalk projects: (School Route Sidewalk Programs; Miscellaneous Curb, Gutter and Sidewalks; and W.O. 04-12: Alkali Creek Sidewalk, Curb and Gutter), establishing compliance with reimbursement bond regulations under the Internal Revenue Code.
[\(Corresponding Staff Memo E\)](#)

F. Resolution relating to financing of SID 1368 (Annandale Rd. extension), SID 1370 (Interlachen Dr.), SID 1373 (S. Billings Blvd.) and Briarwood Sanitary Sewer Extension, establishing compliance with reimbursement bond regulations under the Internal Revenue Code.

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

G. Acceptance of a scholarship donation from Wendy's Foundation of Montana, for scholarships for children of low-income families to enroll in Parks & Recreation Dept. activities, \$4,000.00.

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

H. Authorization to submit a Fair Housing Initiative Program (FHIP) grant application to the U.S. Dept. of Housing and Urban Development (HUD) to facilitate equal opportunity in housing, \$100,000.00 maximum.

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

I. Acceptance and recognition of donation to the Billings Animal Shelter from Linda and Nedra Maxin, \$535.00 for the AS general donation account.

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

J. Second/final reading of ordinance expanding the boundaries of Ward II to include the recently annexed property in Annex #06-02, a 19-acre parcel described as a portion of C/S 2776 located on the west side of Highway 87, north of its intersection with Main Street in the Heights, 4A's LLC, petitioner.

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

K. Second/final reading of ordinance expanding the boundaries of Ward V to include the recently annexed property in Annex #06-03, Tracts 1 and 2, C/S 3139, Tract 1, C/S 2379 and two unplatte tracts containing 79 acres located near the southwest corner of the Grand Avenue and 56th Street West intersection, Douglas and Ronald Frank, petitioners.

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

L. Bills and Payroll.

(1) April 7, 2006

[\(Corresponding Staff Memo L1\)](#)

April 14, 2006

[\(Corresponding Staff Memo L2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward II to include recently annexed property in Annex #06-04, the contiguous City-owned land known as Annex #06-04: Tract 2B of Amended Tract 2, C/S 727, located on Alkali Creek Rd. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward I to include recently annexed property in Annex #06-05, the remaining tract of corrected C/S 3223, Amended Tract 1, McCall Development Inc., petitioners. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND RESOLUTION** creating PMD #4032 in Riverfront Pointe Subdivision. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND RESOLUTION** regarding the Central Terry initiative on the PSE Superfund site cleanup. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)
6. **THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AND HOME INVESTMENT PARTNERSHIP (HOME) PROGRAMS** and the FY 2006 Annual Action Plan. (PH held 4/24/06). Staff recommends approval of the allocation of CDBG and HOME funds for FY 2006-2007 as recommended by the CD Board and approval of the FY 2006-2007 Annual Action Plan as the second year of the Consolidated Plan for FY 2005-2009. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 6\)](#)

7. **RESOLUTION** authorizing condemnation of six properties on Grand Avenue. (Delayed from 4/10/06). Staff recommends further delaying action for 30 days to allow staff to evaluate the market analysis and renegotiate with affected property owners. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)
8. **APPROVAL AND ACCEPTANCE** of donations (cash, materials, in-kind) over \$500.00 for Crime Prevention Center in Rimrock Mall. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 8\)](#)
9. **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

EXECUTIVE SESSION to follow the conclusion of this meeting.

(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>

CALENDAR

(Council AND Boards & Commissions)

MAY:

5/08/2006	Parking Advisory Board REGULAR Council Meeting	CANCELLED 6:30 p.m.	Council Chambers
5/09/2006	Agenda Review Meeting/Special Work Session Planning Board	6:00 p.m. 6:00 p.m.	3 rd Floor Library 4 th Floor Library
5/10/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
5/11/2006	Library Board Public Utilities Board	11:30 a.m. CANCELLED	Library
5/15/2006	Parking Advisory Board Council WORK SESSION	4:00 p.m. 5:30 p.m.	CH Conference Room Community Center 360 N. 23 rd St
5/16/2006	Yellowstone Historic Preservation Board Council Strategic Planning Session	8:00 a.m. 6:00 p.m.	4 th Floor Library CH Conference Room
5/22/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
5/23/2006	Traffic Control Board Planning Board Special Work Session	NOON 6:00 p.m. 6:00 p.m.	4 th Floor Library 4 th Floor Library 3 rd Floor Library
5/24/2006	Development Process Advisory Review Board (DPARB)	1:00 p.m.	CH Conference Room
5/25/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
5/29/2006	MEMORIAL DAY – CITY OFFICES CLOSED		
5/30/2006	Agenda Review/Special Work Session	6:00 p.m.	3 rd Floor Library
5/31/2006	Housing Authority	NOON	2415 1 st Avenue North

JUNE:

6/01/2006	Human Relations Commission	12:15 p.m.	CH Conference Room
6/05/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St

6/06/2006	Community Development Board Zoning Commission Aviation & Transit Commission Board of Adjustment	3:00 p.m. 4:30 p.m. 5:30 p.m. 6:00 p.m.	4 th Floor Library Council Chambers Airport Terminal Council Chambers
6/07/2006	Policy Coordinating Committee	8:00 a.m.	4 th Floor Library
6/08/2006	Library Board	11:30 a.m.	Library
6/12/2006	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
6/13/2006	Planning Board	6:00 p.m.	4 th Floor Library
6/14/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
6/15/2006	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
6/19/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
6/20/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
6/22/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
6/26/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
6/27/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 th Floor Library 4 th Floor Library
6/28/2006	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 st Avenue North CH Conference Room

A

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 8, 2006

TITLE: Contract Amendment #1 – Hazardous Waste Collection Events – Philip Services

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division recommends approval of Contract Amendment #1 for professional services with Philip Services in the amount of \$40,000 to oversee the twelfth annual Household Hazardous Waste (HHW) collection event and the eleventh annual Conditionally Exempt Small Quantity Generator (CESQG) collection event for area businesses. A contract approved in 2005 allowed the City to use Philip Services for up to three years if the firm's performance was acceptable.

ALTERNATIVES ANALYZED:

- Solicit Requests for Proposals and select a Consultant to provide the necessary services and enter into a contract based upon the RFP selection process.
- The recommended alternative is to approve the Contract Amendment with Philip Services to provide the necessary services for the collection events.

FINANCIAL IMPACT: The current FY06 Solid Waste Division budget includes \$60,000 to fund the city's annual hazardous waste collection events.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #1 for professional services with Philip Services in the amount of \$40,000 to oversee the annual HHW and CESQG collection events.

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

ATTACHMENT

A: Amendment #1 to a Contract with Philip Services

INTRODUCTION

For the past eleven years, the Solid Waste Division has conducted a one-day HHW collection event where area landfill users can bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. In addition, the Solid Waste Division sponsors a one-day collection event for area businesses that qualify as Conditionally Exempt Small Quantity Generators (CESQG) of hazardous waste. The Solid Waste Division completed a formal Consultant selection procedure in 2005 and the City Council approved a contract with Philip Services on March 28, 2005. This contract amendment would provide for necessary services to complete the 2006 events.

BACKGROUND

Since 1995, the Solid Waste Division has sponsored a one-day HHW collection event for area residents to bring unwanted and unused household products containing toxic chemicals to the Solid Waste Division for proper disposal. The program is open to all households served by the Billings Regional Landfill, including residents of Yellowstone, Carbon, Stillwater, Musselshell, and Treasure counties. The purpose of this event is to divert household toxic waste from the landfill, provide appropriate disposal options for HHW, and educate the public on the use of alternative non-hazardous products. To date, approximately 170 tons of pesticides, paint, solvents, antifreeze and used oil have been drummed and transported to hazardous waste disposal facilities for reclaiming, recycling, incineration or disposal in a hazardous waste landfill.

The Solid Waste Division also sponsors an additional one-day collection event for area businesses that qualify as CESQGs of hazardous waste. The purpose of the business event is to provide an economic alternative to area businesses to safely dispose of their hazardous waste. The 2006 CESQG event is scheduled for Friday, June 2nd; the HHW collection event is scheduled for Saturday, June 3rd.

ALTERNATIVES ANALYSIS

The alternatives analyzed included requesting proposals and selecting a firm based upon that process and enter into a new contract, or approve a Contract Amendment with Phillip Services. Staff is recommending the contract amendment because it is the most cost effective. There are a limited number of companies that provide this type of service and none are located in Montana. There are no recycling, incineration, or disposal facilities for this type of waste in Montana, therefore the waste needs to be transported to the closest facilities, which are in Washington and Oregon. In 2005 the Solid Waste Division requested proposals and Philip Services was the selection committee's recommendation of the three companies that submitted proposals. Councilman Veis served on the selection committee. The selection process included the intent to utilize the same company for up to three years if their performance was acceptable. Philip Services did an excellent job in 2005. Requesting proposals every year only adds cost to the project in the form of advertising costs and staff time. Since the first collection event, we have requested proposals every three years, and if the selected company performed satisfactorily, a contract amendment would be utilized for up to two more years. There are also cost efficiencies associated with having a firm that is familiar with our facility and program. The contract amendment is based upon the same charges as the 2005 Professional Services Contract with

Philip Services.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #1 for professional services with Philip Services in the amount of \$40,000 to oversee the annual HHW and CESQG collection events.

ATTACHMENT

A: Amendment #1 to a Contract with Philip Services

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 8, 2006

TITLE: Approval of Amendment #10 with Morrison-Maierle, Inc. for Engineering Services for Airport Miscellaneous Capital Paving Projects

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding requirements, the City of Billings Logan International Airport has historically entered into five-year term contracts to provide engineering services at the Airport. The current five-year contract is with Morrison-Maierle, Inc. to provide engineering, design, survey, and contract administration services as required for Airport Capital Projects and other general Departmental engineering services as needed. This base contract is amended as new projects are undertaken. Amendment #10, totaling \$39,233, includes the required engineering design, preliminary and construction surveys, and contract administration services for the asphalt replacement projects at vehicle access Gates 9 and 24, and the Airport Business Park. Council approved the award of this paving project to JTL Group, Inc. at the April 10, 2006 City Council meeting. The scope of work and associated fees have been reviewed and negotiated by Airport staff. Including Amendment #10, the total cost of the engineering work under this contract during the first four and one half years has totaled \$3,067,335, and has produced over \$19,870,787 in construction projects and \$830,000 in equipment purchases.

FINANCIAL IMPACT: The total cost of engineering Amendment #10 with Morrison-Maierle, Inc. is \$39,233. The cost of the paving work to be accomplished is \$170,787. The source of the funding for this project is the Department's Capital fund.

RECOMMENDATION

Staff recommends that the City Council approve Amendment #10 to the Morrison-Maierle, Inc. term contract in the amount of \$39,233 to cover the engineering services needed to complete the Airport's Miscellaneous Capital Paving Project.

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

Attachment A: Amendment #10 to a contract with Morrison-Maierle, Inc.

AMENDMENT NO. 10
TO
AGREEMENT FOR GENERAL AND AIP RELATED ENGINEERING SERVICES
BILLINGS LOGAN INTERNATIONAL AIRPORT
AIP 3-30-0008-23
DATED MAY 14, 2001

This Amendment No. 10 made and entered into this & day of May, 2006 by and between the following:

City of Billings, Montana, a Municipal Corporation, PO Box 1178
Billings, Montana 59103, hereinafter designated the OWNER

and

Morrison-Maierle, Inc., 315 N. 25th Street, Suite 102, Billings, Montana 59101, a
private Montana Corporation, hereinafter designated as the ENGINEER

WITNESSETH:

WHEREAS, the OWNER and the ENGINEER have entered into a contract dated May 14, 2001 for
ENGINEER to provide engineering services to OWNER for PFC Program Project, Airfield Lighting
Control System;

WHEREAS, the OWNER has a need for additional engineering services;

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

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained
herein, or attached and incorporated herein, the parties hereto agree to amend the May 14, 2001
Agreement, corresponding amendments to this Agreement, and all related exhibits as follows:

ARTICLE I - SCOPE OF SERVICES. The following items of work listed below are added and
amended by Amendment 10:

For Phase I - Design Plans and Specifications, Design Surveys, Design Testing and ALP Update.

For Phase II - Construction Phase, Amendment 10 includes all of the items defined in the original
Agreement, plus the following item of work: The ENGINEER shall provide Construction Layout
services in accordance with the Master Agreement. Construction Layout includes, but is not limited to,
field marking of the following: lines, offsets, pipe inverts, material quantities, preliminary grades, and
finished grades, and their associated staking notes. The ENGINEER shall provide the Contractor with a
copy of the staking notes in a timely manner.

Engineering fees for providing the scope of work are based on the methods described in Article II of the
original agreement.

Scope of Work (individual work items table in paragraph a., page 3) is amended to include:

ITEMS DESCRIPTION

Items For Amendment 10 (Ten):

- I . Paving Improvements at Gate 9, Gate 24, and IP-9: Provide plans and specifications for the removal and replacement of old asphalt pavement section at Gate 9 and Gate 24 and the reconstruction of a portion of Rimview Drive adjacent to structure IP-9 and west parking lot overlay. This project requires coordination with Airport Operations for gate closures at both Gate 9 and 24 as these affect airport security. Remaining work outside the security fencing requires coordination with existing tenants of structure IP-6, 7, 8, and 9. This construction work shall be completed in the 2006 construction season.

Phase I

Phase I work will include the work items listed.

Prepare design plans and specifications for proposed construction projects as described above.

Phase II

Phase II work will include providing Construction Administration, Construction Layout, Resident Project Representative (Inspector) part time (1 hrs/day) based on a 81 calendar day contract for Item 1; and Project Closeout for all items identified as Phase I design work.

ARTICLE II - ENGINEERING FEES

The items discussed above are finalized items of work that the Airport has approved for local funding.

Phase I - Design Plans and Specifications, Design Surveys, Design Testing, and ALP Update.

Preparation of design plans and specifications for Phase I, Items for this Amendment will be accomplished for a lump sum fee of \$ 21,027.00 as per the Method A - Fee Determination as outlined in the original Agreement dated May 14, 2001. See Table 1a for engineering budgets.

Phase II - Construction Phase.

The items discussed above involve the Phase II. Items for this Amendment scope of services will be accomplished at a cost plus fixed fee with a ceiling price not to exceed \$18,206.00 as per Method B - Fee Determination outlined in the original Agreement dated May 14, 2001. See Table 2a for engineering budgets.

COST SUMMARY OF AMENDMENT NO. 10

Description	Labor & Expenses	Fixed Fee	Total
Amendment No. 10 (See Table 1a) Phase I - Design AIP-30 - PCC Ramp Replacement - Design Plans and Specifications	\$18, 603	\$2,424	\$21,027
Amendment No. 10 (See Table 2a) Phase II - Construction of AIP-30 - PCC Ramp Replacement, based on 220-calendar day construction contract.	\$16,146	\$2,060	\$18,206
Total Amendment No. 10	\$34, 749	\$4,484	\$ 39,233

TABLE Ia

Amendment No, I 0
ENGINEERING BUDGET
PHASE I -DESIGN & SPECIFICATIONS - ITEM 1

Engineering Services Item 1	Total Man-hour	Labor Rate	Total
Survey & Design, P & S, and Bid Documents: Paving Improvements at Gate 9, Gate 24 and IP-9.	280	\$57.72*	\$16,160
Total MU Labor			\$16,160
Expenses			
Company Vehicle	\$ 72		
Commuting, Travel	\$0		
Technology Charge	\$633		
Per Diem	\$0		
Equipment Charges	\$102		
Professional Service	\$0		
Printing, Copies	\$1,232		
Telephone, FAX	\$0		
Photos, Etc.	\$0		
Freight, Postage	\$100		
Project Supplies	<u>\$303</u>		
SUBTOTAL	\$2,443		
Total MU Labor			\$16,160
Total Direct Expenses			<u>\$2, 443</u>
Total MU Labor & Expenses			\$18,603
Fixed Fee			<u>- \$2.424</u>
Total Lump Sum for Design Phase			\$21,027

* Figure is rounded

TABLE 2a

Amendment No. 10
ENGINEERING BUDGET
PHASE II - CONSTRUCTION - ITEM 2

Engineering Services Item 1	Total Man-hour	Labor Rate	Total
Construction Admin. & Inspection: Paving Improvements at Gate 9, Gate 24 and IP-9.	240	\$57.30*	\$13,734
 Total MU Labor			\$13,734
 Expenses			
Company Vehicle	\$274		
Commuting, Travel	\$0		
Technology Charge	\$674		
Per Diem	\$0		
Equipment Charges	\$440		
Professional Service	\$0		
Printing, Copies	\$295		
Telephone, FAX	\$327		
Photos, Etc.	\$0		
Freight, Postage	\$114		
Project Supplies	\$288		
 SUBTOTAL	\$2,412		
 Total MU Labor			\$13,734
 Total Direct Expenses			\$2,412
Total MU Labor & Expenses			\$16,146*
Fixed Fee	f		\$2,060
Total Ceiling Not to Exceed for Construction Phase			\$18,206

* Figure is rounded

IN WITNESS WHEREOF, the parties hereto have made and executed the Amendment No.10 this day of May, 2006.

CONSULTANT

Morrison-Maier e, Inc.

BY:



DATE: April 2, 2006

OWNER

City of Billings

BY: _____

DATE: _____

ATTEST: BY:

City Clerk

APPROVED AS TO FORM:

BY: _____ City
Attorney

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Approval of CTA Architects Engineers Contract for Architectural and Engineering Services for the Downtown MET Transit Operations Center Project

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: On Monday, December 19, 2005, the City Council approved the recommendation from the RFP Committee to select CTA Architects Engineers for the design, mechanical, electrical, structural, civil engineering, and construction administration services for the estimated \$4,000,000 Downtown MET Transit Operations Center project. Staff was then instructed to negotiate an acceptable fee structure and scope of work. This was accomplished and on Monday, April 24, 2006, the City Council approved the architectural/engineering fees of \$571,913.25 for the professional services to be provided by CTA Architects Engineers. Staff has negotiated a contract incorporating the approved fees for City Council's final approval.

FINANCIAL IMPACT: The approved fees for CTA Architects Engineers to accomplish the needed design, architectural, engineering, project administration and construction oversight, for the City of Billings Downtown MET Transit Operations Center is \$571,913.25. CTA's fees will be funded by a Federal Transit Administration (FTA) discretionary grant at 80% Federal, with a 20% local match. The FTA's portion will be \$457,530.60, and the City's match amount is \$114,382.65. The source of the City's match is budgeted in the MET Transit's Capital fund.

RECOMMENDATION

Staff recommends that Council approve the CTA Architects Engineers contract for architectural and engineering services for the Downtown MET Transit Operations Center project.

Approved By: City Administrator City Attorney

Attachment A: CTA A&E Contract

**SERVICE AGREEMENT
FOR
ARCHITECTURAL AND ENGINEERING DESIGN SERVICES
FOR
DOWNTOWN MET TRANSIT OPERATIONS CENTER**

THIS AGREEMENT for Architectural and Engineering Design Services for the Downtown MET Transit Operations Center is entered into this 8th day of May 2006, between the City of Billings (hereinafter designated CITY) with an office at 210 North 27th Street, Billings, Montana 59103, and CTA Architects Engineers (hereinafter designated ARCHITECT) a Montana corporation with offices at 13 North 23rd, Billings, Montana 59101.

I. SCOPE OF SERVICES

ARCHITECT shall render to CITY all of the services specified in this Agreement on an as-ordered basis by CITY in writing, in accordance with the service schedule attached hereto as Exhibit A and made a part hereof (the "Work Schedule") for Architectural and Engineering Design Services for the Downtown MET Transit Operations Center, at the prices identified and attached hereto as Exhibit B (the "Price Structure").

Services performed by ARCHITECT and/or its employees ("Consultants") pursuant to the Work Schedule shall be performed in accordance with generally accepted professional standards and shall be in accordance with such requirements or restrictions as may be lawfully imposed by government authority.

II. TERM

This Agreement shall be effective for two (2) years commencing on the date of the final approval of the Agreement by the Billings City Council. Project time line is tied to the construction of the adjacent expansion of Park II Garage. Design will proceed per the Scope of Services, but bidding and construction can occur only after the relocation of the existing Wells Fargo drive-up banking facility, which is located on the property. The final design construction schedule will be developed as part of the work product by ARCHITECT.

III. COMPENSATION

A. General. In consideration of ARCHITECT'S performance of the services, CITY will pay ARCHITECT in accordance with the Work Schedule. ARCHITECT will submit, upon the completion of work, a detailed invoice denoting services.

CITY shall be billed on a monthly basis depending on the service schedule for the Downtown MET Transit Operations Center. ARCHITECT will invoice against an assigned purchase order. All invoices will reference its assigned purchase order number and are payable within thirty (30) days.

- B. A job description, where the services are to be performed, and the approximate duration of those services is specified in Exhibit A.
- C. Change in Services.
 1. Change in services of the ARCHITECT, including services required of the ARCHITECT'S consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the ARCHITECT'S control, or if the ARCHITECT'S services are affected as described in Section C.2. below. In the absence of mutual agreement in writing, the ARCHITECT shall notify the CITY prior to providing such services. If the CITY deems that all or a part of such change in services is not required, the CITY shall give prompt written notice to the ARCHITECT, and the ARCHITECT shall have no obligation to provide those services. Except for a change due to the fault of the ARCHITECT, change in services of the ARCHITECT shall entitle the ARCHITECT to an adjustment in compensation and to any Reimbursable Expenses.
 2. If any of the following circumstances affect the ARCHITECT'S services for the project, the ARCHITECT shall be entitled to an appropriate adjustment in the ARCHITECT'S schedule and compensation:
 - a. Change in the instructions or approvals given by the CITY that necessitate revisions in instruments of service;
 - b. Enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared instruments of service;
 - c. Decisions of the CITY not rendered in a timely manner;
 - d. Significant change in the Project including, but not limited to, size, quality, complexity, the CITY'S schedule or budget, or procurement method;
 - e. Failure of performance on the part of the CITY or the CITY'S consultants or contractors;
 - f. Preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the ARCHITECT is party thereto.

IV. RESPONSIBILITIES OF THE PARTIES

A. CITY

1. Unless otherwise provided under this Agreement, the CITY shall provide full information in a timely manner regarding requirements for and limitations on the project. The CITY shall furnish to the ARCHITECT, within fifteen (15) days after receipt of a written request, information necessary and relevant for the ARCHITECT to evaluate, give notice of or enforce lien rights.
2. The CITY shall periodically update the budget for the project, including that portion allocated for the cost of the work. The CITY shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the cost of the work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the ARCHITECT to a corresponding change in the project scope and quality.
3. The CITY'S Designated Representative identified in Section XVII shall be authorized to act on the CITY'S behalf with respect to the project. The CITY or the CITY'S designated representative shall render decisions in a timely manner pertaining to documents submitted by the ARCHITECT in order to avoid unreasonable delay in the orderly and sequential progress of the ARCHITECT'S services.
4. The CITY shall furnish the services of consultants other than those designated in Section XVII or authorize the ARCHITECT to furnish them as a change in services when such services are requested by the ARCHITECT and are reasonably required by the scope of the project.
5. Unless otherwise provided in this Agreement, the CITY shall furnish tests, inspections and reports required by law or the contract documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
6. The CITY shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time for the project to meet the CITY'S needs and interests.
7. The CITY shall provide prompt written notice to the ARCHITECT if the CITY becomes aware of any fault or defect in the project, including any errors, omissions or inconsistencies in the ARCHITECT'S instruments of service.

B. ARCHITECT

1. The services performed by the ARCHITECT, ARCHITECT'S employees and ARCHITECT'S consultants shall be as enumerated in Exhibit A.
2. The ARCHITECT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the project. The ARCHITECT shall submit for the CITY'S approval a schedule for the performance of the ARCHITECT'S services, which initially shall be consistent with the time periods established in Section II and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the CITY'S review, for the performance of the CITY'S consultants, and for approval of submissions by authorities having jurisdiction over the project. Time limits established by this schedule approved by the CITY shall not, except for reasonable cause, be exceeded by the ARCHITECT or CITY.
3. The ARCHITECT'S designated representative identified in Section XVII shall be authorized to act on the ARCHITECT'S behalf with respect to the project.
4. The ARCHITECT shall maintain the confidentiality of information specifically designated as confidential by the CITY, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the ARCHITECT from establishing a claim or defense in an adjudicatory proceeding. The ARCHITECT shall require of the ARCHITECT'S consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the CITY.
5. Except with the CITY'S knowledge and consent, the ARCHITECT shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the ARCHITECT'S professional judgment with respect to this project.
6. The ARCHITECT shall review laws, codes, and regulations applicable to the ARCHITECT'S services. The ARCHITECT shall respond in the design of the project to requirements imposed by governmental authorities having jurisdiction over the project.
7. The ARCHITECT shall be entitled to rely on the accuracy and completeness of services and information furnished by the CITY. The ARCHITECT shall provide prompt written notice to the CITY if the

ARCHITECT becomes aware of any errors, omissions or inconsistencies in such services or information.

V. LOCATION

- A. ARCHITECT will provide the services to CITY at the following locations: CTA Architect and Engineers, 13 North 23rd, Billings, Montana 59101, and the construction site formerly 2513 Second Avenue North, and physically identified as the southern one-half of the CITY block bordered by Second and Third Avenues North and North 25th and North 26th.
- B. CITY will provide ARCHITECT with access to all areas CITY deems necessary for ARCHITECT to perform the services, provided ARCHITECT substantially complies with CITY's safety and security procedures and general policies as in effect from time to time.

VI. PERSONNEL

- A. General. As the employer, ARCHITECT will (1) maintain all necessary personnel and payroll records for its employees, (2) calculate their wages and withhold/pay applicable taxes and other government mandated charges, if any; (3) pay net wages and fringe benefits, if any, directly to its employees; (4) provide for liability insurance and (5) provide worker's compensation insurance coverage in amounts as required by law.
- B. Training. ARCHITECT will ensure that its employees are fully trained in all areas pertaining to the services in order to provide high quality workmanship and safety.
- C. Security Requirements. ARCHITECT will comply and will cause all personnel assigned to perform the services to comply with all security requirements of CITY relating to the personnel assigned to perform the services.
- D. Right to Hire. While this Agreement is in effect and for six (6) months after this Agreement ends, neither party to this Agreement will hire the other party's employees without the express written consent of the other party. If either party violates this clause, they shall compensate the other party with a one-time settlement equal to the annual salary of the employees involved, calculated at the last applicable rate of pay of the former employee.

VII. SAFETY

- A. General. ARCHITECT assures that its employees or subcontractors and agents shall conform to CITY'S "Contractor Safety Policy" incorporated herein by

reference and with all other safety policies which may be in effect from time to time. CITY will provide ARCHITECT with copies of all written safety policies. All required training shall be conducted by ARCHITECT and training records shall be maintained by ARCHITECT and made available to CITY upon request. CITY reserves the right to review ARCHITECT safety programs and will immediately notify ARCHITECT of any deficiencies with a request for correction.

- B. Substance Abuse Policy. ARCHITECT agrees that on behalf of its employees, subcontractors and agents, it will prohibit ARCHITECT'S employees from engaging in the use, possession, sale(s), concealment, transfer or presence in the body of illegal drugs (or their metabolites), controlled substances, marijuana, mood or mind-altering substances, "look-alike" substances, designer and synthetic drugs and/or alcohol beverages on CITY property and will prohibit the use and/or possession of drug paraphernalia on CITY property. ARCHITECT will communicate this agreement on substance abuse to its employees and will require that they comply with this agreement for the duration of their assignment; and ARCHITECT will require its subcontractors and agents to agree in writing that they and their employees, while on CITY property and/or engaged in providing the services for CITY, will comply with this agreement on substance abuse.

VIII. TERMINATION

- A. Termination. At any time during the term of this Agreement or any extension hereof, CITY may terminate this Agreement for City of Billings convenience and without cause by giving ARCHITECT thirty (30) days written notice to terminate this Agreement. Upon the expiration of the thirty (30) day period, CITY will pay ARCHITECT all amounts outstanding through the effective date of termination. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.
- B. Nonperformance. In the event that ARCHITECT does not substantially perform the services in a manner reasonably consistent with generally accepted professional standards, CITY shall so inform ARCHITECT in writing, specifying the manner in which CITY believes the services to be deficient, and ARCHITECT shall have a period of ten (10) business days from the receipt of such notice to correct such deficiencies in performance. In the event that ARCHITECT does not correct the deficiency within such period or in the event that performance deficiency recurs, CITY shall then have the option of terminating this Agreement.

X. TRANSITIONAL SERVICE OBLIGATIONS OF ARCHITECT UPON EXPIRATION OR TERMINATION

In the event this Agreement is terminated with or without cause, or expires by its terms, and a successor vendor is selected by CITY or if either party fails to renew this Agreement, ARCHITECT will continue to provide full and complete services under this Agreement until new services are implemented by its successor, by CITY or any third party designated by CITY. ARCHITECT'S obligation to provide all services in any such transition shall continue for a maximum of one hundred twenty (120) days after the effective date of termination or expiration of the Agreement, or for a lesser time as determined by CITY. ARCHITECT will cooperate fully in assuring CITY continued and uninterrupted service during such a transition.

During such transition, the method of providing service to CITY will not be modified or personnel relocated or removed on ARCHITECT'S own initiative, without CITY'S prior written consent.

ARCHITECT will, upon request, release and transfer all CITY data, without cost or fees to any designated successor vendor selected by CITY, to CITY, or any third party it designates, in a format as it appears on ARCHITECT'S systems, provided that CITY has paid all undisputed amounts invoiced by ARCHITECT to CITY for services rendered per Exhibit A.

In the event of transfer of volume to another vendor, to CITY, or a CITY-designated third party, ARCHITECT will not charge fees or costs to CITY for equipment de-installation, un-expired leasehold obligations, employee severance, management time, knowledge transfer, or any other costs incurred due to or during such transfer.

XI. WORKER'S COMPENSATION AND LIABILITY INSURANCE

A. ARCHITECT will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

1. Workers' Compensation statutory coverage as required by the laws of the jurisdiction in which the services are performed, and Employers Liability \$1,000,000 per occurrence limit.
2. Third Party Liability bodily injury insurance with a \$1,500,000 minimum.
3. Comprehensive General Liability to include bodily injury, property damage, independent contractor coverage, completed operations or products coverage, blanket contractual, broad-form property damage with

a combined single limit per occurrence of \$1,500,000, and thirty (30) day notice of cancellation. CITY shall be named as an additional insured.

4. Commercial Automobile Liability with a \$1,000,000 combined single limit.
 5. Umbrella Liability with a minimum amount of \$5,000,000 per occurrence. Policy to provide excess limits for automobile, Comprehensive General Liability, and Workers' Compensation/Employer's Liability coverages. CITY shall be named as an additional insured.
 6. Fidelity Bond with a minimum of \$1,000,000 per loss, including dishonesty, robbery, theft, and forgery on premises and in transit. CITY shall be named as an additional insured.
 7. Professional Liability and Errors and Omissions Liability with a minimum of \$1,000,000 per occurrence.
 8. ARCHITECT will require all sub-contractors to meet the minimum CITY insurance requirements.
- B. Certificates of insurance acceptable to CITY shall be filed with CITY before the commencement of this Agreement and shall name CITY as an additional insured provided further, that no insurance hereunder shall be cancelable upon less than thirty (30) days prior written notice to CITY.

XII. INDEMNIFICATION

- A. To the extent not prohibited by law, ARCHITECT shall indemnify, protect, defend and hold CITY, its affiliates, officers, attorneys, directors, agents and employees harmless from and against all liabilities, costs, expenses, fines, claims, losses, suits, demands, liens, and all causes of action due to bodily injury or property damage, including death, which arise out of this Agreement and are the result of the negligence of ARCHITECT.
- B. To the extent not prohibited by law, CITY shall indemnify, protect, defend and hold ARCHITECT, its affiliates, officers, attorneys, directors, agents and employees harmless from and against all liabilities, costs, expenses, fines, claims, losses, suits, demands, liens, and all causes of action due to bodily injury or property damage, including death, which arise out of this Agreement and are the result of the negligence of CITY.

XIII. NOTIFICATION OF CLAIMS

CITY and ARCHITECT agree (1) to notify the other party in writing of any asserted claim within ten (10) days of either discovery of the occurrence upon which the claim may be based or learning of the claim, whichever occurs first; and (2) to permit ARCHITECT or CITY, as the case may be, to defend the claim at the option of the party against whom the claim is asserted, with counsel acceptable to such party, which consent will not be unreasonably withheld or refused. Neither party will pay or agree to pay any asserted claim under this Agreement without prior written approval from the party against whom the claim is asserted, which approval will not be unreasonably withheld. Each party hereto shall cooperate with the other in every reasonable way to facilitate the defense of any such claim.

XIV. PERMITS, LICENSES AND CERTIFICATIONS

Each party will maintain in effect during the term of this Agreement any and all Federal, State and/or Local licenses, permits and certifications which may be required with respect to the respective business in which each party is engaged. ARCHITECT warrants that all consultants maintain current professional licenses, permits or certifications as may be necessary to complete the services. Any costs associated with maintaining such licenses, permits or certifications shall not be the responsibility of CITY. CITY will maintain at its expense the licenses, permits and certification required by applicable authorities in order to engage in CITY'S business, and if ARCHITECT is requested to obtain these types of permits, licenses and certification on behalf of CITY, and cost will be billed to CITY.

XV. AUDIT

CITY and any governmental agent which regulates CITY may, at all reasonable times during the term of the Agreement and for three (3) years thereafter and upon reasonable notice, inspect and audit the books and records of ARCHITECT with respect to the services for the sole purpose of evaluating ARCHITECT'S compliance with this Agreement and any law, regulation or policy applicable to CITY. CITY and such governmental agencies may copy any such information in connection with such audit. ARCHITECT will retain all applicable books and records for three (3) years subsequent to the termination of this Agreement.

XVI. FORCE MAJEURE

Neither party will be responsible for any failure or delay in performance of this Agreement if the failure or delay is due to an event beyond the reasonable control and without the fault or negligence of the party seeking to excuse performance, including without limitation, acts of God, war, labor disputes and strikes, fire, flood, riot, unforeseen delays in third-party provided transportation or communications. Any party

seeking to excuse or delay performance under this Section XVI will provide detailed written notice to the other party of the nature and anticipated duration of the delay.

XVII. NOTICES

Any notices, consents or other communications required or permitted under this Agreement must be in writing and shall be deemed to have been duly given when delivered in person or when deposited in the U.S. mail, postage prepaid, properly addressed, registered or certified mail, return receipt requested to the address as set forth below, or to such other address or addresses as may be designated in writing by notice given to the other party pursuant to this paragraph:

If to CTA ARCHITECTS ENGINEERS:

Jim Wertman, Principal
13 North 23rd Street
Billings, MT 59101
Phone: 406-248-7455
Fax: 406-248-3779
E-mail: jimw@ctagroup.com

And

Eirik Heikes, Project Manager
13 North 23rd Street
Billings, MT 59101
Phone: 406-248-7455
Fax: 406-248-3779
E-mail: eirikh@ctagroup.com

If to CITY OF BILLINGS:

Ron Wenger, Transit Manager
MET Transit
1705 Monad Road
P.O. Box 1178
Billings, MT 59103
Phone: 406-657-8221
Fax: 406-657-8419
E-mail: wengerr@ci.billings.mt.us

And

Kim Annin, C.M., Manager of Construction Engineering and Planning
Aviation and Transit Department
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105
Phone: 406-657-8482

Fax: 406-657-8438
E-mail: annink@ci.billings.mt.us

With copy to:

City of Billings
Attn: General Counsel
P.O. Box 1178
210 North 27th Street
Billings, MT 59103

XVIII. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of Montana, without reference to choice of law, rules or principles.

XIX. INDEPENDENT CONTRACTOR

ARCHITECT'S relationship with CITY under this Agreement shall be that of an independent contractor. ARCHITECT is to exercise its own discretion on the method and manner of performing its duties and CITY will not exercise control over ARCHITECT or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, and equipment used by ARCHITECT shall at all times be under ARCHITECT'S exclusive direction and control. Nothing in this Agreement shall be construed to designate ARCHITECT, or any of its employees, as employees, agents, joint ventures or partners of CITY. ARCHITECT is wholly responsible for withholding and payment of all Federal, State and Local income and other payroll taxes with respect to its employees, including contributions from them as required by law.

XX. REGULATORY REQUIREMENTS

Each party shall comply with United States Federal, State, and Local laws and regulations. As a prerequisite for entering into this Agreement for which compensation to ARCHITECT will include Federal funding provided through the Federal Transit Administration (FTA), ARCHITECT agrees to provide the information to complete the Affidavit of Non-Collusion (Exhibit E-1), the applicable information regarding Disadvantaged Business Enterprise certification (Exhibit E-2), the Certification of Debarment (Exhibit E-3), the Certification of Disclosure of Lobbying (Exhibit E-4), the List of Subconsultants (Exhibit E-5), and to abide and comply with the FTA Assisted Required Clauses as set forth in Exhibit E-6.

XXI. MISCELLANEOUS

- A. Section Headings. The Section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.
 - B. Severability, Waiver. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.
 - C. Entirety. This Agreement and its Exhibit(s) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded. This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.
 - D. Assignment. Neither party may assign or transfer this Agreement or any part hereof without the express written consent of the other party, which consent shall not be unreasonably withheld, except that CITY may, without the consent of ARCHITECT assign its rights and obligations under this Agreement to any successor of all or substantially all of its assets whether by merger, asset acquisition, stock purchase or otherwise.
 - E. Compliance with Laws. In connection with the performance of this Agreement, ARCHITECT will comply with all applicable laws, regulations and orders. Further, ARCHITECT shall inform any of its employees providing services to or on behalf of CITY that they must abide by such laws, regulations and orders.
- ARCHITECT certifies that to the extent legally required it complies with all equal employment opportunity and non-discrimination in employment laws, including but not limited to, Executive Order 11246, as amended by Executive Order 11275, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era (War) Veteran readjustment Assistance Act of 1974, as amended and Executive Order 11625, as amended, as well as the rules and regulations thereunder. Further, ARCHITECT shall inform any of its employees providing services to or on behalf of CITY that they must abide by such policies and ARCHITECT shall obtain their written agreement to comply.
- F. Compliance with CITY Policies. ARCHITECT agrees to comply with all CITY policies applicable to the services to be performed under this Agreement. Further,

ARCHITECT shall inform any of its employees providing services to or on behalf of CITY that they must abide by such policies.

- G. Contact Information. Contact Information for CITY and ARCHITECT is attached as Exhibit C.
- H. Small Business Subcontracting Opportunities. CITY is an Affirmative Action/Equal Opportunity employer. Because CITY transacts business with the United States Government, the Equal Opportunity Clauses at 41 CFR sections 60-1.4(a), 60-250.5(a) and 60-741.5(a) are hereby incorporated and, if applicable, ARCHITECT shall comply with FAR 52.212-3, Offer or Representations and Certifications-Commercial Items, and FAR 52-219-8, Utilization of Small Business Concerns; and if subcontractors are engaged to provide any work pursuant to this Agreement, ARCHITECT will use commercially reasonable efforts to engage businesses that are: (1) certified as small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women owned business, by a third party certification agency acceptable by CITY; or (2) small business concerns that are fifty-one percent (51%), controlled, operated and managed by veterans, service-disabled veterans, HUBZone, disadvantaged business, women or minority owned, including African Americans, Hispanic Americans, Native Americans, Asian Indian Americans, Asian-Pacific Americans.
- It is CITY'S objective to ensure that certified small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women or minority owned small business will have the maximum opportunity to compete for CITY'S procurement requirements. To this end, ARCHITECT is expected to extend to qualified Diverse Suppliers, an equitable opportunity to compete for subcontracts and purchase orders applicable to this work.
- I. Publicity. ARCHITECT agrees that it will not, without the written consent of CITY in each instance: (1) use in advertising, publicity, or otherwise the name of CITY, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by CITY; or (2) represent, directly or indirectly, that any product or any service provided by ARCHITECT has been approved or endorsed by CITY. CITY and ARCHITECT, upon agreement, may engage in joint marketing efforts including, without limitation, joint publications and presentations regarding the services provided by ARCHITECT. CITY has the right to submit scientific articles for publication and present papers and lectures regarding the services.
- J. Taxes. Any sales or use taxes determined to be applicable as a result of services covered by this Agreement shall be the responsibility of CITY. ARCHITECT'S

Federal Tax I.D. is 810305543. ARCHITECT and CITY shall cooperate to the fullest extent allowable by law to minimize any and all sales and use, transfer or other excise taxes applicable on payments to be made by CITY to ARCHITECT. Any and all taxes to be charged to CITY by ARCHITECT and remitted to tax authorities by ARCHITECT on behalf of CITY shall be separately stated on any invoices or statement of fees submitted to CITY.

- K. Order of Precedence. This Agreement shall supersede any and all pre-printed terms on any purchase order, invoice, or other related documents or any and all orders issued by ARCHITECT. In the event of a conflict between the terms and conditions of this Agreement and any other terms, the terms and conditions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year shown above.

CITY OF BILLINGS

By: _____

Print: _____

Title: _____

Date: _____

CTA ARCHITECTS ENGINEERS

By: _____

Print: _____

Title: _____

Date: _____

CITY OF BILLINGS

By: _____

Print: _____

Title: _____

Date: _____

EXHIBIT A

WORK SCHEDULE/SERVICES

SCOPE OF WORK

MET TRANSIT DOWNTOWN OPERATIONS CENTER

PREDESIGN

1. Site visit by A & E Team Project Director and Department Senior Management staff.
2. Scoping meetings leading to agreement on scope of work and preliminary time line.
3. Develop Acceptable Fee and Contract.

DESIGN PHASE

Task I – Develop Final Functional Site Configuration

1. Meet and confirm with City staff and Advisory Committee the project goals and objectives, including discussion and agreement on theme of site and building look, and functions.
2. Confirm and review the site criteria and shall confirm with City staff, the site configuration which meets the requirements of the operational design standards identified in the City RFP.
3. Site work design will include parking, traffic study, queuing design for efficient entry and exit, landscaping, utilities, storm water management, and facade design and design and improvements.
4. Gather Existing Information (GIS, survey, etc.).
5. Prepare Existing Conditions Drawing.
6. Manage All Site Demolition.
7. Geotechnical Analysis as Appropriate.

Task II – Develop Fully Detailed Plans, Specifications, Estimates, and Schedules for Construction of Facility

1. Design structure and bus parking layout to satisfy physical site constraints, functional and site circulations requirements, and site external traffic and aesthetic, and environmental mitigation requirements.
2. Schedule design review meetings with involved City staff and Advisory Committee.
3. Complete an approved traffic control plan to be used during the construction phase.
4. Development of detailed project cost estimates and projects schedules.
5. Preparation of final plans, construction documents, and bidding documents.
6. Analyze bid proposals and make recommendations on awarding a construction contract.
7. Submit progress – status documents of drawings and specifications for review.
8. Prepare and submit construction cost estimates and construction schedule.
9. Prepare and submit schedules and milestone dates for design progress, construction, and beneficial occupancy.
10. Prepare and perform all work in accordance with all applicable building codes, construction standards, local, state and Federal regulations.
11. Participate, support, and assist fully in the value engineering process including exercises as appropriate.

Task III – Public Participation Process

1. Prepare drawings of proposed project.
2. Participate in and provide project narrative description for two (2) to four (4) public meetings.
3. Prepare to provide two (2) to four (4) project updates to the Aviation and Transit Commission.
4. Prepare appropriate presentations for two (2) City Council briefings.

5. Prepare for two (2) to four (4) appropriate presentations for working sessions with City's Advisory Group.
6. Develop a neighborhood contact list and Develop a communications plan.

CONSTRUCTION PHASE

Task IV – Architectural/Engineering Services During Advertising, Bidding, and Award of Construction Contracts

1. Update the prepared drawings, specifications, contract forms, contract administration forms, and contract documents in final form acceptable to the City and subject to review by the City and City's agents and shall be amended by Contractor as directed by such review by City and City's agents.
2. Provide drawings, specifications, and contract forms in sufficient quantity:
 - a. to advertise and receive bids on all portions of the Project,
 - b. to award and execute contracts to successful bidders, and
 - c. to administer construction by Contractor, City, Project Manager, and City's representatives and agents.
3. City shall receive Consultant's recommendations for award of contracts for materials, services, and/or construction by evaluating bids, proposals, or other submitted data in cooperation with City and Construction Manager.

Task V – Develop a Site Safety Plan Covering from Demo to Completion of Project

Task VI – Architectural/Engineering Services During Construction

1. Discuss level of consultant participation during construction.
2. Review, date, and approve shop drawings for project.
3. Monitor construction in progress for document compliance and shall prepare and submit observation reports with recommendations for needed action.
4. Evaluate and recommend action on proposed changes to the work and shall generate change notices for the Project, as may be appropriate from time to time. Contractor shall analyze, consider for approval, and make recommendations regarding proposed changes in the work and the cost thereof.

Review and make recommendations upon request for payment from trades Contractors.

5. Have authority to reject work, which does not conform to the Construction Documents.
6. Observe the work at the time of Substantial Completion and prepare punch lists as may be needed from time to time to assure that the work is complete in every detail and in full compliance with the plans and specifications.
7. Review and approve certificates of completion.
8. Receive as-built data from the Construction Manager and/or any and all trades, contractors, and provide three (3) sets of "record" drawings in reproducible form.
9. Render written decisions within a reasonable time on all claims, disputes or other matters in question between the City and trades contractors relating to the execution and progress of the work as provided in the Construction Documents, in the Project schedules developed by Contractor and approved by City and Construction Manager, and in other documents or work product related to the Project.
10. Conduct weekly meetings with minutes.
11. Conduct Substantial Completion Inspection.
12. Conduct Final Inspection.

POST CONSTRUCTION SERVICES

Provide all necessary FTA grant related contract clauses and certifications per the FTA's Best Practices Procurement Manual, including any grant closeout documents as appropriate.

SCHEDULE OF DELIVERABLES

The Schedule of Deliverables will be formulated based upon the final scope of work.

EXHIBIT B

PRICE STRUCTURE

CTA ARCHITECTS ENGINEERS MET TRANSIT DOWNTOWN OPERATIONS CENTER FEE SUMMARY

PREDESIGN PHASE		\$13,634.00
DESIGN PHASE		
TASK I	Develop Final Functional Site Configuration	\$113,835.50
	Demolition Plans & Specifications	\$24,865.00
TASK II	Develop Fully Detailed Plans, Specifications, Estimates, and Schedules for Construction of Facility	\$207,363.50
TASK III	Public Participation Process	\$39,754.00
Subtotal		\$399,452.00
CONSTRUCTION PHASE		
TASK IV	Architectural/Engineering Services During Advertising, Bidding, and Award of Construction Contracts	\$31,713.50
TASK V	Develop a Site Safety Plan Covering from Demo to Completion of Project	\$11,870.00
TASK VI	Architectural/Engineering Services During Construction	\$116,350.50
Subtotal		\$159,934.00
POST CONSTRUCTION SERVICES		
	Provide all necessary FTA grant material per BPPM	\$12,527.25
SubTotal		\$571,913.25

EXHIBIT C

CITY OF BILLINGS/CTA ARCHITECTS ENGINEERS CONTACTS

CITY OF BILLINGS CONTACTS

Ron Wenger, Transit Manager
MET Transit
1705 Monad Road
P.O. Box 1178
Billings, MT 59103
Phone: 406-657-8221
Fax: 406-657-8419
E-mail: wengerr@ci.billings.mt.us

and

Kim Annin, C.M., Manager of Construction Engineering and Planning
Aviation and Transit Department
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105
Phone: 406-657-8482
Fax: 406-657-8438
E-mail: annink@ci.billings.mt.us

CTA ARCHITECTS ENGINEERS CONTACTS

Jim Wertman, Principal
13 North 23rd Street
Billings, MT 59101
Phone: 406-248-7455
Fax: 406-248-3779
E-mail: jimw@ctagroup.com

and

Eirik Heikes, Project Manager
13 North 23rd Street
Billings, MT 59101
Phone: 406-248-7455
Fax: 406-248-3779
E-mail: eirikh@ctagroup.com

EXHIBIT D

SERVICE DELIVERY ADDRESS INFORMATION

ARCHITECT will provide the services to CITY at the following locations: CTA Architect and Engineers, 13 North 23rd, Billings, Montana 59101, and the construction site formerly 2513 Second Avenue North, and physically identified as the southern one-half of the CITY block bordered by Second and Third Avenues North and North 25th and North 26th.

Federal Transit Administration (FTA) - Required Exhibits

EXHIBITS

- E-1 Affidavit of Non-Collusion
- E-2 Disadvantaged Business Enterprise Certifications and Forms
- E-3 Debarment Certification
- E-4 Lobbying Certification
- E-5 List of Subconsultants
- E-6 Federal Transit Administration Assisted Required Clauses

**EXHIBIT E-1
AFFIDAVIT OF
NON-COLLUSION**

AFFIDAVIT OF NON-COLLUSION

I hereby swear (or affirm) under the penalty for perjury:

1. That I am the Consultant (if the Consultant is an individual, a partner in the Proposal (of the Consultant is a partnership) or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Consultant is a corporation);
 2. That the attached Proposal or Proposals has been arrived at by the Consultant independently and have submitted without collusion and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or service described in the Request for Proposal, designed to limit independent Proposals or competition;
 3. That the contents of the Proposal or Proposals has not been communicated by the Consultant or its employees or agents to any person not an employee or agent of the Consultant or its surety on any bond furnished with the Proposal or Proposals and shall not be communicated to any such person prior to the official opening of the Proposal or Proposals; and
 4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

SIGNED _____

FIRM NAME _____

STATE OF)) SS:
COUNTY OF)

This instrument was acknowledged before me on _____(Date)
by _____(Name(s) of persons) _____
as _____(Type of authority, e.g., Officer, trustee, etc.) _____
of _____(Name of party on behalf of whom instrument was executed).

(Seal, if any)

(Signature of Notary Officer)

(Title and rank (optional))
ension expires (optional):)

EXHIBIT E-2
DISADVANTAGED BUSINESS
ENTERPRISE CERTIFICATIONS
AND FORMS

DBE Form A

DBE STATUS

The consultant hereby certifies that:

(Firm Name)

1. **Is - is not** (check one) a Disadvantaged Business Enterprise (DBE); Note To Consultant: If the consultant is a DBE, then the consultant must provide proof of DBE certification by Montana Department of Transportation (MDOT) with proposal submittal.

2. **Is - is not** (check one) a participant of a joint venture in this Proposal.

Note to Consultant: If the consultant is a participant of a joint venture, then the consultant must complete DBE Form "Schedule B: Information for Determining Joint Venture Eligibility" (unless all joint venture firms are minority owned). If the consultant is not a participant, then the consultant should write "N/A" on DBE Form Schedule B.

3. **Will - will not** (check one) involve DBE firms in this project.

Note to Consultant: If the consultant will involve DBE firms, then the consultant must complete DBE Form D "Record of Participation by DBE firms". If the consultant will not involve DBE firms, then the consultant should write "N/A" on DBE Form D. In either case, the consultant shall submit DBE Form E "DBE Unavailability Certification" for every DBE firm from which the consultant unsuccessfully sought to secure DBE participation. DBE Form E and/or DBE Form D shall be submitted at the same time as the list of subcontractors (if requested) or shall accompany the consultant's Proposal.

SIGNATURE: _____ TITLE _____ DATE: _____

STATE OF _____

) SS:
COUNTY OF _____

This instrument was acknowledged before me on _____ (Date) _____
by _____ (Name(s) of persons) _____
as _____ (Type of authority, e.g., Officer, trustee, etc.) _____
of _____ (Name of party on behalf of whom instrument was executed).

(Signature of Notary Officer)

(Seal, if any)

(Title and rank (optional))

(My commission expires (optional):)

DBE Form B

LETTER OF INTENT TO PERFORM

AS A SUBCONTRACTOR

TO: _____
(Name of Prime or General Consultant/Consultant)

The undersigned intends to perform work in connection with the above project as (check one):

an individual a partnership
 a corporation a joint venture

The DBE status of the undersigned is confirmed on the attached DBE Form A. The undersigned is prepared to perform the following described work in connection with the above project, (specify in detail particular work items or parts thereof to be performed).

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Project Commencement Date	Project Completion Date
1.		
2.		
3.		
4.		
5.		

____ Percent of the dollar value of this DBE subcontract will be sublet and/or awarded to non-disadvantaged contractors and/or non-disadvantaged suppliers. The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the City of Billings, Aviation/Transit Department – MET Transit Division.

Name of DBE Firm: _____ Date: _____

Signature: _____ Title: _____

DBE Form C
DBE AFFIDAVIT

(NOTE: THIS PAGE MUST BE COMPLETED BY THE DISADVANTAGED BUSINESS ENTERPRISE CONTRACTOR.)

I HEREBY DECLARE AND AFFIRM that I, _____
(Name)
am the _____ and duly authorized
(Title)
representative of the firm _____
(Name of Corporation or Joint Venture)
whose address and phone number is _____

and further affirm that I am a disadvantaged business enterprise (DBE) as defined by the City of Billings, Aviation/Transit Department – MET Transit Division in the specifications, and that I will provide information if requested by the City of Billings, Aviation/Transit Department – MET Transit Division to document this fact.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

_____ (Affiant) _____ (Date)
STATE OF _____
) SS:
COUNTY OF _____

This instrument was acknowledged before me on _____ (Date) _____
by _____ (Name(s) of persons) _____
as _____ (Type of authority, e.g., Officer, trustee, etc.) _____
of _____ (Name of party on behalf of whom instrument was executed).

_____ (Signature of Notarial Officer)
(Seal, if any) _____
(Title and rank (optional))
(My commission expires (optional):) _____

DBE Form D**RECORD OF PARTICIPATION BY DBE FIRMS**

(NOTE: THIS FORM MUST BE FILLED OUT BY THE CONTRACTOR (OFFEROR) AND SHOULD INCLUDE A GENERAL DESCRIPTION OF WORK TO BE PERFORMED. MATERIALS AND/OR SUPPLIES UNDER THIS CONTRACT MUST BE LISTED BELOW.)

Name of DBE Firm _____

Address _____

Description of Work _____

Name of DBE Firm _____

Address _____

Description of Work _____

Name of DBE Firm _____

Address _____

Description of Work _____

Name of DBE Firm _____

Address _____

Description of Work _____

TOTAL % DBE PARTICIPATION _____

I _____ certify that the information given above on behalf
(Name)

of the consultant is true and correct, and that as _____ of the consultant,
Position

of the proposer, I attest that I **have** - **have not** (check one) met the assigned DBE Goal for this
Contract of _____ %.

_____ (Signature)

DBE Form E**DBE UNAVAILABILITY CERTIFICATION**

Project: _____

Contractor's Name: _____

To demonstrate a good faith effort to utilize Disadvantaged Business Enterprises, contractors and suppliers who cannot meet their DBE participation goals must respond to either Item A or Item B below. Please use one sheet per DBE firm contracted.

ITEM A:

Name of DBE Firm Contacted _____

Form of Proposal Sought (i.e., unit prices, etc.): _____

Dates Contacted: _____

Method of Contact: _____

Results: _____

To the best of my knowledge and belief, the above DBE contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a proposal for the following reason(s):

I, _____, _____
(Name) (Title)of, do hereby certify that the above information
(Contractor's Firm)

is true and correct, and that I have made a good faith effort as documented in ITEM A above to obtain DBE participation in the performance of this Contract.

Signature _____ Date _____I, of _____
(Name) _____ (DBE Company
Name)was offered an opportunity to propose on the above project on _____ (Date)
The above statement is a true and accurate account of why I did not submit a proposal on this project.

(Signature) _____ (Title) _____ (Date) _____

DBE Form E**ITEM B: CERTIFICATION OF NO OPPORTUNITY FOR DBE PARTICIPATION**

There exists no opportunity for subcontracting as part of this project. It is the general practice of (Name of Consultant) to perform all work of this nature solely with its own work force, and to do otherwise would constitute a violation of industry standards.

I, _____, _____
(Name) (Title)

of (Name of Consultant), do hereby certify that the above information is true and correct, and that I have made a good faith effort as documented in ITEM B above to obtain DBE participation in the performance of this Contract.

(Signature)

(Date)

DBE Form Schedule B**INFORMATION FOR DETERMINING
JOINT VENTURE ELIGIBILITY**

(This form must be completely filled out. If an item does not apply to you or your organization, write "NA" in the appropriate space. **NOTE:** This form need not be completed if all joint venture firms are minority owned.)

1. Name of Joint Venture _____
2. Address _____
3. Phone Number _____
4. Identify the firms that comprise the joint venture. (The DBE partner must complete Schedule A.)

(a) Describe the role of the DBE firm in the joint venture (attach extra sheets if necessary):

(b) Describe very briefly the experience and business qualifications of each non-DBE joint venture (attach extra sheets if necessary):

5. Nature of the joint venture's business:

6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of DBE Ownership? _____
8. Ownership of joint venture: (This need not be completed if described in the joint venture agreement, provided in Question 6.)
 - (a) Profit and loss sharing. _____
 - (b) Capital contributions, including equipment. _____
 - (c) Other applicable ownership interests. _____
9. Control of and participation in this Contract. Identify by name, race, sex and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision-making including, but not limited to, those with prime responsibility for:

	Name	Race	Sex	Title
Final Decisions				
Estimating				
Marketing				
Sales				
Hiring/Firing of Management Personnel				
Purchaser of major items/supplies				
Supervision of field operations				
Other				

Note: If, after filing this Schedule B and before the completion of the joint venture's work on the Contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee either directly or through the prime contractor if the joint venture is a subcontractor.

EXHIBIT E-3

**DEBARMENT
CERTIFICATION**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor/Primary Participant _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a three-year period preceding this Proposal, been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public function (federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not, within a three-year period preceding this Proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this Proposal.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT
THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND
THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.**

(Affiant) _____ (Date) _____
STATE OF _____
COUNTY OF _____
) SS:
This instrument was acknowledged before me on _____ (Date) _____
by _____ (Name(s) of persons) _____
as _____ (Type of authority, e.g., Officer, trustee, etc.) _____
of _____ (Name of party on behalf of whom instrument was executed).

(Seal, if any) _____ (Signature of Notary Officer) _____

(Title and rank (optional)) _____
(My commission expires (optional):) _____

EXHIBIT E-4

**LOBBYING
CERTIFICATION**

LOBBYING CERTIFICATION

(To be submitted with a proposal or offer exceeding \$100,000)

The Consultant certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or shall be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
2. If any funds other than Federal appropriated funds have been paid or shall be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
3. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, USC §1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE CONSULTANT OR OFFEROR, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE CONSULTANT OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31, USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Signature of Consultant or

Offeror's Authorized Official _____

Name and Title of Consultant
or Offeror's Authorized Official _____

Date _____

(Note: Consultants are required, pursuant to federal law, to include the above language in subcontracts over \$100,000 and to obtain this lobbying certificate from each subcontractor being paid \$100,000 or more under this contract.)

EXHIBIT E-5
LIST OF SUBCONSULTANTS

EXHIBIT F**LIST OF SUBCONSULTANTS**

	Name of Subcontractor	Type of Work/Services	DBE Yes/No
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

EXHIBIT E-6

FEDERAL TRANSIT ADMINISTRATION
ASSISTED REQUIRED CLAUSES

Exhibit E-6**FTA ASSISTED REQUIRED CLAUSES
FOR CAPITAL AND PROFESSIONAL SERVICE PROCUREMENTS**

It is a requirement of the Federal Government that activities financed, in part, with Federal funds and performed by a third party contractor and its subcontractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements.

Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations. Accordingly, any contractor and its subcontractors performing activities under this contract must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and subcontractors employed as a result of this contract are subject to the same conditions and regulations as set forth herein unless specifically exempted. The prime contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The prime contractor will be held liable for compliance failures by its subcontractors.

Failure to comply will render the prime contractor responsible for damages and/or contract termination.

1. Not Used**2. Non-Collusion**

The Consultant guarantees that the Proposal submitted is not a product of collusion with any other Consultant and that it has not been communicated by the Consultant to anyone not an employee or agent or surety of the Consultant. Consultants are required to furnish a Federal Non-collusion Affidavit (attached). Failure to submit the signed affidavit at the time of proposal opening shall be grounds for disqualification of the Proposal.

3. Incorporation of FTA Terms

General Contract Provisions, includes, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Billings, Aviation/Transit Department –

MET Transit Division (hereinafter referred to as the MET) requests that would cause MET to be in Violation of the FTA terms and conditions.

4. Fly America

The Recipient understands and agrees that the Federal Government will not participate in the costs on international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers", 41 CFR. 301.131 through 301.143.

5. Nondiscrimination Assurance

The Contractor, subrecipients or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MET deems appropriate as specified in the contract.

6. Prompt Payment Provision

The prime contractor must pay subcontractor for satisfactory performance of their contracts no later than 10 days from the receipt of payment made to the prime by MET. Prompt return of retainage payments, if any, from the prime contractor to the subcontractor will be made within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment among the parties may take place only for good cause and with MET's prior written approval. If the prime contractor determines the work of the subcontractor to be unsatisfactory, it must notify MET's project manager and DBE Liaison Officer immediately in writing and state the reasons. Failure by the prime contractor to comply with this requirement will be construed to be a breach of contract and may be subject to sanctions as specified in the contract or any other options listed in 49 CFR Section 26.29.

7. Prohibitions against exclusionary or discriminatory specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the Recipient agrees that it will comply with the requirements of 49 U.S.C. 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

8. Geographic restrictions

The Recipient agrees to refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by FTA, such as stated in Subsection 15.1 of the Master Agreement.

9. Nondiscrimination

During the performance of this contract, Contractor, for itself, its assignees, and successors in interest, agrees as follows:

A. Compliance with Regulations Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

B. Nondiscrimination Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of age, race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, including Procurement of Materials and Equipment

In all solicitations, whether by competitive proposing or negotiation made by Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of the Contractor obligations under this contract and the Regulations relative to nondiscrimination on the grounds of age, race, color, sex, or national origin.

D. Information and Reports Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MET to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information is required, or such information is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to MET, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, MET shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to Contractor under the contract until Contractor complies, and/or
2. Cancellation, termination, or suspension of the contract, in whole or in part.

10. Incorporation of Provisions

Contractor shall include the provisions of Paragraphs A) through E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as MET may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, Contractor may request MET to enter into such litigation to protect the interests of MET.

Affirmative Action in Employment

Contractor shall comply with the provisions of Section 503 of the Rehabilitation Act of 1973.

(A) Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(B) Contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

(C) In the event of Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the secretary of labor pursuant to the act.

(D) Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting officer. Such notices shall state Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(E) Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the secretary issued pursuant to Section 503 of

the Act, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance (41 CFR 60-741.4.4).

11. Third Party Rights

Notwithstanding anything herein to the contrary, the services provided under this Agreement shall not give rise to, nor shall be deemed to or construed so as to confer any rights on any other party, as a third party beneficiary or otherwise.

12. Interest of members of Congress

No member of or delegate to the Congress of the United States may be admitted to any share or part of this agreement or to any benefit arising therefrom.

13. Interest of public officials

No member, officer, or employee of any public body, during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the benefits thereof.

14. Federal Changes

Contractor shall at all time comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15. Not Used

16. Civil rights

The following requirements apply to the underlying contract:

(A) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5532, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(B) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor", 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, Equal Employment Opportunity", as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act", 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(C) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

17. Covenants Against Gratuities

The Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of MET during the period of this contract or for a period of one year thereafter.

18. Ineligible Contractors

In the event the Contractor is on the comptroller General's List of Ineligible Contractors for federally financed or assisted projects, this contract may be canceled, terminated, or suspended by MET.

19. Provisions for Resolution of Disputes or Breaches

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly: 1) The Recipient agrees to notify FTA of any current or prospective major dispute, breach, default, or litigation pertaining to the Project. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees in informing the FTA before doing so. 2) The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share committed to the Project, of any proceeds derived from any third party recovery, except that liquidated damages recovered may be returned to the Project Account in lieu of returning the Federal Share to the Federal Government. 3) The Recipient agrees to pursue all legal rights available under any third party contract. 4) FTA reserves the right to concur in any compromise or settlement of any claim involving Project and the Recipient. 5) FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

20. Access Requirements for Persons with Disabilities ADA

The contractor agrees to comply with the requirements of 49 U.S.C. 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)", 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance", 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/ U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles", 36 C.F.R. Part 1192 and 49 C.F.R. part 38;
- (4) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services", 28 C.F.R. Part 35;

- (5) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities", 28 C.F.R. Part 36;
- (6) U.S. GSA regulations, "Accommodations for Physically Handicapped", 41 C.F.R. subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission," Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
- (9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (10) Any implementing requirements FTA may issue.

21. Notice of Federal Requirements

New Federal laws, regulations, policies, and administrative practices may be established after the date of this Contract, which may apply to this Contract. If Federal requirements change, the changed requirements will apply to the Contract or the performance of work under the Contract as required. All standards or limits set forth in this Contract to be observed in the performance of the work are minimum requirements.

22. Records Retention/Audit and Inspection of Records

- (A) The Contractor shall permit the authorized representatives of MET, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance under the contract until the expiration of three years after final payment under this contract.
- (B) The Contractor further agrees to include in all subcontracts hereunder a provision to the effect that the subcontractor agrees that MET, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, papers, and records of the subcontractor directly pertinent to this contract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (C) The periods of access and examination described above, for records which relate to (1) appeals under the dispute clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract to which an exception has been

taken by the U.S. Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

23. No Federal Government obligations to third parties by use of a disclaimer

The recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipients, any third party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipients and third party contractor.

24. Program fraud and false or fraudulent statements and related acts

The Recipient acknowledges and agrees as follows:

- (A) The Recipient acknowledges that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* And U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Grant Agreement or Cooperative Agreement, the Recipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered by the Grant Agreement or Cooperative Agreement. In addition to other penalties that may be applicable, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.
- (B) The Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

25. Prohibitions

- (A) Section 1352 of title 31, United States Code, among other things. Prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any

Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant loan, or cooperative agreement.

(B) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(C) The prohibitions of the Act do not apply under the following conditions:

Agency and legislative liaison by own employees. The prohibition on the use of appropriated funds, in subparagraph B.1 of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

26. Not Used

27. Equal Employment Opportunity

In connection with the execution of this Contract, the Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, or national origin. The Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to race, religion, color, sex, disability, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Consultant shall also insert a similar provision in all subcontracts except subcontracts for standard commercial supplies or raw materials.

28. Clean Water

(A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

29. Clean Air

- (A) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- (B) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

30. Seismic Safety

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issue on the projects.

31. Patent Rights

If any invention, improvement, or discovery of MET or any contractor or subcontractor is conceived or first actually reduced to practice in the course of or under this Contract or Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, and MET and the contractor or any subcontractor shall notify the FTA immediately and provide a detailed report. The rights and responsibilities of MET, the contractor or subcontractor of any tier, and the Government with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, policies, and any waiver thereof.

32. Rights in Data & Copyrights

The contractor selected as a result of this solicitation agrees that, as applicable, the use of any data produced or delivered under the terms of said contract, including, but not limited to engineering drawings and associated lists, specifications, process sheets, and technical reports, shall be governed by provisions of 49 C.F.R. 18.34. In addition, the contractor agrees that it will not publish such data without the written consent of MET, and, if appropriate, the Federal Government.

33. Environmental Requirements

The contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. Consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality", 42 U.S.C. 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality

regulations on compliance with the National Environmental Policy of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures", 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

34. Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that is contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

35. Certification of Contractor Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion

Title 49 CFR Part 29 and Executive Order 12549 establish regulations pertaining to DOT and other federal contractors at any tier, and procedures applicable to their debarment, suspension, ineligibility or exclusion from participation in any DOT or other federal contracts.

Consultants are required to review the above regulations and to complete and submit a Certification Regarding Debarment, Suspension, Other Ineligibility and Voluntary Exclusion (Section 1.4.15), or furnish an explanation as to why the Certification cannot be provided.

The Consultant agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by MET.

The Consultant further agrees by submitting this Proposal that it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction", in all lower-tier covered transactions over \$25,000 and in all solicitations for lower tier contracts.

36. Restrictions on Lobbying

Section 1352 of Title 31, United States Code, provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person by influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement.

Each Consultant is required to review the above referenced Regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations (Section 1.4.16). Pursuant to federal

regulations, the Consultant is required to have all subcontractors (at any tier) providing more than \$100,000 towards the contract also complete with this Certification, to be included with the Consultant's Proposal.

37. Contract Termination for Default

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, MET may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by MET that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, MET, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

38. Contract Termination for Convenience

MET may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in MET's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to MET to be paid the Contractor. If the Contractor has any property in its possession belonging to MET, the Contractor or will account for the same, and dispose of it in the manner MET directs.

39. Breaches and Dispute Resolution

Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MET's Contracting Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by MET, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Remedies

Unless this contract provides otherwise, all claims, counterclaims, Disputes and other matters in question between MET and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which MET is located.

Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MET, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

40. Notification of Federal Participation

In the announcement of any third party contract award for goods for services (including construction services) having an aggregate value of \$500,000 or more, MET agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

41. Not Used

42. Disadvantaged Business Enterprise (DBE) Utilization

(A) **Goal** MET Transit sets an annual overall DBE goal each year.

While the expected percentage of DBE participation may vary from contract to contract due to availability of DBE's, MET believes the overall goals to be realistically obtainable over the year.

The amount of DBE participation will be determined by the dollar value of the work subcontracted to DBE's, as compared to the total value of all work performed under this contract and/or by the percentage of the net profit that the parties agree will be shared by DBE's where a joint venture is entered into for the completion of the project.

(B) **Instructions to Bidders and Consultants** It is the policy of MET that equal opportunity to participate in its procurement will be provided to DBEs. To accomplish this objective, MET requires, as applicable, all bidders and consultants to complete and return with the Proposal submittals, all DBE

Forms (included in the Exhibit Section of these Solicitation Documents), which obligates the Contractor to assert a good faith effort to attain the specified goal for DBE participation. A bidder/consultant may satisfy the requirements of DBE Form A by having DBE status, by subcontracting portions of the work to DBEs, and/or by entering into a joint venture with DBEs.

(C) Requirements, Terms and Conditions

- (1) A DBE is defined as a small business concern that is owned and controlled by socially and economically disadvantaged individuals. These socially and economically disadvantaged individuals must own 51 percent of the business, and they must control the management of the business. Socially and economically disadvantaged individuals include Women, Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, or any other minorities or individuals found to be disadvantaged by the Small Business Administration (SBA), pursuant to Section 8(a) of the Small Business Act.

To be accepted as a qualified DBE, a Contractor must be certified as a DBE by MDOT before the time of proposal submittal. The MDOT DBE Program Manager is Leslie R. Wootan (406-444-6337). MDOT's DBE certification application forms are available, for Contractors interested in securing MDOT DBE certification prior to proposal opening, on line at www.mdt.mt.gov/business/contracting/civil/dbe.shtml.

Any questions regarding MET's DBE program or questions regarding the DBE forms should be directed to Leslie Wootan.

- (2) A bidder or consultant who fails or refuses to complete and return the applicable enclosures shall be deemed non-responsive and will not be awarded the contract. Where a bidder or consultant intends to attain its goal for DBE participation by subcontracting or use of a joint venture, it shall complete and submit the following seven (7) forms that are included in the Exhibit Section of these Solicitation Documents: all DBE forms shall be completed and submitted with the Proposal. (3) All bidders or consultants are required to submit written assurance of meeting the contract goal in their proposal or proposals and will submit: (1) Names of DBE subcontractors; (2) a description of the work they are to perform; and (3) the DBE percentage of each proposed DBE subcontract. To be a responsive bidder/consultant, a contractor must meet the specified DBE contract goal or demonstrate sufficient good faith efforts to do so. Meeting the contract goal or making sufficient good faith efforts to do so, no less than meeting technical specifications or complying with proposal or Proposal procedures, is a necessary condition of responsiveness.

- (3) The contractor's expressed goal stated in the DBE Affidavit shall express the contractor's commitment to the percentage of DBE utilization during the term of this contract.
- (4) The contractor's commitment to a specific goal is to meet DBE objectives and is not intended, and shall not be used, to discriminate against any qualified company or group of companies.
- (5) The contractor's attainment of the Specific Contract Goal for DBE utilization is required by this document. The signing of the Proposal Form shall constitute a commitment by the contractor to make a good faith effort to meet the Specific Contract Goal. If the contractor fails to attain the specified goal, the bidder/consultant shall complete DBE Form E "DBE Unavailability Certification" as evidence of its good faith efforts. Documentation will also include assurances that the contractor has done the following:
 - (a) Whether the contractor attended any pre-solicitation or pre-proposal meetings that were scheduled by the recipient to inform DBEs of contracting and subcontracting opportunities;
 - (b) Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
 - (c) Whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
 - (d) Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
 - (e) Whether the contractor selected portions of the work to be performed by DBEs to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
 - (f) Whether the contractor provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
 - (g) Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
 - (h) Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and

- (i) Whether the contractor effectively used the services of available minority community organizations; minority contractor's groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

For further guidance and additional steps to take concerning the good faith efforts, see 49 CFR 23, Federal Register, Vol. 64, No. 21, final rule 2/2/1999.

- (6) A prime contractor must make a good faith effort to replace a defaulting DBE with another DBE. The prime contractor must notify MET immediately of the DBEs inability to perform and the contractor's intent to obtain a substitute DBE. If the contractor obtains a substitute DBE, the contractor will notify MET and provide copies or descriptions of new or amended contracts and a completed certification form for each new DBE and any applicable certificate of good faith effort as stated in Item 6 of this section.
- (7) MET, through its DBE Liaison Officer, will review the contractor's DBE efforts during performance of the contract. If the contractor meets its goals, the contractor shall be presumed to be in compliance.

Where the DBE Liaison Officer finds that the contractor has failed to comply with the requirements of this section, MET Contracting Officer will be so informed and will, in turn, notify the contractor, who shall, after receipt of such notice, immediately take the corrective action. If the contractor fails or refuses to comply promptly, MET Contracting Office shall issue an order stopping all or part of the payment and/or work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the contractor. Where the contractor is found to have failed to exert a good faith effort to involve DBEs in the work provided, MET may declare that the contractor is ineligible to receive further MET contracts for a period of up to three (3) years.

- (8) The contractor will maintain those records and documents for three (3) years following performance of the contract that indicates compliance with this section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of MET and will be submitted to MET upon request; together with any other compliance information which such representative may require.
- (9) Nothing in this section shall be interpreted to diminish the present contract compliance review and complaint programs.

Counting DBE Participation Toward Goals

- (A) Once a firm has been granted DBE status by the Montana Department of Transportation (MDOT), or has accepted a certification of eligibility from another agency, the total dollar value of the contract awarded to the DBE shall be counted toward the DBE goal.
- (B) In a joint venture between minority and non-minority contractors, that portion of the contract that the DBE partner is responsible for may be counted toward the DBE goal.
- (C) MET or a contractor may count toward its DBE goal only expenditures to DBEs that perform commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of the contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the recipient or contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.
- (D) Consistent with normal industry practices, a DBE may enter into subcontracts. However, any items not performed by a certified DBE will not be counted toward the participation goal.
- (E) A contractor may count the entire expenditure to a DBE manufacturer, i.e., supplier that produces goods from raw materials or substantially alters them before resale).
- (F) The contractor may count only fees or commissions toward contract goal expenditures to DBEs acting as bona fide brokers.
- (G) The contractor may count 60 percent of expenditures to DBE suppliers that are not manufacturers, provided the DBE supplier performs a commercially useful function in the supply process.
- (H) In determining compliance with this requirement, the total dollars contracted to the DBE will be divided by the awarded contract dollars to determine the percentage of performance. The contractor shall maintain records of payment under this proposal condition. Upon completion of the project, the contractor shall submit a certificate listing all DBEs that engaged in this contract and report the total dollar amount paid to each, including copies of the checks that were paid to DBEs. Consultant is required to provide copies of all checks paid to DBE subcontractors to:

City of Billings, Aviation/Transit Department
MET Transit Division
A/E Design Services for the Downtown MET Transit Operations Center
Attn: Ron Wenger, Transit Manager

PO Box 1178
Billings, MT 59103

DBE Subcontractor's Failure to Perform Successfully.

If the prime contractor finds that a DBE subcontractor is unable to perform successfully, the contractor shall make good faith efforts to replace the DBE subcontractor with another DBE replacement. DBE subcontractors shall have prior approval by MET before the substitution is approved. MET reserves the right to order completion of the work (that was subcontracted to a DBE who is unable to perform successfully), by either of the following methods:

- + Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtain a DBE replacement.
- + Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Resolution Amending Resolution 06-18391 - Vacating of Right-of-Way for Broadwater Avenue in Legacy Subdivision

DEPARTMENT: Public Works Department – Engineering Division

PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: On February 13th, 2006, City Council held a public hearing and passed the Resolution Vacating Broadwater Avenue Right-of-Way for Legacy Subdivision. During the recording process, an error was found in the legal description of the right-of-way being vacated. A new resolution has been prepared amending the previous resolution.

ALTERNATIVES ANALYZED:

- Approve the amended resolution vacating Broadwater Avenue Right-of-Way
- Do not approve the amended resolution vacating Broadwater Avenue Right-of-Way.

FINANCIAL IMPACT: The portion of street being vacated is 22,344 square feet. Right-of-way will be dedicated for Dovetail Avenue and will provide continuity to the west in the future. The City Engineer's Office recommends the right-of-way be vacated at no cost since right-of-way will be dedicated for Dovetail Avenue.

RECOMMENDATION

Staff recommends that Council approve the amended resolution vacating Broadwater Avenue Right-of-Way.

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

ATTACHMENT

A. Exhibit A

RESOLUTION NO. 06-

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, AMENDING
AND SUPERSEDING RESOLUTION NO. 06-18391, A RESOLUTION
DISCONTINUING AND VACATING 650 feet of Broadwater Avenue directly
west of 52nd Street West located in Block 1, Legacy Subdivision.

WHEREAS, on February 13th, 2006 the Billings City Council approved Resolution No. 06-18391 discontinuing and vacating 650 feet of Broadwater Avenue directly west or 52nd Street West located in Block 1, Legacy Subdivision.

WHEREAS, the description in Resolution 06-18391 was incorrectly described and is
corrected as follows:

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of 650 feet of
Broadwater Avenue directly west of 52nd Street West located in Block 1, Legaev
Subdivision 774.92 feet of Broadwater Avenue directly west of 52nd Street West located in
Block 1, Legacy Subdivision as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., 650 feet of Broadwater Avenue directly west of 52nd Street
West located in Block 1, Legacy Subdivision 774.92 feet of Broadwater
Avenue directly west of 52nd Street West located in Block 1, Legacy

Subdivision and more particularly described in *Exhibit “A”* attached, is/are hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described 650 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision 774.92 feet of Broadwater Avenue directly west of 52nd Street West located in Block 1, Legacy Subdivision is in the best interest of the public and can be done without any public detriment. Ownership of the vacated area will revert to the adjacent owner – Rick Dorn.

PASSED by the City Council and APPROVED this 8th day of May, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City does not anticipate issuing bonds for sidewalk projects until some future period. However, the City expects to expend monies related to the projects before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

FINANCIAL IMPACT:

School Route Sidewalks-Various locations throughout the City (CIP)	400,000
Misc Curb, Gutter and Sidewalk-Misc improvements throughout the City (CIP)	400,000
WO 04-12-Alkali Creek	30,000

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

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

ATTACHMENT

A – Resolution relating to financing of certain proposed projects.

ATTACHMENT A

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a resolution entitled: “RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on May 8, 2006 , and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____

; voted against the same: _____

; abstained from voting thereon: _____
; or were absent: _____.

WITNESS my hand officially this _____ day of May 2006

City Clerk

RESOLUTION NO. 06-_____

RESOLUTION RELATING TO FINANCING OF CERTAIN
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE
WITH REIMBURSEMENT BOND REGULATIONS UNDER
THE INTERNAL REVENUE CODE

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

Section 1. Recitals.

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

The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Section 2. Official Intent Declaration.

The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the "Projects").

Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$830,000 (the "Bonds") after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the

bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Section 3. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Section 4. Reimbursement Allocations. The Financial Services Manager shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 8th day of May, 2006.

Ron Tussing, Mayor

Attest:

Marita Herold, CMC/AAE City Clerk

EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
School Route Sidewalks Programs	400,000
Builds sidewalk-related public improvements throughout the City according to establishing priority	
Msc Curb, Gutter and Sidewalks	400,000
Annual replacement and infill program of curb, gutter and sidewalkrepairs, construction of accessibility ramps, and other miscellaneous items throughout the City	
WO 04-12	30,000
Alkali Creek sidewalk, curb and gutter	

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

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Resolution Relating to Financing of Certain Proposed Projects; Establishing Compliance with Reimbursement Bond Regulations under the Internal Revenue Code

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City does not anticipate issuing bonds for Special Improvement Districts 1368, 1370 and 1373 and for Briarwood sanitary sewer extension until June. However, the City expects to expend monies related to the projects before funds are available from the bond sale proceeds. The following resolution allows the City to reimburse those expenses from the bond sale proceeds.

FINANCIAL IMPACT:

SID 1368-Annandale Road extension	227,000
SID 1370-Interlachen Drive	333,000
SID 1373-South Billings Boulevard	291,000
 Briarwood sanitary sewer extension	 4,835,350
Montana SFR Loan	

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

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

ATTACHMENT

A – Resolution relating to financing of certain proposed projects

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a resolution entitled: “RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on May 8, 2006 , and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____

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

WITNESS my hand officially this _____ day of May 2006

City Clerk

RESOLUTION NO. 06-_____

RESOLUTION RELATING TO FINANCING OF CERTAIN
PROPOSED PROJECTS; ESTABLISHING COMPLIANCE
WITH REIMBURSEMENT BOND REGULATIONS UNDER
THE INTERNAL REVENUE CODE

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

Section 1. Recitals.

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

1.02 The City desires to comply with requirements of the Regulations with respect to certain projects hereinafter identified.

Section 2. Official Intent Declaration.

2.01. The City proposes to undertake certain projects, which projects and the estimated costs thereof are generally described on Exhibit A hereto, which is hereby incorporated herein and made a part hereof (the "Projects").

2.02. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds (as hereinafter defined), (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Projects have heretofore been paid by the City and no expenditures will be paid by the City until after the date of this Resolution.

2.03. The City reasonably expects to reimburse some or all of the expenditures made for costs of the Projects out of the proceeds of debt in an estimated maximum aggregate principal amount of \$5,686,350 (the "Bonds") after the date of payment of all or a portion of the costs of the Projects. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

Section 3. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Projects, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

Section 4. Reimbursement Allocations. The Financial Services Manager shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Projects. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Projects and shall specifically identify the actual original expenditure being reimbursed.

Adopted this 8th day of May, 2006.

Ron Tussing, Mayor

Attest:

Marita Herold, CMC/AAE City Clerk

EXHIBIT A

<u>Description of Projects</u>	<u>Estimated Cost</u>
SID 1370-Interlachen Drive	333,000.00
Curb & Gutter, Drive Approaches, Sidewalks and Storm Drain Improvements	
SID 1368-Annandale Road Extension	227,000.00
Water, Sanitary Sewer, Storm Drain, and Street Improvements	
SID 1373-South Billlings Boulevard	291,000.00
Curb, Gutter, Sidewalk and Street Improvements	
Briarwood Sanitary Sewer Extension	4,835,350.00

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Wendy's Scholarship Donation

DEPARTMENT: PRPL/Recreation Division

PRESENTED BY: Joe Fedin, Supt. of Recreation

PROBLEM/ISSUE STATEMENT: Once again the Wendy's Foundation of Montana has stepped forward to provide up to \$4,000 for scholarships for low-income families to be able to enroll their children in Parks & Recreation activities throughout the year. This is a direct reimbursement to the city for receipts processed through the Wendy's scholarship application.

ALTERNATIVES ANALYZED:

- Since this donation offers a positive experience for low-income children and has a positive financial impact for the city the only logical alternative would be to accept this donation and public acknowledge the contribution of the Wendy's Foundation. Council acceptance is required for the first time under administrative order #96, adopted in February 2006.

FINANCIAL IMPACT:

- Since this money allows families to register for programs which they normally would not be able to do because of the family income level, it will generate up to \$4,000 of additional revenue for city recreational program offerings which without this program would not be realized. Last year \$3,545 was awarded in scholarships.

RECOMMENDATION

Staff recommends that Council graciously accept this generous donation from the Wendy's Foundation of Montana and publicly acknowledge this gift to the community.

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

ATTACHMENTS: Wendy's Scholarship Application



WENDY'S YOUTH SCHOLARSHIP
City of Billings Parks and Recreation Department



Guidelines and Application Form

The purpose of this scholarship is to assist families that can not normally afford sporting, cultural or enrichment type activities for their children due to difficult economic hardships. This scholarship fund has been made possible through the generosity of the Wendy's Foundation. The Billings Parks and Recreation Department will register approved applicants that qualify under the guidelines listed below. There are a limited amount of funds available for summer programs as well as school year programs. All scholarship applications will be accepted on a first come, first served basis and subject to class availability.

Parents or legal guardians can fill out the **Scholarship Form** below and return it with an attached **Activity Registration Form** and the City **Reduced Program Fees Application** in person to:

Billings Parks and Recreation Department
ATTN: Wendy's Youth Scholarship Fund
390 North 23rd Street
Billings, MT 59101

Who is eligible? Any Billings youth, up to age 16, who resides within the Billings city limits.

What programs does this apply to? Any current City of Billings Recreation Division youth program or activity. Each youth will be limited to one program or activity choice up to a \$50 dollar value per season.

How do I apply? Just fill out the information below, the Reduced Program Fee Application, and an Activity Registration Form. Please bring a copy of your previous year's tax statement (1040 form) to verify the household income level – this will be returned immediately. It may take up to five business days to award a scholarship from the date it is turned in to us. **Note:** If you have already submitted a Reduced Program Fees Application and have been approved, it is not necessary to complete another application or show the 1040 form.

Parent/Guardian Name: _____ Date: _____
Home Address: _____ City: _____ Zip: _____
Contact phone #: _____

Parent/Guardian Signature: _____

FOR OFFICE USE ONLY: Application #: _____

Date of application: _____ Processed date: _____

Amount of Scholarship: _____ Approved by: _____

Name of Activity/Program: _____ Class Activity #: _____

Child's Name: _____ VSI receipt #: _____

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

AGENDA ITEM:**CITY COUNCIL AGENDA ITEM**
CITY OF BILLINGS, MONTANA
Monday May 8, 2006

TITLE: Grant Application Submittal for the Fair Housing Initiatives Program
U.S. Department of Housing and Urban Development (HUD)

DEPARTMENT: Planning & Community Development Division

PRESENTED BY: Candi Beaudry, Acting Planning & Community Services Director, and
Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: As a recipient of CDBG and HOME funds, the City of Billings is required to affirmatively further fair housing in our community. HUD has recently released its 2006 Fiscal Year - Notice of Funding Availability (NOFA) which provides an opportunity for organizations to apply for federal funds to facilitate HUD's long-term strategic goal for equal opportunity in housing. Last year, the City was awarded \$92,879 in HUD Fair Housing Initiatives Program (FHIP) funding which provided funding for education and outreach activities.

In response to Council direction to fund fair housing activities through a competitive allocation process, staff issued a Request for Proposals to identify partners for this year's FHIP application. Community Development received six responses to the RFP. All were selected to partner with the City in this year's application. Partnering organizations for this year's application include homeWORD, Yellowstone County Council on Aging, Community Housing Resource Board, District 7 HRDC, Interfaith Hospitality Network, and the Billings Partners for American Indian Homeownership.

The City will be applying for the maximum award of \$100,000. The anticipated program period will be the 12 month period starting January 1, 2007. The grant application is due by May 17, 2006 and would fund educational and outreach activities in the Billings community.

ALTERNATIVES ANALYZED: If unable to pursue this grant, the above named partners will need to limit their fair housing educational opportunities for the upcoming fiscal year.

FINANCIAL IMPACT: City Council approval would allow the City of Billings to assist in grant preparation and administration of funded activities.

RECOMMENDATION

Staff recommends that the City Council authorize the submission of the FHIP grant and authorize City staff to negotiate and finalize the grant if awarded.

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

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Acceptance and Recognition of Donation to the Billings Animal Shelter
DEPARTMENT: Police Department (Animal Control Division)
PRESENTED BY: Rich St John, Chief of Police

PROBLEM/ISSUE STATEMENT: On April 12, 2006 the Billings Animal Shelter received two checks as donations to the Animal Shelter totaling \$535.00. Linda and Nedra Maxin of Warden, Montana operate candy vending machines in and around the Billings area and wish to donate a percentage of the proceeds from the machines to the Billings Animal Shelter.

Businesses participating by allowing the machines and who contribute through the purchasing of candy are:

- Ace Hardware 1327 Main Billings 59105
- Brown's Auto and Transmission 1144 Broadwater Billings 59102
- Cigarette Store 251 Main Billings 59105
- Jim and Tracy's 2203 1st Avenue South Billings 59101
- Montana Honda Marine 1428 ½ 14th Street West Billings 59102
- Nissan 2100 King Avenue Billings 59102
- One-Source Lighting 2751 Enterprise Avenue Billings 59102
- Project Veterinarian 1459 Highway 312 East Worden 59088
- Red Oxx 310 13th Street North Billings 59101
- Reliable Tent and Awning 120 North 18th Street Billings 59101
- Syndicut 1414 Main Suite B Billings 59105

Linda Maxin requested this donation be deposited into the general donations account in order that it be used where needed to benefit the animals. As required by Administrative Order #96, we now come before City Council for authorization to accept and deposit this generous donation into the City of Billings, Animal Shelter General Donation Account.

ALTERNATIVES ANALYZED:

- Approval and acceptance of the donation.
- Denial and return of the donation.

FINANCIAL IMPACT: Building, Spaying/Neutering, Education, and General Donation Accounts allow for special projects and needs of the Billings Animal Shelter, our Community and its domesticated animals. This donation to the General Donation Account will be used where needed to benefit the animals.

RECOMMENDATION:

Staff recommends City Council approval and acceptance of this donation to be deposited into the Billings Animal Shelter General Donation Account.

Approved By: City Administrator City Attorney

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Second Reading of an Ordinance Expanding Ward II

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On April 10, 2006, the City Council approved the annexation of the north 19 acres of Certificate of Survey No. 2776. (Annexation #06-02). The petition for annexation was submitted by owners of property, 4A's, LLC, Dean Luptak, Secretary. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward II on April 24, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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 II 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 10 and the SW1/4 of Section 11, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Certificate of Survey 2776, a partition of Tract 1, Recorded September 3, 1993, Under Document No. 1702477, Records of Yellowstone County, Montana, less that portion of Tract 1 previously annexed as Tract 1 of Certificate of Survey 1965 Recorded January 21, 1980, Under Document No. 1154541, Records of Yellowstone County, Montana, annexed by City of Billings Resolution No. 84-14768 passed and approved by City Council December 17, 1984; including all adjacent right-of-way of U.S Highway No. 87 and existing U.S. Highway No. 87 right-of-way south of proposed Annexation wholly surrounded by City of Billings city limits.

Containing 22.516 gross and 19.038 net acres, more or less.

(# 06-02) See Exhibit "A" Attached

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

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 24th day of April, 2006.

PASSED by the City Council on the second reading this 8th day of May, 2006.

THE CITY OF BILLINGS:

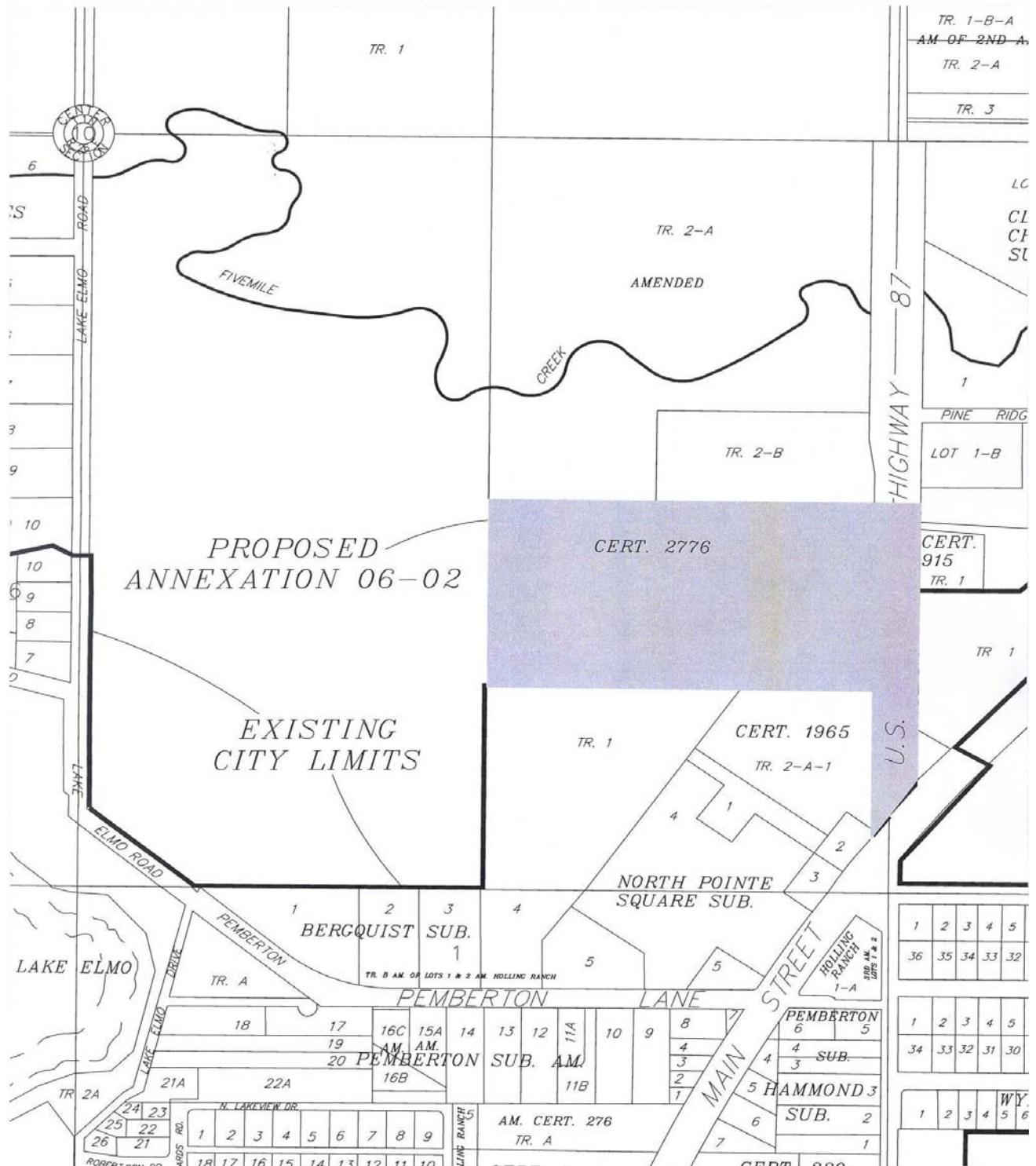
Ron Tussing, MAYOR

ATTEST:

BY:

Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



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

K

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Second Reading of an Ordinance Expanding Ward V

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: On April 10, 2006, the City Council approved the annexation of Tracts 1 and 2, Certificate of Survey No. 3139, Tract 1, Certificate of Survey No. 2379, and two unplatted tracts containing 79 acres. (Annexation #06-03). The petition for annexation was submitted by Ronald and Douglas Frank, owners of properties. After annexation, the property must be added to one of the City's election wards. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward V on April 24, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

1. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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 NE1/4 of Section 5, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 3139, Tracts 1 and 2, Recorded April 18, 2003, Under Document No. 3225759, Records of Yellowstone County, Montana; Certificate of Survey 2379, Tract 1, Recorded June 2, 1986, Under Document No. 1395571; Along with a portion of unplatte land in the NE1/4 of Section 5, T.1S., R.25E., P.M.M. beginning at the SW corner of Certificate of Survey No 3139; Thence S 00° 11' 15" E for an approximate distance of 1321.06 feet to a point on the mid E-W Section line of said Section 5; Thence at an easterly direction along the said mid section line to the SW corner of Certificate of Survey 2379; Thence N 00° 15' 45" W for a distance of 660.00 feet to the NW corner of said Certificate of Survey 2379; Thence N 89° 51'58" E for a distance of 660.00 feet to the NE corner of said Certificate of Survey 2379; Thence N 00° 15' 08" W for an approximate distance of 658.24 feet along the east section line of Section 5 to the N1/16 corner of said Section 5; Thence S 89° 56' 55" W for an approximate distance of 1304.60 feet to the SE corner of Certificate of Survey 3139; Thence S 89° 56'55" W for a distance of 652.30' to the Point of Beginning. Containing 78.749 gross and net acres, more or less.

(# 06-03) 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 24th day of April, 2006.

PASSED by the City Council on the second reading this 8th day of May, 2006.

THE CITY OF BILLINGS:

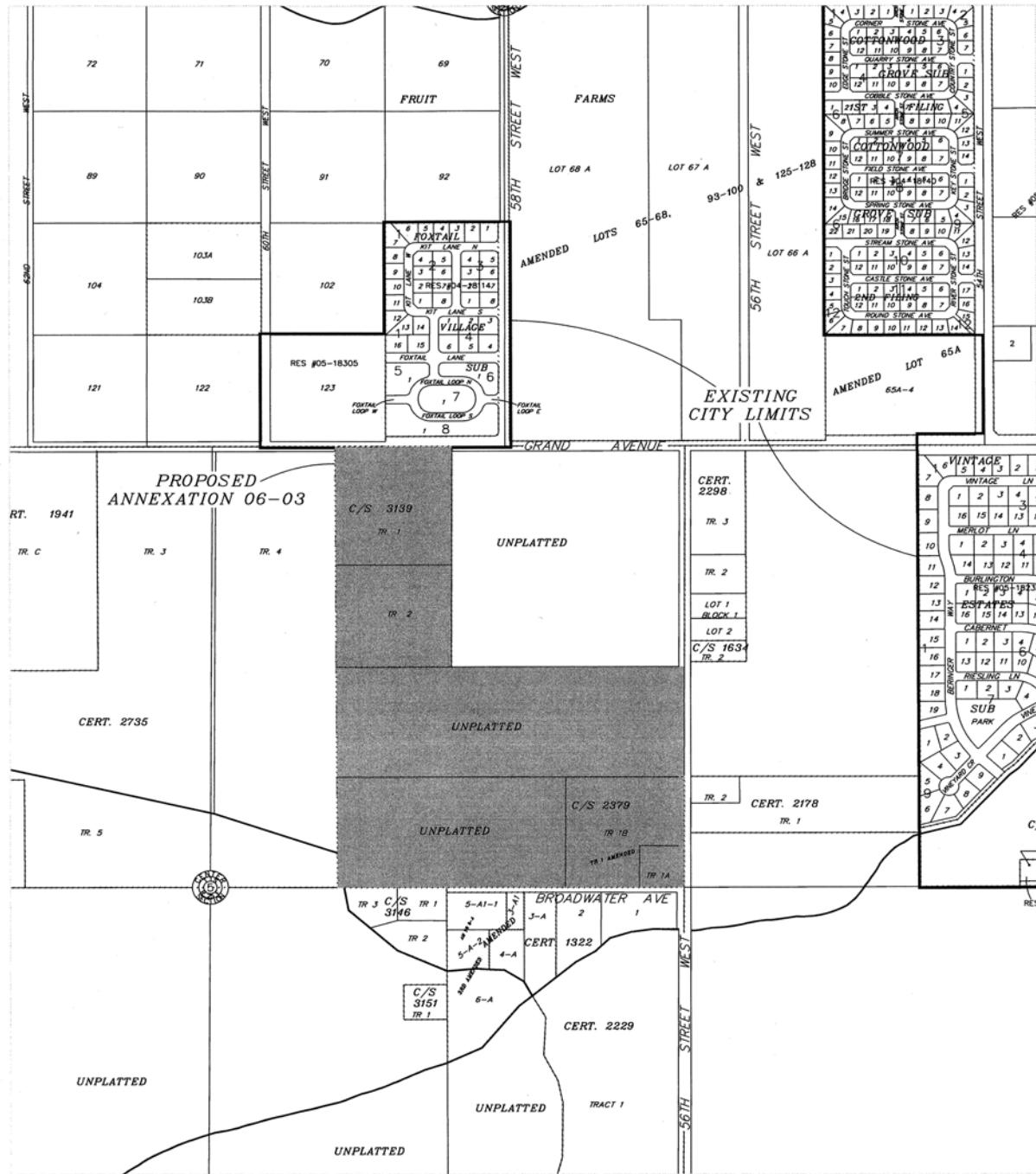
Ron Tussing, MAYOR

ATTEST:

BY:

Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



L1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$952,087.40 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 7, 2006, 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

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L2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Payment of Claims
DEPARTMENT: Administration – Finance Division
PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$791,326.52 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 14, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A – List of claims greater than \$2500

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward II

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: On April 24, 2006, the City Council approved the annexation of Tract 2B of Amended Tract 2, Certificate of Survey 727 containing 1.194 acres. (Annexation #06-04). The request for annexation was submitted by the City of Billings, 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 II will be held on May 8, 2006. The second reading of the ordinance is scheduled for Council action on May 22, 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 II.

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

ATTACHMENT

B. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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

A tract of land situated in the SW1/4 of Section 28, T.1N., R.26E., Yellowstone County, Montana, more particularly described as: Certificate of Survey 727, Tract 2B of Amended Tract 2, Recorded August 4, 2005, under Document No. 3342937, Records of Yellowstone County, Montana, containing 1.194 gross and net acres.

(# 06-04) 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 8th day of May, 2006.

PASSED by the City Council on the second reading this 22nd day of May, 2006.

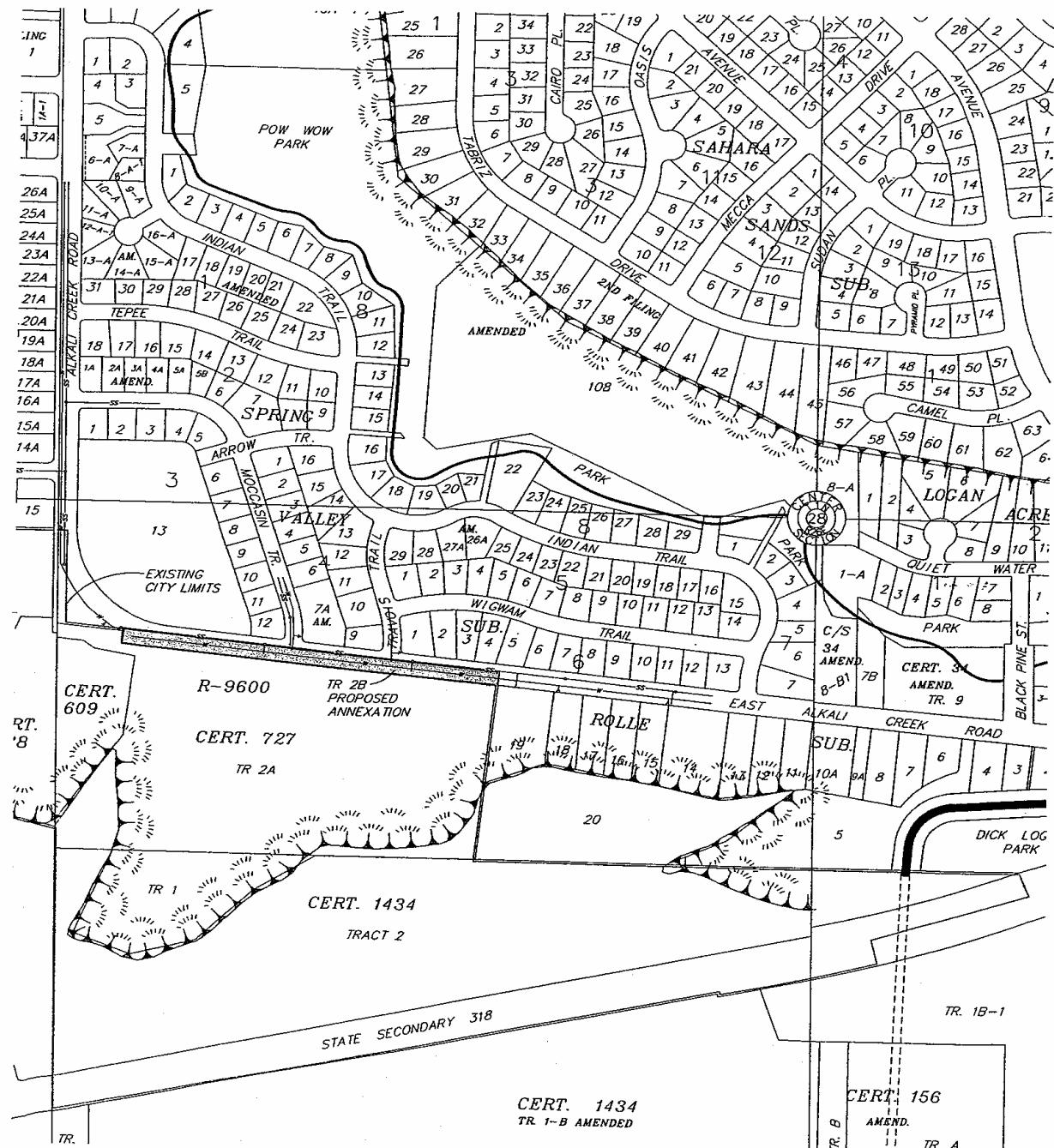
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward I

DEPARTMENT: Planning and Community Services Department, Candi Beaudry, AICP, Interim Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On April 24, 2006, the City Council approved the annexation of an approximate 89.381 acre parcel legally described as the remainder tract of corrected Certificate of Survey 3223, Amended Tract 1. The request for annexation was submitted by McCall Development, Inc., the owners of property. Upon annexation, the property must be added to one (1) of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward I will be conducted on May 8, 2006. The second reading of the ordinance is scheduled for Council action on May 22, 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

C. Ward Ordinance and Exhibit A

ATTACHMENT A

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102I, 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© and the State Law, Billings Municipal Code, Section 11-102© Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:

A tract of land situated in the NW ¼ of Section 20, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: the remainder tract of Corrected Certificate of Survey 3223, Tract 1 Amended, Under Document No. 3360294, Records of Yellowstone County, Montana; Containing 89.381 gross acres, more or less.

(# 06-05) 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 8th day of May, 2006.

PASSED by the City Council on the second reading this 22nd day of May, 2006.

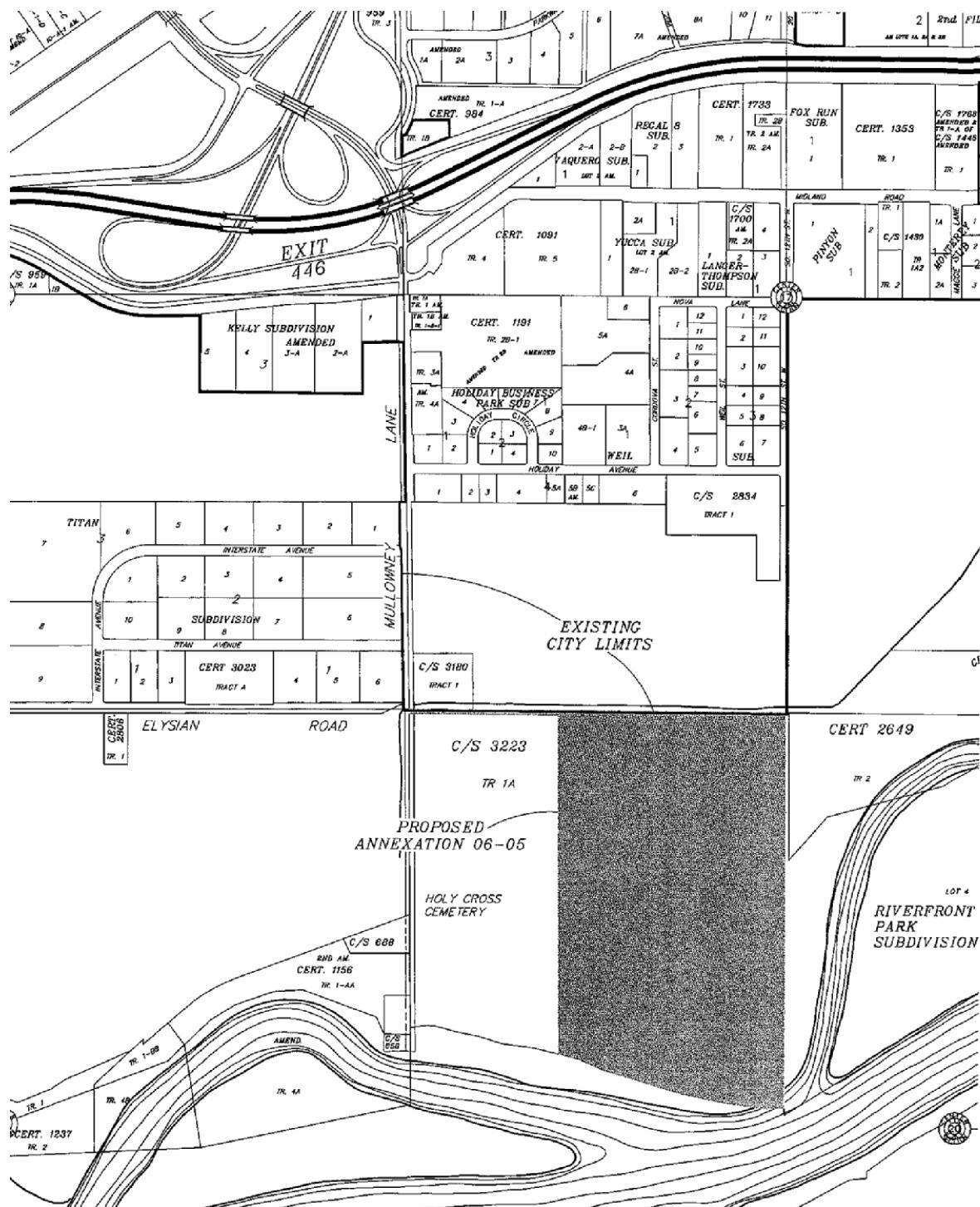
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Public Hearing and Resolution to Create - Park Maint. District No. 4032, Riverfront Pointe Subdivision

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: Riverfront Pointe Subdivision contains approximately 1.36 acres of dedicated park and public open space consisting of primarily the trailway corridor along the south side of the subdivision. The development and improvement of the park will be by the developer through private contract. The Park Maintenance District needs to be created at this time to provide for the maintenance of the trail corridor improvements. As a condition of the Riverfront Pointe Subdivision final plat approval, the lots must establish a park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Riverfront Pointe Subdivision in Park Maintenance District No. 4032.

ALTERNATIVES ANALYZED:

- Create the Park Maintenance District now to assure assessments can be collected in November 2006, to pay costs of maintenance as the park is developed. This is the requirement approved in the Subdivision Improvement Agreement and the staff recommendation.
- Do not create the Park Maintenance District at this time.

FINANCIAL IMPACT: The maintenance costs for the public area improvements are estimated to be \$3,800.00 for the first year for 74 lots. The assessment rate for the first year is \$51.35135 assessed equally to 74 units in District 4032. The first year budget and assessment for the lots is shown in "Exhibit D" of the attached PMD documents for the coming year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4032.

ATTACHMENT

A: Resolution to Create Park Maintenance District No. 4032; and Exhibits A-D thereto attached.

INTRODUCTION

The Public Hearing and consideration of the Resolution to Create Park Maintenance District No. 4032 for the maintenance of Riverfront Pointe Subdivision, public areas is the final step in the process for creating the Park Maintenance District.

PROCEDURAL HISTORY

- The Riverfront Pointe Subdivision plat is in the process of being approved and filed.
- The Resolution of Intent To Create the Park Maintenance District was adopted by the City Council at the meeting of April 10th, 2006.
- A Public Notice of Intent to Create PMD 4032 was advertised April 13th and April 20th, 2006, and mailed to affected property owners explaining the protest and comment procedures and the dates of the protest period.
- The period for filing protest and comment was from April 13th through April 28th, 2006.
- The Public Hearing and Council consideration of the Resolution to Create the district at the May 8th, 2006, regular City Council meeting.

BACKGROUND

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

The Public Hearing and consideration for approval of the Resolution to Create Park Maintenance District No. 4032 for Riverfront Pointe Subdivision, at the May 8th, 2006, City Council Meeting completes the process to create the district, if adopted.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2006, to pay costs of maintenance for the spring and summer of 2006 as the public area development commences. The approved Subdivision Improvements Agreements call for development at this time and requires a Park Maintenance District to be created for maintaining it. This is the staff recommendation.

- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developer has agreed to the development and maintenance of the public areas in Riverfront Pointe Subdivision.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide developed parks and public spaces for their residents to help mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

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

Maintaining this subdivision's public area with a maintenance district continues the process of extending maintenance services to the developing areas of Billings, even though the revenue growth of the city general fund has not been adequate to provide for the maintenance of new parks. Park Maintenance District revenue is estimated to be \$548,986 to offset maintenance expenses in the upcoming 2007 FY PRPL Parks Operation and Maintenance budget and is projected to equal over 25% of the total Parks Division Operations & Maintenance budget this year.

RECOMMENDATION

Staff recommends Council approve the Resolution to Create Park Maintenance District No. 4032.

ATTACHMENT

A: Resolution to Create Park Maintenance District No. 4032; and Exhibits A-D thereto attached.

RESOLUTION NO. 06

**A RESOLUTION CREATING PARK MAINTENANCE
DISTRICT NO. 4032 FOR THE PURPOSE OF MAINTAINING EXISTING
AND FUTURE PUBLIC AREA IMPROVEMENTS IN
RIVERFRONT POINTE SUBDIVISION
CITY OF BILLINGS, MONTANA**

WHEREAS, the City Council of Billings, Montana, hereby finds, determines and declares that:

1. The public interest and convenience require the creation of the above named district.
2. That said district is of more than local or ordinary public benefit.
3. All lands are benefited and no lands that are not benefited have been included within the district. All lands within the district will be enhanced in value to the extent of the assessments to be levied upon such lands, and all lands included within the district should be assessed accordingly to pay the costs and expenses of the district.

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

1. *Jurisdiction and Creation.* Park Maintenance District Number 4032 is of more than local or ordinary public benefit. The Council has acquired jurisdiction to order the proposed improvement, and it does hereby create Park Maintenance District Number 4032. All lands included within Park Maintenance District Number 4032 are benefited and no lands that are not benefited have been included in said district.
2. *General Character of Improvement and Maintenance.* The general character of the improvements to be maintained is as follows: landscaping, trails, trees, irrigation systems, irrigation system water services, storm water detention facilities, lighting and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Park District. The purpose of said district is to provide perpetual maintenance of the above-mentioned items.
3. *Boundaries.* The Boundaries of the district are described and designated on Exhibit "B" attached hereto.
4. *Ownership.* The ownership records of all properties within the said district are described and designated in Exhibit "C" attached hereto.

5. *Maintenance Estimate.* The estimated cost of the proposed maintenance for the first year will be \$51.35135 as described in the Maintenance Estimate attached hereto in Exhibit "D".
6. *Assessment Method.* All eligible properties within the District are to be assessed for a portion of the costs of maintaining the Riverfront Pointe Subdivision, public area improvements as specified herein. Said properties shall not be eligible for assessment until such time as the final plat of the property is filed and the Restrictions on Transfers and Conveyances are lifted. The costs of maintaining the Improvements shall be assessed against the property in the District benefiting from the Riverfront Pointe Subdivision, Public Area Improvements, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.
7. *Payment of Assessment.* The assessments for all maintenance and costs of the district shall be paid in equal annual installments, provided that payment of one-half of said annual assessment may be deferred to May 31 of the year following the assessment. All money derived from the collection of said assessments otherwise shall constitute a fund to be known as Fund of Park Maintenance District Number 4032.
8. *Bonds for Improvement.* There will be no bonds sold for this district as it is for maintenance only.
9. *Engineering.* No engineering will be required.
10. *District Accounts.* The Director of Finance is hereby authorized and directed to establish the necessary accounts to govern the receiving of all revenues and the expenditures of the same district.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this _____
_____ day of _____, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Public Hearing & Resolution – DEQ Maximum Priority Designation for Billings PCE Site

DEPARTMENT: City Council/City Administrator's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: At its April 24, 2006, meeting, the City Council passed an initiative to consider a resolution to the Montana Department of Environmental Quality (DEQ), asking it to put a maximum priority designation on, assign a case manager to, and begin assessment of a tetrachloroethylene (PCE) site underlying an estimated 1,800 homes and businesses in the mid-town Billings area. The area already is designated a high-priority site, but DEQ revises its site priorities on a semi-annual basis. The resolution was requested by Weldon J. Birdwell, Chairperson of the Central –Terry Park Task Force.

In 1993, the State identified an area of about 500 acres in mid-town affected by PCE, industrial solvents that potentially can affect the nervous system, liver and lungs. The PCE was put into the ground as long ago as 1965. Groundwater tests performed in 1999 appeared to show higher PCE concentrations than when DEQ performed tests in 1991-92, and indoor air quality tests performed in 2001 showed higher-than-safe levels of PCE in the area's basements.

ALTERNATIVES ANALYZED:

- Hold the public hearing and adopt the resolution as proposed;
- Hold the public hearing and amend the resolution;
- Hold the public hearing and defeat the resolution.

FINANCIAL IMPACT: No direct financial impact on the City is anticipated, but cleaning up potential environmental hazards can contribute to the area's value and marketability.

RECOMMENDATION

Staff recommends that Council hold the public hearing and adopt the proposed resolution.

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

ATTACHMENTS

Attachment A: Resolution with Exhibits A-1 and A-2
Attachment B: Letter from Mr. Birdwell to DEQ

ATTACHMENT A

RESOLUTION NO. 06- _____

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA,
DECLARING SUPPORT FOR A MONTANA DEPARTMENT OF ENVIRONMENTAL
QUALITY DESIGNATION OF THE BILLINGS PCE SITE
AS HAVING MAXIMUM PRIORITY**

WHEREAS, the Montana Department of Environmental Quality (DEQ) has been aware since 1992 that a significant area of the City of Billings as shown in Exhibit 1 has underlying soil and groundwater contamination from tetrachloroethylene (PCE), which potentially can affect the nervous system, liver and lungs; and

WHEREAS, groundwater tests conducted by DEQ in 1999, compared with tests in 1991 and 1992, indicate the level of PCE present has not diminished with the passage of time, that instead the level of PCE detected has persisted in significant quantities; and

WHEREAS, limited indoor air samples collected by DEQ in 2001 indicated results that warranted additional monitoring, yet none to date has been conducted or scheduled; and

WHEREAS, the Billings PCE Site appears to comply with the criteria required for a maximum priority site designation pursuant to sections (2) (g) and (i) of CERCA Remediation, 17.55.111 Facility Ranking of the Administrative Rules of Montana, as shown in Exhibit 2; and

WHEREAS, the Billings PCE Site is currently designated a “high priority site,” but DEQ revises its site priorities on a biannual basis.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BILLINGS,
MONTANA, DOES HEREBY RESOLVE** to request the Montana DEQ to assign a maximum priority rating to the Billings PCE Site, name a case manager and begin an immediate process to address the site.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 8th day of May, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____

Marita Herold, CMC/AAE, CITY CLERK

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Programs and the FY2006 Annual Action Plan

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The City Council previously held a public hearing on the allocation of the City of Billings FY2006-2007 CDBG and HOME funding and the second year Consolidated Plan Annual Action Plan for FY2006-2007 on Monday, April 24, 2006. Council action is now scheduled for May 8.

ALTERNATIVES ANALYZED: No additional alternatives have been analyzed.

FINANCIAL IMPACT: The public hearing will result in additional public input on the use of CDBG & HOME resources in Billings. In FY2006-2007 the City has \$726,020 in new CDBG funding and \$504,467 in HOME funding available for allocation this year. The new funding allocation from HUD represents an \$110,196 decrease from last year's funding. An additional \$102,196 in CDBG funding is available to allocate this year from projects that have been canceled or completed and \$44,562 from completed HOME projects. This income, in addition to other program income, (shown on Attachment E – Final Revenue) results in a total of \$1,042,925 available for allocation in CDBG funding and \$617,029 in HOME funding. Federal revenues received for the CDBG and HOME programs are provided through the U.S. Department of Housing and Urban Development. The Community Development Board recommendations will be included in the Friday, May 5th packet and comply with funding limitations.

RECOMMENDATION

Staff recommends that the City Council approve the allocation of CDBG and HOME funds in the community for FY2006-2007 and the FY2006-2007 Annual Action Plan as the second year of the Consolidated Plan for FY2005-2009. The recommendation on the allocation of funds has been prepared by the City's Community Development (CD) Board.

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

ATTACHMENTS

- A. FY2006-2007 Annual Action Plan (9)
- B. CD Board Budget Recommendation (2 pages to be included in Friday, May 5 packet)
- C. CDBG / HOME Programs FY2006-2007 Project Summaries (7)
- D. Task Force Priorities (4)
- E. FY2006-2007 Final Revenue (1)

INTRODUCTION

The Community Development Board has made recommendations to City Council on the allocation of CDBG and HOME funding for FY2006-2007. On April 24th, the City Council held a public hearing to provide public input on the recommendations and the allocation of CDBG and HOME resources in the community. Additional background on the Community Development Board's recommendation was provided to the City Council prior to the public hearing during a work session on April 17, 2006.

Also for consideration is the FY2006 Annual Action Plan representing the second year of planning for the FY2005-2009 Consolidated Plan. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and non-federal resources. The Annual Action Plan for FY 2006-2007 will serve as the planning tool for the City's FY CDBG and HOME Programs. The Consolidated Plan is required for participation by the City of Billings in the U.S. Department of Housing and Urban Development (HUD) CDBG and HOME Programs and also for homeless programs funded under the McKinley Act and the Housing for Persons with AIDS (HOPWA) Program. The City of Billings does not receive McKinley funds or HOPWA funds and the City's Consolidated Plan is focused on CDBG and HOME activities. The Consolidated Plan combines the planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME programs allows program planning and citizen participation to take place in a comprehensive context covering both programs. A separate Consolidated Plan is prepared by the City of Great Falls, the City of Missoula, and the State of Montana for urban and rural areas of Montana outside of Billings, Great Falls, and Missoula.

The City Council is asked to consider the input that is received and make a final decision on the FY2006-2007 CDBG and HOME budgets and FY2006-2007 Annual Action Plan on Monday, May 8, 2006.

PROCEDURAL HISTORY

The City of Billings has been receiving CDBG funds since the mid-1970s and HOME funds since the early 1990s. These funds are provided by the federal government and are primarily targeted in Billings to address the affordable housing and neighborhood revitalization needs of the community. The FY2006-2007 budget represents the second year Action Plan to implement the City's 5-Year Consolidated Plan. The Consolidated Plan identifies strategies for the use of housing and community development resources in the community.

In allocating CDBG and HOME resources, the City of Billings goes through an extensive process to gather public input on the use of the funds. This year's applications were available at the beginning of December and due at the end of January 2006. Task force input was requested in February and March. The Community Development Board held budget hearings on the use of

the CDBG and HOME resources on March 23rd and 24th and prepared recommendations on April 4th and finalized recommendations on May 2nd. A copy of the priorities of the task forces, as received during this process, is included in Attachment D.

The City Council public hearing is required by the Federal government and is part of the 30-day public comment period on the program beginning April 7th and extending to May 7th. The City Council is scheduled to act on the CDBG and HOME programs on May 8th. An application will then be submitted to HUD for its review and the program year will begin July 1, 2006.

BACKGROUND

The April 24th public hearing on the FY2006-2007 CDBG / HOME budget and the 2006-2007 Annual Action Plan is part of the public input process for the use of these funds in the community. Each year the City of Billings requests application for the use of these funds for housing and community development activities. These applications are then forwarded to the Community Development Board, which prepares its recommendation for the City Council consideration.

The City is required to provide no more than 20% of its CDBG funding for administration, fair housing and planning type activities (\$188,146) and **must** provide 15% (\$75,670) of its annual HOME allocation for activities carried out by nonprofit housing development organizations or CHDOs (Community Housing Development Organizations). The City is required to provide no more than 10% of HOME funding for administration activities (\$57,247). The City can allocate up to 15% of CDBG resources (\$132,602) to nonprofit organizations or other projects classified as public service activities, ranging from daycare to crime prevention activities.

The City received 25 applications for housing and neighborhood activities and 19 applications for public service funding. Project summaries for activities proposed this year are included as Attachment C. CDBG and HOME resources represent the main federal commitment to communities to address the need to preserve the existing supply of affordable housing and promote the development of new affordable housing. Few other federal, state or local resources are available to address these housing needs.

ALTERNATIVES ANALYZED

The allocation of funding is restricted by the eligibility requirements for CDBG and HOME funding. Projects are focused on activities that promote new affordable housing or preserving the existing supply of affordable housing and those neighborhoods where the affordable housing stock is located. The applications for housing and neighborhood activities are consistent with this focus. The Community Development Board reviewed the proposed projects and analyzed various alternatives for funding.

STAKEHOLDERS

Stakeholders for the CDBG and HOME programs include:

1. Applicants for funding - The City receives applications from a variety of nonprofit organizations which apply for public service funding or for housing funding, such as, Living Independently for Today and Tomorrow and Yellowstone County Council on Aging. A summary of the applicants is included as Attachment C and the complete applicants are available online at <http://www.ci.billings.mt.us/Online/living.php>
2. Neighborhood Task Forces – The task forces are consulted throughout the year regarding neighborhood needs and solutions to those needs utilizing both CDBG and HOME resources. Task forces are asked to comment on or prioritize the applications. These priorities have been provided in Attachment D for your review.
3. The Community Development Board, as an advisory body to the City Council, provides detailed oversight to both the CDBG and HOME programs throughout the year and has gone through an extensive process to prepare its recommendations for the City Council consideration at the April 24th meeting. Additional information of the Community Development Board's recommendation will be provided to the board prior to the April 24th Public Hearing.

CONSISTENCY WITH ADOPTED POLICIES OR PLAN

Projects proposed for consideration are consistent with the goals and objectives of the adopted FY2005-2009 Consolidated Plan for the use of CDBG & HOME resources in Billings. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment completed for the City of Billings by Montana State University-Billings Center for Applied Economic Research. This needs assessment was undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data. This work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities: (1) increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing; (2) An aging population and the associated increase in the percentage of the population with disabilities; (3) A slight decrease in the price of rental housing and short term concern over the number of multi-family units scheduled to be constructed in 2005 and 2006; and (4) The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

The following five strategies are proposed by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

Strategy #1

Promote the preservation of the existing supply of affordable housing in the community by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

Strategy #2

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located by:

- Upgrading the housing stock in older lower income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower income neighborhoods; and,
- Supporting efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Strategy #3

Promote new affordable housing opportunities by:

- Encouraging the development of new affordable single, multi family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

Strategy #4

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and respond to opportunities; and,

- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

Strategy #5

Improve the economic conditions of lower income households in the community by:

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and
- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

Proposed goals and objectives for each of these strategies for FY2006-2007 are identified in the Annual Action Plan included as Attachment A. The complete Draft FY 2005-2009 Consolidated Plan including the 2005 MSU-B Housing Needs Assessment is available for review at <http://www.ci.billings.mt.us/Online/living.php>

RECOMMENDATION

Staff recommends that the City Council approve the allocation of CDBG and HOME funds in the community for FY2006-2007 and the FY2006-2007 Annual Action Plan as the second year of the Consolidated Plan for FY2005-2009. The recommendation on the allocation of funds has been prepared by the City's Community Development (CD) Board.

* The Draft 2006 Annual Action Plan is available for review online at:
<http://www.ci.billings.mt.us/Online/PDF/Government/community/ConPlan2006DRAFT.pdf>

** Each application is available for review on line at:
<http://www.ci.billings.mt.us/Online/living.php>

ATTACHMENTS

- A. FY2006-2007 Annual Action Plan (9)
- B. CD Board Budget Recommendation (2 pages to be included in Friday, May 5 packet)
- C. CDBG / HOME Programs FY2006-2007 Project Summaries (7)
- D. Task Force Priorities (4)
- E. FY2006-2007 Final Revenue (1)

ATTACHMENT A
City of Billings, Montana

ANNUAL ACTION PLAN - FY 2006
CDBG / HOME Programs

EXECUTIVE SUMMARY

This is the City of Billings' second year Action Plan of a 5-year strategic plan that identifies activities it will undertake in 2006-2007 to address priority needs in the community. The draft Annual Action Plan is open for public comment extending from April 7th through May 7th, 2006. A public hearing has been scheduled on April 24, 2006 during the Billings City Council meeting to accept public comments on the Annual Action Plan and Community Development Board recommendations for funding. The Action Plan for FY 2006 will serve as the budget for the City's FY 2006-2007 Community Development Block Grant (CDBG) Program and Home Investment Partnership Program (HOME). Projects proposed for this year are found in Appendix A.

The Consolidated Plan is required for participation by the City of Billings in the U.S. Department of Housing and Urban Development (HUD) CDBG and HOME Programs and also for homeless programs funded under the McKinley Act and the Housing for Persons with AIDS (HOPWA) Program. The City of Billings does not receive McKinley funds or HOPWA funds and the City's Consolidated Plan is focused on CDBG and HOME activities. The Consolidated Plan combines the planning and application requirements for the CDBG and HOME Programs. Consolidation of the submission requirements for the CDBG and HOME Programs allows program planning and citizen participation to take place in a comprehensive context covering both programs. A separate Consolidated Plan is prepared by the City of Great Falls, the City of Missoula, and the State of Montana for urban and rural areas of Montana outside of Billings, Great Falls, and Missoula.

The CDBG and HOME programs covered by the Consolidated Plan have three basic goals:

1. To provide decent housing which includes maintaining the affordable housing stock in the community, increasing the availability of permanent housing that is affordable to lower-income households without discrimination, increasing support of housing which enables persons with special needs to live independently, and to assist homeless persons to obtain affordable housing.
2. To provide a suitable living environment which includes improving the safety and livability of neighborhoods, increasing access to quality facilities and services, reducing the isolation of income groups within areas by deconcentrating housing opportunities and revitalizing deteriorating neighborhoods, restoring and preserving natural and physical features of special value for historic, architectural, or aesthetic reasons, and conserving energy resources.

3. To expand economic opportunities including creating jobs accessible to lower-income individuals, providing access to credit for community development which promotes long-term, economic, and social viability, and empowering lower-income persons in federally assisted and public housing to achieve self-sufficiency.

Activities under these programs must primarily benefit low and moderate income persons. The strategies described in the City of Billings' Consolidated plan outlines a specific course of action for the community's housing and community development activities. The plan builds on local assets to meet the needs of the community and sets forth goals, objectives, and performance measures to assure progress in achieving the strategies described in the plan.

The structure and content of this plan are based on specific requirements of the U.S. Department of Housing and Urban Development for the preparation of the Consolidated Plan. Many terms used in this document are specific to the Consolidated Plan process and HUD programs, and the reader may consult the Community Development Office for assistance.

Available Funding, Expenditure Limits & Match Requirements

CDBG administration and planning activities are budgeted at \$184,014 which is 20% of our new CDBG allocation (\$726,020) and program income (\$194,049). The proposed budget also includes \$102,196 in projects which have been cancelled or completed. 100% of available funding will be used to benefit the low to moderate income.

The amount of funding available for Public Service Activities is \$132,602. This amount represents 15% of prior year income (15% of \$95,279 is \$14,292) and the new CDBG allocation (15% of \$504,467 is \$108,903), and an additional \$9,407 reprogrammed funding from Public Services from prior years.

HOME administration activities are budgeted at \$57,247 which includes 10% of new HOME revenue (10% of \$504,467 is \$50,447) and program income (10% of \$68,000 is \$6,800).

The City of Billings meets HOME matching requirements through low-interest financing available for First Time Homebuyer Loans issued through the Montana Board of Housing (MBOH) and matching funds provided for other affordable housing projects undertaken with HOME funds, such as private contributions and other local bank financing. MBOH contributed \$4 million in set-aside financing during FY2005-2006.

Past Performance

The City of Billings received comments from the U.S. Department of Housing and Urban Development regarding Comprehensive Annual Performance Evaluation Report (CAPER) in January 2006. The overall evaluation concluded the City of Billings CDBG and HOME

programs are making a positive impact on the community and specifically for low to moderate income households.

FFY2005-2009 CONSOLIDATED PLAN SUMMARY

The FFY2005-2009 Consolidated Plan followed a plan development process which included the development of the 2005 Billings Housing Needs Assessment completed by Montana State University-Billings, input from neighborhood groups, and public hearings on housing and community development needs and was adopted by the Billings City Council on May 9, 2005.

The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for addressing those needs in a comprehensive, coordinated fashion utilizing available federal and nonfederal resources. Five primary strategies are proposed in the FY2005-FY2009 Consolidated Plan to meet the diverse needs of Billings' lower-income households. These needs have been primarily identified through the 2005 Billings Housing Needs Assessment. This needs assessment was undertaken utilizing focus groups, individual interviews, a community survey, and an examination of census and housing market data. This work and input from neighborhood groups and community partners resulted in the identification of the following four characteristics of the community that the City of Billings will attempt to address with housing and community development activities:

1. Increasing housing cost compared to income and its effect on low income renters and homeowners in achieving safe, decent & affordable housing;
2. An aging population and the associated increase in the percentage of the population with disabilities;
3. A slight decrease in the price of rental housing and short term concern over the number of multi-family units scheduled to be constructed in 2005; and
4. The age and condition of the community's affordable housing stock, particularly in the older neighborhoods surrounding the City's Central Business District.

Addressing these community characteristics requires the continuation of existing partnerships and developing new partnerships between public, private and non-profit sectors of the community.

FFY 2005-2009 STRATEGIC PLAN

The following five strategies are proposed by the City of Billings in its FY2005-2009 Consolidated Plan to address Billings' housing and community development needs.

Strategy #1

Promote the preservation of the existing supply of affordable housing in the community, by:

- Providing affordable financing to allow low and moderate-income homeowners to perform needed repairs to their homes;
- Providing affordable financing to encourage rehabilitation of multi-family units affordable to lower income residents in the community; and,
- Reducing the loss of existing standard housing units affordable to lower income households due to redevelopment activities.

Strategy #2

Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located, by:

- Preserve the housing stock in older lower income neighborhoods;
- Providing incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods;
- Supporting activities that provide amenities and address infrastructure needs of older lower income neighborhoods; and,
- Supporting efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities.

Strategy #3

Promote new affordable housing opportunities, by:

- Encouraging the development of new affordable single, multi family, and special needs housing in the community through private developers and non-profits; and,
- Promoting homeownership.

Strategy #4

Work as an active partner with non-profits, neighborhood groups, and others to address housing, community, and neighborhood needs, by:

- Encouraging housing and community development organizations to work together to build strong community structures to better address needs and respond to opportunities; and,
- Supporting activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes.

Strategy #5

Improve the economic conditions of lower income households in the community, by:

- Supporting efforts of community organizations to address the human service needs of lower income residents of the community in general and our lower income neighborhoods in particular; and

- Supporting the efforts of economic development and non-profit agencies to undertake strategies that will result in job training and employment opportunities for lower income households.

The complete FY2005-2009 Consolidated Plan can be viewed online:

<http://www.ci.billings.mt.us/Living/community/consolidatedplan2005.php>

COMMUNITY DEVELOPMENT BOARD - FINAL RECOMMENDATIONS

FY 2006-2007

CDBG/HOME GRANT HISTORY			2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	CD Board Recommendations	
							Requested	CDBG	HOME
Fair Housing	Admin / Planning	HN-1	CDBG Administration	\$172,402	\$175,000	\$173,493	\$173,800	\$175,000	\$175,000
		HN-2	HOME Administration	\$57,138	\$60,000	\$63,629	\$66,000	\$65,000	\$57,247
		HN-3	Professional Services			\$15,000		\$25,000	\$9,014
		HN-4	Yellowstone Historic Preservation Board	\$7,500	\$7,500	\$7,500	\$6,500	\$6,500	\$0
		HN-25	McKinley School / North Elevation Task Force					\$15,500	\$0
		HN-5	Community Housing Resource Board	\$15,000	\$15,000	\$15,000	\$13,000	\$13,100	\$0
		HN-6	Community Housing Resource Board - HOME FUNDS				\$2,000	\$5,000	\$0
Affordable Housing Activities	Fair Housing Activities	HN-7	Community Housing Investment Program					\$15,120	\$0
		HN-8	Housing Rehabilitation Loan Program	\$250,000	\$300,000	\$300,000	\$250,000	\$300,000	\$243,216
		HN-9	Minor Home Repair Program	\$100,000	\$115,000	\$100,000	\$60,000	\$100,000	\$60,000
		-	Rental Rehabilitation Program	\$20,000	\$40,000	\$40,000	\$57,290	-	
		HN-10	HOME/CDBG Affordable Housing Support	\$250,000	\$464,000	\$500,000	\$346,133	\$400,000	\$100,000
		HN-11	HOME First Time Home Buyer Program	\$200,000	\$100,000	\$175,000	\$375,000	\$450,000	\$150,000
		-	homeWORD - Homebuyer Education				\$3,000	-	
		HN-12	Set-Aside for CHDOs - must be 15% of HOME funds	\$75,300	\$84,703	\$84,535	\$80,310	\$75,670	\$75,670
		HN-13	Living Independently for Today & Tomorrow	\$15,000	\$15,000	\$10,000	\$10,000	\$12,500	\$10,000
		HN-14	Yellowstone County Council on Aging - MHR Program	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
		HN-15	Rebuilding Together			\$5,000	\$5,000	\$10,000	\$10,000
		-	CDBG Demolition Program			\$10,000		-	
		HN-16	Property Management	\$12,000	\$12,000	\$10,000	\$8,000	\$8,000	\$8,000
		HN-17	Special Assessment Grants	\$50,000	\$50,000	\$40,000	\$40,000	\$50,000	\$50,000
		HN-18	Paint Program			\$5,000	\$2,000	\$5,000	\$2,000
Neighborhood Projects	Neighborhood Projects	HN-19	Code Enforcement - Abatement & Graffiti					\$50,000	\$25,000
		HN-20	Garfield Elementary Renovation - Phase III Parking					\$250,000	
		HN-21	Friendship House - Community Technology Center					\$20,000	\$15,000
		HN-22	PRPL - Skate Park - The Galles Building Improvements				\$30,000	\$50,000	\$50,000
		HN-23	PRPL - Pioneer Park Disc Golf Course				\$40,000 - pools	\$21,000	\$0
Econ Dev	HN-24	BSEDA		\$10,000	\$10,000	\$7,500	\$10,000	\$7,500	\$7,500

Totals: \$2,137,390 \$919,730 \$617,029

PUBLIC SERVICE ACTIVITIES

FY 2006-2007

<i>CDBG GRANT HISTORY</i>		2002-2003	2003-2004	2004-2005	2005-2006	<i>Amount Requested</i>	<i>CD Board Recommendations</i>	
Public Service Activities	PS-1	Big Sky Prevention of Elder Abuse - Social Work	\$5,667	\$9,500	\$9,500	\$9,025	\$10,000	\$9,000
	PS-2	Big Sky Senior Helping Hands Program	\$14,667	\$18,000	\$20,000	\$19,000	\$20,000	\$19,000
	PS-3	Billings Food Bank	\$6,667	\$16,000	\$10,000	\$10,000	\$20,000	\$8,500
	PS-4	Billings Public Schools - REWARDS					\$8,300	\$0
	PS-5	Boys & Girls Club - Bair Family Clubhouse	\$3,667	\$4,000	\$4,000	\$5,000	\$5,000	\$4,000
	PS-19	Central / Terry Task Force - PCE Groundwater Education					\$2,500	\$1,000
	PS-6	Family Service, Inc.	\$16,667	\$17,000	\$20,000	\$20,000	\$30,000	\$19,000
	PS-7	Friendship House - Summer Enrichment	\$11,717	\$9,000	\$10,000	\$12,000	\$15,000	\$10,000
	PS-8	homeWORD - Financial Fitness					\$6,000	\$0
	PS-9	HRDC - Homeless Program				\$10,000 <i>Hsg Counseling</i>	\$40,000	\$0
	PS-10	HRDC - Growth Thru Art	\$9,667	\$10,000	\$10,000	\$11,771	\$25,000	\$10,000
	PS-11	Parents Let's Unite for Kids	\$2,167	\$2,500	\$2,500	\$2,500	\$4,000	\$2,500
	PS-12	Tree Trimming, Planting & Removal	\$15,000	\$15,000	\$10,000	\$10,000	\$15,000	\$8,802
	PS-13	Tumbleweed Runaway Program, Inc.	\$16,000	\$15,050	\$15,050	\$12,500	\$18,000	\$10,700
	PS-14	Yellowstone County Council on Aging - Resource Center					\$10,000	\$2,000
	PS-15	Yellowstone Health Partnership - Med Assistance Program	\$2,667	\$9,500	\$9,500	\$9,500	\$12,000	\$9,000
	PS-16	Young Families Early Head Start	\$7,117	\$10,000	\$11,000	\$10,000	\$32,000	\$9,000
	PS-17	YWCA of Billings Children's/Women's Services	\$1,667	\$2,000	\$2,100	\$2,100	\$2,100	\$2,100
	PS-18	YWCA Gateway House	\$4,667	\$10,000	\$8,000	\$8,000	\$10,000	\$8,000
Totals:						\$284,900	\$132,602	

ATTACHMENT C

FFY 2006 ANNUAL PLAN

Strategy #1 - Promote the preservation of the existing supply of affordable housing in the community.		
Implementation Plan		
Objective	Implementation Plan	2006-2007 Goals
Provide affordable financing to lower income homeowners to perform needed repairs.	Complete substantial rehabilitation work through the Housing Rehabilitation Loan Program.	12 homes
	Complete minor rehabilitation work through the Minor Home Repair Program.	15 homes
	Provide funding for single purpose rehabilitation projects targeted to elderly and special needs lower income homeowners.	6 ramps by LIFTT, 40 home repairs for the elderly by YCCOA, 5 homes by Rebuilding Together
	Pursue grant and private funding to support activities that increase resources available for housing rehabilitation activities.	Staff support & coordination to Rebuilding Together and other organizations performing rehabilitation
Provide affordable financing to rehabilitate rental units affordable to lower income residents.	Complete substantial rehabilitation ¹ work to rental units for occupancy by lower income, elderly and special needs households through the Rental Rehabilitation Program.	10 Rental Units
	Pursue private resources to support rental rehabilitation activities.	Utilize Fannie Mae's America's Community Fund for rental rehabilitation activities to complete 1 project in FY2006
Reduce the loss of existing standard housing units affordable to lower income households due to redevelopment activities.	Organize task force of organizations involved with redevelopment activities to promote the preservation of the existing supply of affordable housing and to mitigate the effects of demolition or conversion when it does occur.	Establish work group by 6/1/2006 to begin work on new housing preservation guidelines ²

¹ For the purposes of this plan, substandard condition of housing is defined by the City of Billings as properties requiring more than \$20,000 in funding to complete all required code related improvements to the property. Substandard condition but suitable for rehab would be those properties where \$20,000 invested would address all safety hazard conditions related items associated with the house within primary systems ranging from electrical, plumbing, heating, roofing, and foundation repairs.

² Housing is being lost due to redevelopment activities separate from CDBG and HOME activities. This work group would be established to study the loss of housing units due to demolition or redevelopment activities and to develop local housing preservation guidelines acceptable to the community. This initiative will increase local awareness of the negative cumulative effect resulting in the loss of affordable housing units. Local guidelines will be developed which balance the expansion needs of our community with affordable housing.

Strategy #2 - Promote the preservation and revitalization of the community's older neighborhoods where the affordable housing stock is located.		
Objective	Implementation Plan	2006-2007 Goals
Preserve the housing stock in older lower income neighborhoods	See also implementation plan for strategy #1.	
	Support house painting program for lower income homeowners.	5 homes
	Support Tree Program to remove and replace diseased or dangerous trees for lower income homeowners.	12 trees through public service activity
	Support activities that help preserve historic properties.	Implement annual YHPB work plan
Provide incentives to encourage development of vacant lots and redevelopment of substandard properties in lower income neighborhoods	See also implementation plan for strategy #3.	
	Provide funding for Affordable Housing Volunteer Demolition program to eliminate blighted substandard properties in lower income neighborhoods and replace with new affordable housing.	1 property
Support activities that provide amenities and address the infrastructure needs of older lower income neighborhoods	Support planned neighborhood improvements included in City's Capital Improvement Plan.	Implement City's FY2006-2007 CIP including improvements to the Galles Building and Central Park Playground
	Provide Special Assessment Grants for lower income households to help pay for SID's resulting from the City's public improvement projects.	10 Homeowners
	Encourage the redevelopment of the South 27 th Street Corridor.	Complete 1 new redevelopment project (800 block S. 28 th , 700 block S. 27 th & 500 block S. S7th)
	Encourage the implementation of the Heritage Trail Bike Plan in lower income areas.	Plan needed improvements in task force neighborhoods
	Promote historic preservation activities in a coordinated manner through Historic Preservation Organizations.	Implement annual YHPB work plan
Support efforts of residents of lower income neighborhoods to work together to address needs and respond to opportunities	Support Neighborhood Planning efforts and provide on-going support for monthly task force meetings.	Complete Neighborhood Plans in North Park and South Side neighborhoods
		Staff support for newsletter monthly mailings
		Facilitate task force initiatives

Strategy #3 - Promote new affordable housing opportunities.		
Objective	Implementation Plan	2006-2007 Goals
Encourage the development of new affordable single family, and multi family, special needs housing in the community through private developers and non-profits	<p>Provide funding through the CDBG / HOME, and Other Affordable Housing Funds to encourage the development of new affordable housing in the community emphasizing new / converted:</p> <ul style="list-style-type: none"> • Elderly and Disabled housing • Special needs housing • Housing in lower income neighborhoods (Strategy #2) • Housing for very low and extremely low-income renters 	20 units
Promote homeownership	<p>Provide funding to Community Development Housing Development Organizations (CHDOs) to undertake activities to meet priority affordable housing needs.</p>	20 units
	<p>Complete Phase II & III of the Kings Green Affordable Housing Project.</p>	15 units
	<p>Work to address loss of mobile/manufactured housing affordable to lower income households.</p>	Establish work groups to study & make recommendations
	<p>Work with Affordable Housing Task Force to identify and address barriers to affordable housing and to encourage infill development.</p>	
	<p>Support activities of the Housing Authority of Billings and other assisted housing providers to meet the needs of very low-income households.</p>	Support implementation of HAB's 5-Year Plan
	<p>Provide funding for support services to address the needs of the homeless, elderly, and special needs populations.</p>	Staff support for the new Mayor's Commission on Homelessness

	Assist lower income households achieve home ownership through the City's First Time Homebuyer program and low interest "set aside" financing available through Montana Board of Housing (MBOH).	48 homebuyers & \$4 million in set aside financing
	Participate with Montana Homeownership Network to increase First Time Homebuyer opportunities in the City leveraging resources available through Fannie Mae, MBOH etc.	20 homebuyers
	Support homebuyer education in partnership with Montana Homeownership Network.	150 households
	Support Billings Partners for American Indian Homeownership effort to increase homeownership rates for American Indians and other minorities in the community.	Implementation of partnership goals to increase the homeownership rate for American Indians in Billings
	Support the Hispanic American Homeownership & Economic Development.	Staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings

Strategy #4 - Work as an active partner with non-profits, neighborhood groups, and others to address housing & community development needs.

Objective	Implementation Plan	2006-2007 Goals
Encourage housing & community and development organizations to work together to build strong community structures to better address needs and respond to opportunities	Sponsor the Affordable Housing Task Force which brings together organizations such as the Housing Authority of Billings, Habitat for Humanity, HRDC, Big Sky EDA, homeWORD, realtors and lenders to address affordable housing issues of common concerns.	Complete work on the new strategic plan and implement plan
	Sponsor the Adjacent Neighborhood Committee which brings together the City's neighborhood task forces and Downtown Partnership.	Host bi-monthly meetings and provide staff support for task force initiatives
	Support the activities of the Billings American Indian Homeownership Partnership which brings together approximately 20 organizations to increase the homeownership rate for American Indians.	Implementation of partnership goal to increase the homeownership rate for American Indians in Billings.

	Support Neighborhood Task Forces to identify and address neighborhood needs.	Complete neighborhood plans & support distribution of monthly newsletters
	Support the Hispanic American Homeownership & Economic Development.	Staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings
Support activities that promote fair housing and increase awareness of the rights and responsibilities of protected classes	Undertake fair housing activities in a coordinated manner.	Implement existing FY2003-2007 Fair Housing Plan through the FY 2006-2007 Fair Housing Action Plan
	Complete new Analysis of Impediments to Fair Housing Choice for the Billings community in 2007 and develop new Fair Housing Plan for FY2008-2012 ³ .	Apply for 2006 Fair Housing Initiatives Program (FHIP) funding through HUD
Strategy #5 - Improve the economic conditions of lower income households in the community.		
Objective	Implementation Plan	2006-2007 Goals
Support efforts of community organizations to address the human service needs of lower income residents of the community in general and lower income neighborhoods in particular	Utilize up to 15% of CDBG funding for public service activities to improve the economic conditions of lower income households.	Develop performance measures to determine impact of assisted activities
Support the efforts of economic development and non-profit agencies to undertake strategies that will result in job	Provide technical assistance to lower income households interested in starting or expanding an existing business.	Provide Technical assistance to 100 lower income households Develop performance measures to determine impact of assisted activities

³ The City of Billings follows a separate five-year cycle for fair housing planning. The most recent Analysis of Impediments to Fair Housing Choice was completed in 2002, resulting in the 2003-2007 Fair Housing Plan.

training and employment opportunities for lower income households	Support the Hispanic American Homeownership & Economic Development.	Staff support to establish new group to increase economic opportunities and homeownership for Hispanic Americans in Billings
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ATTACHMENT D
COMMUNITY DEVELOPMENT APPLICANTS
HOUSING & NEIGHBORHOOD ACTIVITIES FOR FY2006-2007

TABLE OF CONTENTS

		<u>Amount</u>
ADMINISTRATION/PLANNING		
1. CDBG Administration		\$175,000
2. HOME Administration		\$ 65,000
3. Professional Services		\$ 25,000
4. Yellowstone Historic Preservation Board		\$ 6,500
FAIR HOUSING ACTIVITIES		
5. Community Housing Resource Board – CDBG		\$ 13,100
6. Community Housing Resource Board – HOME		\$ 5,000
7. Community Housing Investment Program		\$ 15,120
AFFORDABLE HOUSING ACTIVITIES		
8. Housing Rehabilitation Loan Program		\$300,000
9. Minor Home Repair Program		\$100,000
10. HOME/CDBG Affordable Housing Support Program		\$400,000
11. HOME First Time Home Buyer Program		\$450,000
12. Set-Aside for CHDOs		\$ 75,670
13. Living Independently For Today & Tomorrow		\$ 12,500
14. Yellowstone County Council on Aging – Minor Home Repair		\$ 5,000
15. Rebuilding Together – Home Rehabilitation		\$ 10,000
NEIGHBORHOOD PROJECTS		
16. Property Management		\$ 8,000
17. Special Assessment Grants		\$ 50,000
18. Paint Program		\$ 5,000
19. Code Enforcement – Abatement & Graffiti		\$ 50,000
20. Garfield Elementary Renovation – Phase III Parking / Sidewalks		\$250,000
21. Friendship House – Community Technology Center		\$ 20,000
PARK Improvements		
22. PRPL – Galles Building Renovation		\$ 50,000
23. PRPL – Pioneer Park Disc Golf Course Improvements		\$ 21,000
ECONOMIC DEVELOPMENT		
24. BSEDA – Small Business Development Center		\$ 10,000
Total Requested		\$2,121,890

COMMUNITY DEVELOPMENT APPLICANTS
HOUSING & NEIGHBORHOOD ACTIVITIES - PROJECT SUMMARIES
FY 2006 - 2007

<i>ADMINISTRATION / PLANNING / FAIR HOUSING ACTIVITIES</i>		
HN - 1	<i>CDBG Administration</i> Funds are requested for general administration expenditures for CDBG Program including office space, salaries and benefits for various staff positions. CDBG also provides the resources for administration for other grant programs related to Community Development received by the City.	\$175,000
HN - 2	<i>HOME Administration</i> Funds are requested for general HOME administration expenditures For HOME Program.	\$65,000
HN - 3	<i>Professional Services</i> Funds are used to contract for professional services on an as-needed basis. In 2007, funds will be needed to conduct the Analysis of Impediments to Fair Housing Choice as a HUD requirement. In addition, \$5,000 would be set aside to assist non-profit organizations with pre-development costs for affordable housing projects. Those organizations that are not currently CHDOs or not eligible for HOME predevelopment assistance would be eligible to apply for this funding.	\$25,000
HN - 4	<i>Yellowstone Historic Preservation Board</i> Funds will be used to match \$5,500 in grant funding made available to Certified Local Governments for historic preservation activities through the Montana State Historic Preservation Office. This funding is used to carry out historic preservation activities in Billings and Yellowstone County.	\$6,500
HN - 5	<i>Community Housing Resource Board - CHRB</i> <i>Fair Housing Education & Outreach</i> Funds are requested to finance the contract labor position, supplies, and postage to further fair housing opportunity through community education and outreach.	\$13,100 CDBG Funding
HN - 6	<i>Community Housing Resource Board - CHRB</i> <i>Fair Housing Education & Outreach</i> Funds are requested to finance the contract labor position, supplies, and postage to further fair housing opportunity through community education and outreach.	\$5,000 HOME Funding
HN - 7	<i>Community Housing Investment Program - CHIP</i> <i>Fair Housing Inclusive Residences</i> Funds are requested for salaries, employee benefits, rent, and other administrative costs to conduct the identification, assessment, and processing of fair housing complaints and other education and enforcement activities.	\$15,120
<i>AFFORDABLE HOUSING ACTIVITIES</i>		
HN - 8	<i>Housing Rehabilitation Loan Program</i> Funds are requested to rehabilitate up to 15 homes throughout the City of Billings. The program is intended to provide affordable financing to low / moderate income applicants to provide substantial improvements that help preserve the City's affordable housing stock and revitalize older neighborhoods. Funds will be used to partially fund the CD Grants Coordinator positions.	\$300,000

HN - 9	<i>Minor Home Repair Program</i>	\$100,000
	Funds are requested to assist approximately 20 low-income homeowners with emergency repairs related to basic systems or accessibility for a physically disabled occupant. The program is available for mobile / manufactured mobile homes and for owner / occupied homes that are not appropriate for the Housing Rehabilitation Loan Program.	
HN - 10	<i>HOME / CDBG Affordable Housing Support Program</i>	\$400,000
	Funds are requested to encourage the development of affordable housing for lower-income households in the City of Billings. Applicants for this program can be for-profit developers or non-profit agencies.	
HN - 11	<i>HOME First Time Home Buyer Program</i>	\$450,000
	Funds are requested to assist approximately 40 low-income families in the purchase of their first home. The program is designed to provide financial assistance to help qualify for traditional housing financial programs to purchase a home. Funds will be used to provide down payment assistance, closing costs, and minor repairs and for related project administration expense.	
HN - 12	<i>HOME Set-Aside Community Development Organizations (CHDO)</i>	\$75,670
	As a recipient of HOME funds, the City of Billings must provide at least 15% of its funding for CHDO activities. This funding is requested for CHDOs to develop affordable housing in the community.	
HN - 13	<i>Living Independently for Today and Tomorrow (LIFTT)</i>	\$12,500
	Funds are requested to construct or provide maintenance work on ramps for low-income persons with disabilities to access their homes. Approximately six households will be assisted.	
HN - 14	<i>Yellowstone County Council on Aging – Minor Home Repair Program</i>	\$5,000
	Funds are requested for this Minor Home Repair program which assists low-income persons over the age of 60 with safety-related repairs.	
HN - 15	<i>Rebuilding Together – Home Rehabilitation</i>	\$10,000
	Funds are requested for building materials and construction costs to assist up to five low-income households. Volunteers paint, clean, weatherize, and do carpentry, plumbing, roofing, and electrical work.	

NEIGHBORHOOD PROJECTS

HN - 16	<i>Property Management</i>	\$8,000
	Funds are requested to pay existing SIDs and maintain weeds and snow on property previously acquired through the CDBG program. These properties are primarily located along South 27 th Street.	
HN - 17	<i>Special Assessment Grants</i>	\$50,000
	Funds are requested to provide grant funds to lower-income households impacted by Special Improvement District assessments for public improvements such as curb, gutter, and sidewalk projects in lower income areas.	
HN - 18	<i>Paint Program</i>	\$5,000
	Funds are requested to assist approximately 10 Billings homeowners to purchase paint and painting materials in order to paint the exterior of their owner-occupied homes. This program would be available to both stick-built and mobile / manufactured homes who meet total household income of 60% median income or less.	

HN - 19	<i>Code Enforcement – Abatement & Graffiti</i>	\$50,000
	Funds are requested to assist in the costs of voluntary abatements, graffiti removal for low / moderate income households, and for the placement of sanitary equipment to clean unkempt areas.	
HN - 20	<i>Garfield Elementary Renovation – Phase III Parking / Sidewalks</i>	\$250,000
	Funds are requested for the renovation of parking spaces and sidewalks at Garfield Elementary School. Costs will fund professional contract services, repair / maintenance, insurance / financial / legal services.	
HN - 21	<i>Friendship House – Community Technology Center</i>	\$20,000
	Renovation funding is requested to remodel and expand an old storage room off of the gymnasium to house the new Community Technology Center.	
<i>PARK IMPROVEMENT PROJECTS</i>		
HN - 22	<i>PRPL – Galles Building Renovations</i>	\$50,000
	Funds are requested for remodeling first floor of the building with restrooms, concession area, commercial / office space, exterior lighting and security measures.	
HN - 23	<i>PRPL – Pioneer Park Disc Golf Course Improvements</i>	\$21,000
	Funds are requested to clean up and restore heavily used wear areas around “tee” throwing points and the target baskets.	
<i>ECONOMIC DEVELOPMENT</i>		
HN - 24	<i>Big Sky Economic Development Authority (BSEDA) – Small Business Development Center</i>	\$10,000
	Funds would be used to supplement the operational expense of the program and provide training materials free of charge to clients attending pre-business workshops.	

ATTACHMENT E
COMMUNITY DEVELOPMENT APPLICANTS
PUBLIC SERVICE ACTIVITIES FOR FY2006-2007
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1. Big Sky Prevention of Elder Abuse – Social Work	\$ 10,000
2. Big Sky Senior Helping Hands Program	\$ 20,000
3. Billings Food Bank	\$ 20,000
4. Billings Public Schools - REWARDS	\$ 8,300
5. Boys & Girls Club of Yellowstone Co.	\$ 5,000
6. Family Service, Inc.	\$ 30,000
7. Friendship House – Summer Enrichment	\$ 15,000
8. homeWORD – Financial Fitness	\$ 6,000
9. HRDC – Community Partnership for the Homeless Program	\$ 40,000
10. HRDC – Growth Thru Art	\$ 25,000
11. Parents Let's Unite for Kids – Transition Training	\$ 4,000
12. Tree Trimming, Planting, & Removal Program	\$ 15,000
13. Tumbleweed Runaway Program, Inc.	\$ 18,000
14. Yellowstone County Council on Aging – Resource Center	\$ 10,000
15. Yellowstone Health Partnership – Medication Assistance Program	\$ 12,000
16. Young Families Early Head Start	\$ 32,000
17. YWCA - Children's Services	\$ 2,100
18. YWCA - Gateway House	\$ 10,000
 Total Requested	 \$282,400

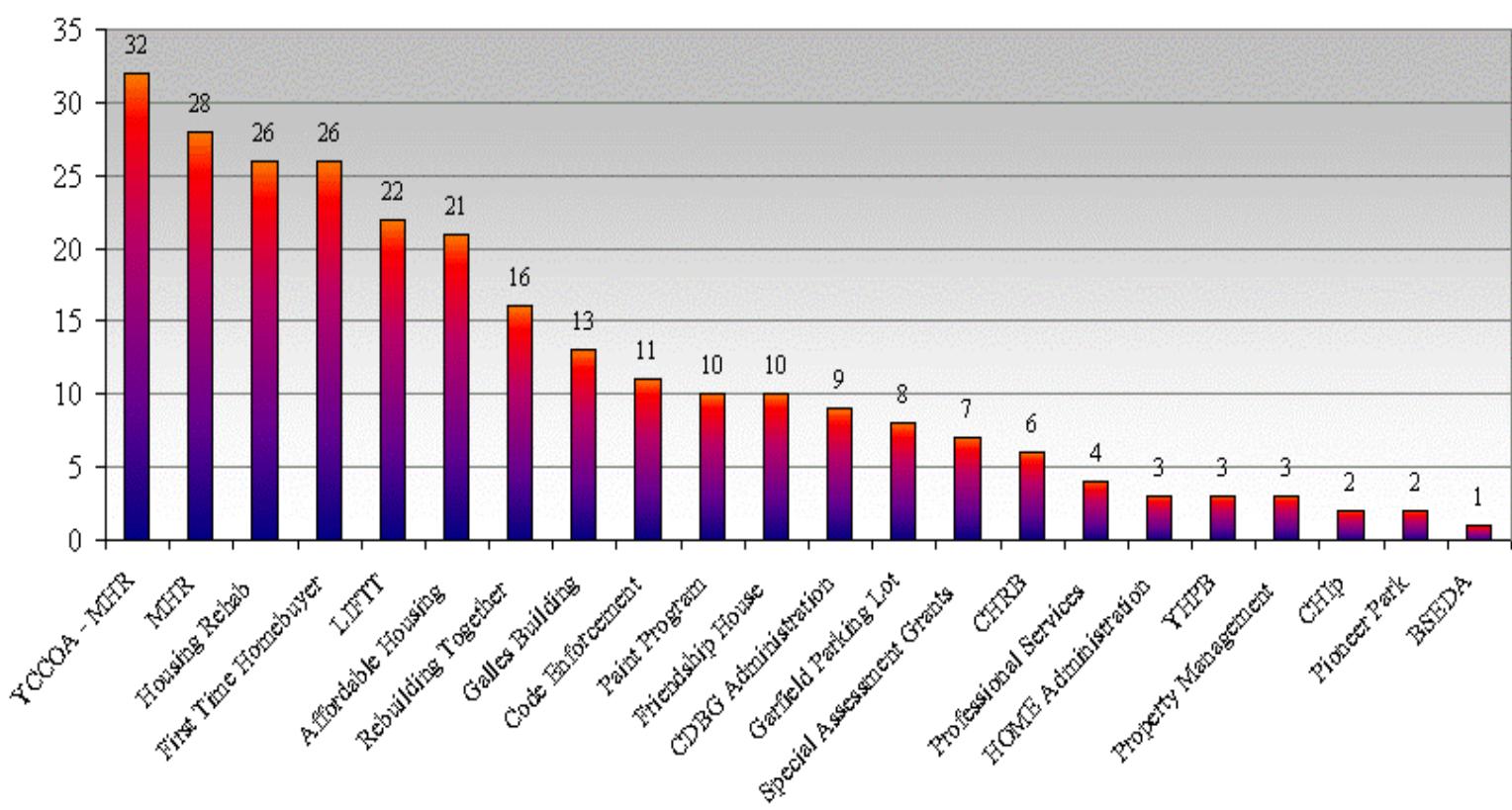
COMMUNITY DEVELOPMENT APPLICANTS
PUBLIC SERVICE ACTIVITIES - PROJECT SUMMARIES
FY 2006 - 2007

PS - 1	<i>Big Sky Prevention of Elder Abuse – Social Work</i>	
PS - 1	Funds are requested to help pay the salary of the Elder Support Social Worker who works with elders and disabled adults to prevent abuse and remediate effects of abuse by resorting economic stability to clients and helping them continue to live safely and independently at home.	\$10,000
PS - 2	<i>Big Sky Senior Helping Hands Program</i>	
PS - 2	Funds are requested for in-home staff salaries providing in-home services to very low-income, vulnerable elders in the Billings community. Services include homemaking, shopping, transportation, socialization, assistance with personal care and hygiene, medication management, health monitoring and health care.	\$20,000
PS - 3	<i>Billings Food Bank</i>	
PS - 3	Funds are requested to purchase a walk-in freezer which will allow greater capacity in the second warehouse.	\$20,000
PS - 4	<i>Billings Public Schools – REWARDS</i>	
PS - 4	Funding is requested to pay for the salaries of two certified teachers at Orchard School who will work in the REWARDS program. This program provides students extended learning from 2:30pm to 5:30pm in a safe environment.	\$8,300
PS - 5	<i>Boys & Girls Club of Yellowstone County</i>	
PS - 5	Funds are requested to pay for wages for a part-time staff member to manage the technology education center at the club.	\$5,000
PS - 6	<i>Family Service, Inc.</i>	
PS - 6	Funds are requested to prevent homelessness of families living in low-income situations. Services are available to help with rents, mortgages, utilities, and deposits.	\$30,000
PS - 7	<i>Friendship House - Summer Enrichment Program</i>	
PS - 7	Funds are requested for personnel and administrative costs associated with the Summer Enrichment Program (SEP). SEP is a comprehensive program that addresses the multi-needs of youth ages 4 - 12 and provides basic human service needs.	\$15,000
PS - 8	<i>homeWORD – Financial Fitness</i>	
PS - 8	Funds are requested to support the salary of the Financial Fitness Coordinator who would provide the Financial Fitness education course (15 hour, 5 week course).	\$6,000
PS - 9	<i>HRDC – Community Partnership for the Homeless Program</i>	
PS - 9	Funding is requested for salaries, benefits, and other administrative costs to expand intensive case management and supportive services to homeless individuals and families in the Montana Rescue Mission and the Women and Family Shelter.	\$40,000
PS - 10	<i>HRDC - Growth Thru Art</i>	

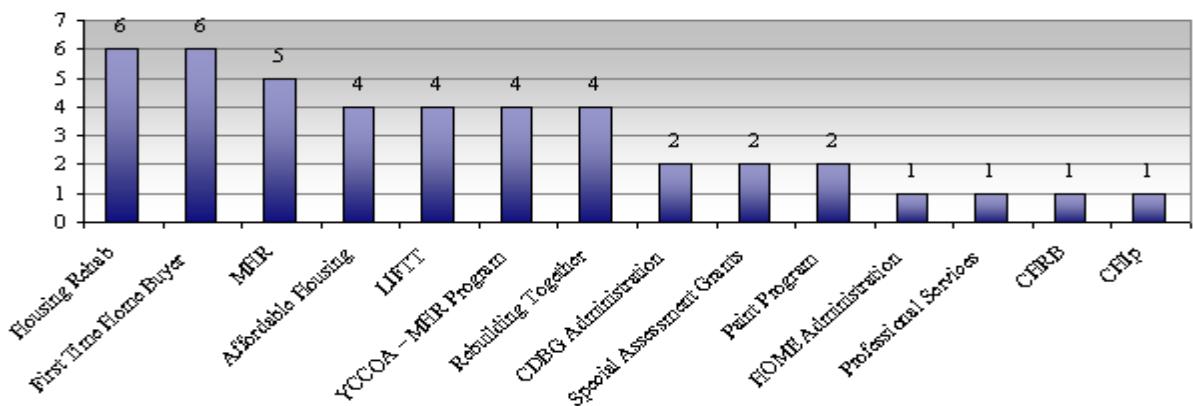
	Funds are requested to fund personnel and art supplies allowing the organization to continue to provide ongoing studio experiences, workshops, presentations and exhibitions, and opportunities to celebrate artists' personal growth through artistic expression for adults with disabilities.	\$25,000
PS - 11	<i>Parents Let's Unite for Kids (PLUK) – Transition Training for Kids with Special Needs</i> Funds are requested for personnel, printing and postage costs for this new program. The Transition Project will focus on preparing young people with disabilities (roughly ages 12 to 18) for the process of moving from their public school lives into adulthood – preparing for employment, secondary education or vocational training.	\$4,000
PS - 12	<i>Tree Trimming, Planting, & Removal Program</i> Funding is requested to remove diseased or dangerous trees and to plant new trees for low-income households throughout the City of Billings.	\$15,000
PS - 13	<i>Tumbleweed Runaway Program, Inc. - Runaway & Homeless Youth Program (RHY)</i> Funding is requested to support wage / salary for a crisis counselor working as a mentor, and service broker to troubled youth and their families. Services include crisis intervention, emergency shelter, family mediation, short term counseling, adolescent support groups and advocacy.	\$18,000
PS - 14	<i>Yellowstone County Council on Aging – Resource Center</i> Funds are requested for staff salaries to manage the Resource Center. This program assists the elderly, adults with physical disabilities in identification of needs, accessing services, completing program assistance applications, and advocacy.	\$10,000
PS - 15	<i>Yellowstone Health Partnership - Medication Assistance Program</i> Funds are requested for salaries of staff for the Medication Assistance Program (MAP) at the Deering Clinic site.	\$12,000
PS - 16	<i>Young Families Early Head Start - Child Care for High School Parents</i> Funding is requested to support salaries and benefits for staff who provide comprehensive child care and development services to infants and toddlers whose parents are teenagers, completing their high school education.	\$32,000
PS - 17	<i>YWCA - Children's Services</i> Funding is requested to provide partial scholarships to low and moderate income families accessing YWCA Children's Services programs for affordable and quality care / educational experiences. The programs include preschool, child care, and after-school care.	\$2,100
PS - 18	<i>YWCA - Gateway House Domestic Violence & Sexual Assault Services</i> Funding is requested to support general operating expenses of the program, which includes utilities, phones taxes, supplies, security, building repairs, and accountant contracted services. Gateway services include housing, support, education, and advocacy for victims of domestic violence and sexual assault.	\$10,000

CDBG / HOME FY 2006-2007

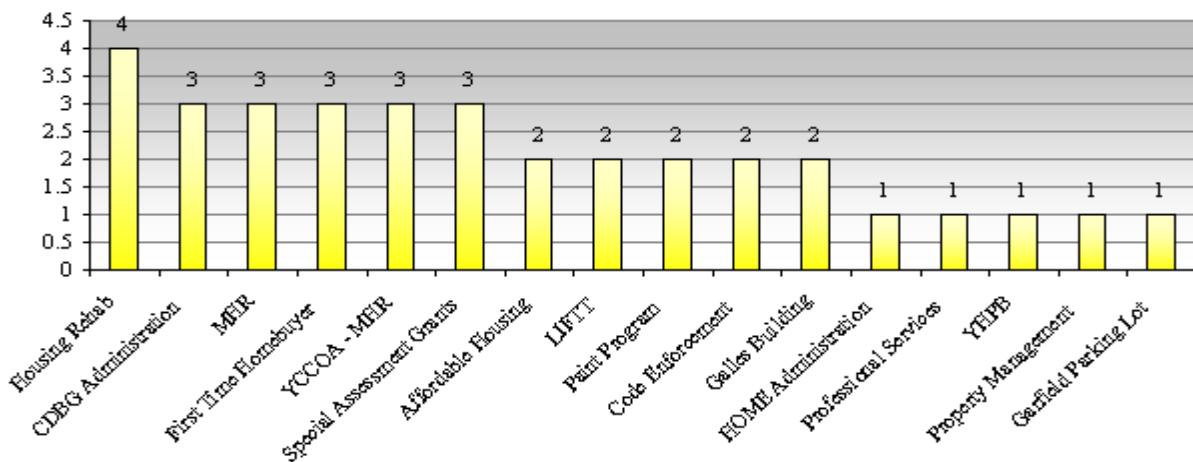
All Task Forces - Combined (55 Respondents)



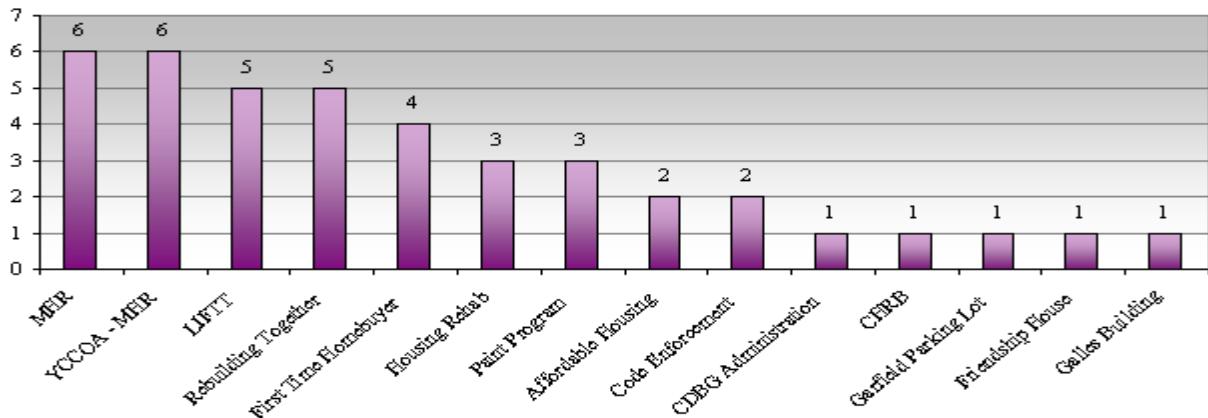
Central - Terry Priorities - 9 Respondents



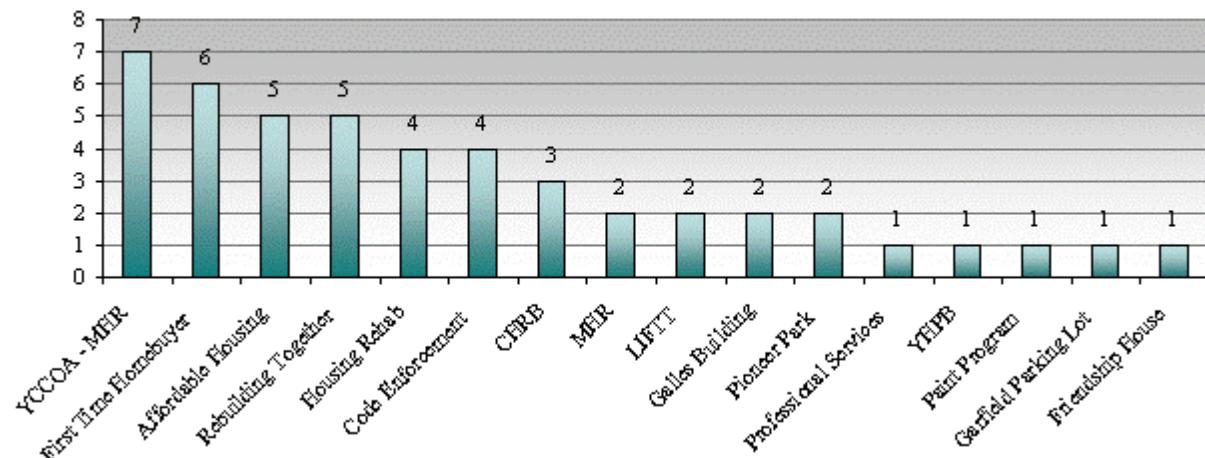
North Park Priorities - 7 Respondents



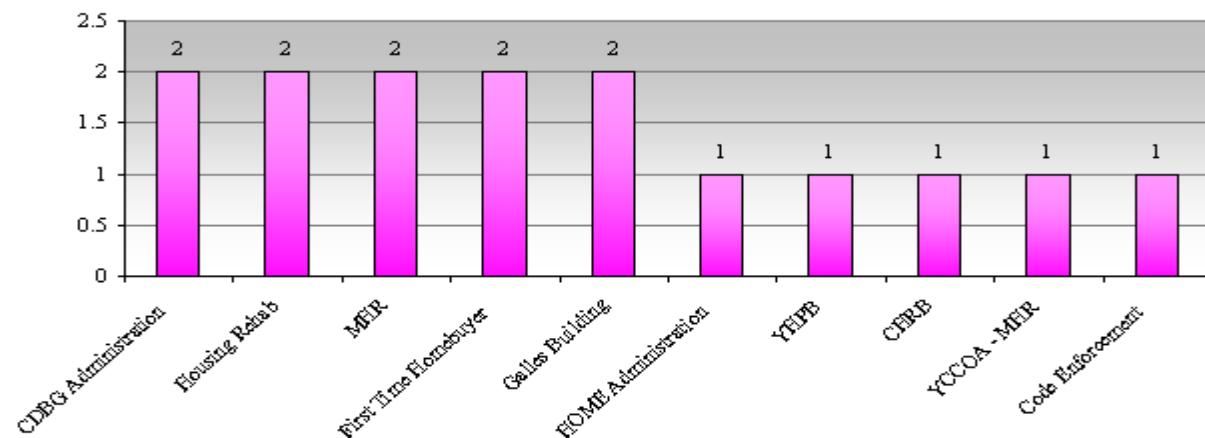
West End Priorities - 9 Respondents



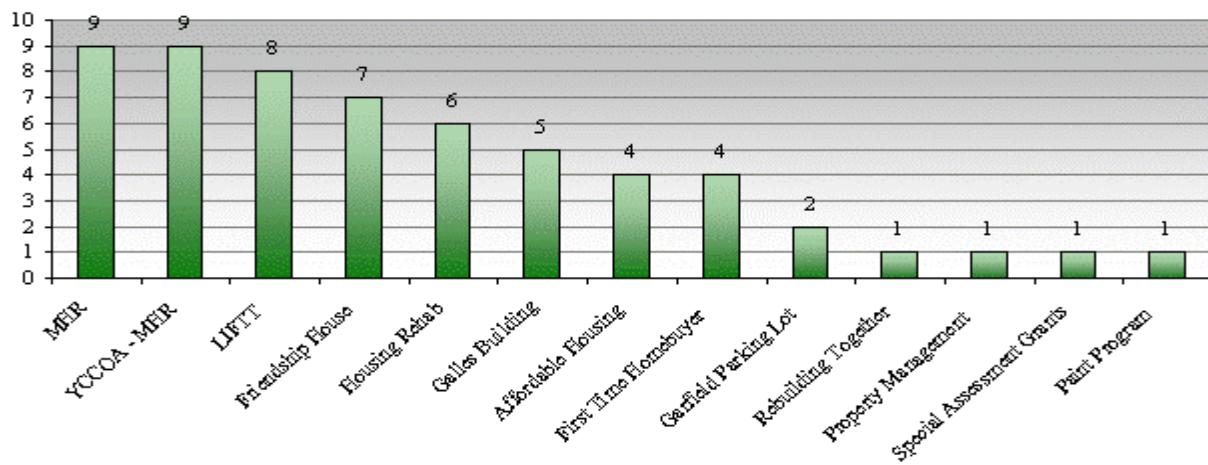
Heights Priorities - 10 Respondents



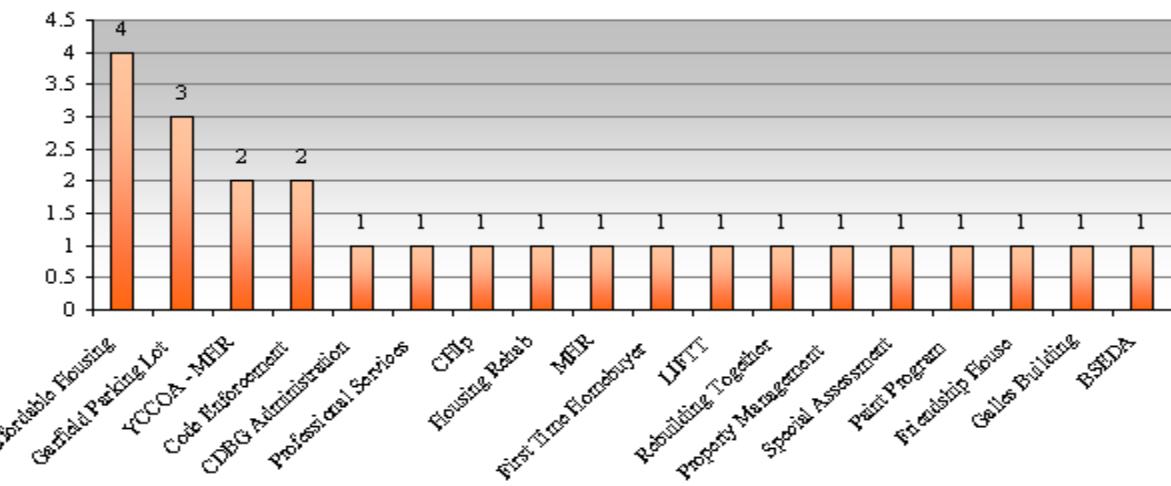
North Elevation Priorities - 3 Respondents



South Side Priorities - 12 Respondents



Southwest Corridor Priorities - 5 Respondents



**COMMUNITY DEVELOPMENT DIVISION
Final Revenue FY 2006-2007 ATTACHMENT E**

24-Apr-06

CDBG REVENUE

HUD CDBG Grant	\$726,020	Annual Allocation
Loan Principal	\$11,500	Parkview Convalescent
Loan Interest	\$9,500	Parkview Convalescent
CDBG Reprogrammed* Funds	\$102,196	See detail below
Housing Rehab Loans Repayment	\$35,435	At 75% year lapsed
Land Sales	\$91,920	South 27th Street properties
Prior Year Program Income - Rehab	\$44,987	Rehab program income over estimate
Rental Rehab Loan Repayment	\$21,225	At 75% year lapsed
Rehab Interest	\$142	Rehab interest received
CDBG Revenue Total:	\$1,042,925	

20% Cap on CDBG Administration:	\$188,146	Includes only new revenue, not reprogrammed*
Board Recommendation for CDBG Admin:	\$184,014	

PUBLIC SERVICE FUNDING

15% of CDBG Allocation (\$726,020)	\$108,903
15% of previous year program income (\$95,279)	\$14,292
<i>Public Service Reprogrammed:</i>	
- Neighborhood Contact Officer 00-01	\$1,369
- Police Graffiti Removal 01-02	\$829
- Neighborhood Contract Police 02-03	\$6,416
- Temporary Teens 02-03 & 03-04	\$793
PUBLIC SERVICE TOTAL:	\$132,602

CDBG Revenue Total: \$1,042,925
Reduced by Public Services Total: \$123,195
Total Available for Housing & Neighborhood: \$919,730

HOME REVENUE

HUD HOME Grant	\$504,467	
FTHB Payback	\$68,000	At 50% year lapsed
HOME Reprogrammed*	\$44,562	
HOME Revenue Total:	\$617,029	

10% Cap on HOME Administration: **\$57,247** Includes only new revenue, not reprogrammed*

CDBG Reprogrammed Funds Detail:

- Terry Park Demolition / Rehab 98-99	\$605	
- Billings Promise 99-00 (Admin-Planning)	\$344	
- Demolition Program 00-01	\$15,725	
- Cobb Field Handicap Lift 00-01	\$10,000	Cancelled or completed projects
- SW Corridor BikeNet 00-01 & 01-02	\$60,000	(not included in caps)
- King Avenue Improvements 01-02	\$12,808	
- Rental Rehab 02-03	\$214	
- Athletic Pool 02-03	\$2,500	
HN / Admin Reprogrammed Total:	\$102,196	

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

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

PROBLEM/ISSUE STATEMENT: City Council was requested to approve a resolution authorizing condemnation of six properties on Grand Avenue at the January 9, 2006, Council Meeting. Council delayed action on the resolution to allow staff 90 days to obtain expert advice on evaluation of appraisals and alternatives. Council then delayed action another 30 days at the April 10, 2006, City Council meeting. The Public Works Department has received a separate market analysis of the six properties and is making a new offer to the property owners based on that market analysis. The Public Works Department is asking for a response from the offers by May 12, 2006. A further delay of 30 days is requested to allow the property owners to evaluate the new offers.

FINANCIAL IMPACT: Final values will be presented to City Council if the values exceed staff's allowable negotiating value.

RECOMMENDATION

Staff recommends that Council further delay action 30 days on the resolution authorizing condemnation of six properties on Grand Avenue to allow staff to evaluate market analysis and renegotiate with affected property owners.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 8, 2006

TITLE: Approval and Acceptance of Donations (Cash/Materials/In-Kind/Services) Over \$500 for Crime Prevention Center in Rimrock Mall

DEPARTMENT: Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: With the remodel of the former Sydney's location in Rimrock Mall and subsequent development of the Police Department's Crime Prevention Center, we are anticipating numerous donations in the form of cash, materials, in-kind, or services exceeding \$500. As demolition nears completion, we are waiting for approval of the architectural drawings by Macerich Corporation and issuance of the building permit. Once the permit is attained, we will begin construction for the City's Crime Prevention Center which will house the BPD volunteer program, its 100 volunteers, and 18 Police Chaplains. As required by Administrative Order #96, we are hereby requesting from Council an all inclusive approval to accept donations over \$500, while respecting the anonymity of the donor if requested. Most donations are expected to be in the form of services, building materials, and equipment. Weekly updates will be submitted to Council detailing donations received. All checks will be made out to the City of Billings or the Billings Police Department, not the Billings Police Foundation.

ALTERNATIVES ANALYZED:

- Approve and accept all donations with this all inclusive memo and provide weekly updates of donations to Council.
- Do not accept or approve donations with this all inclusive memo and require staff to appear before Council and report each and every separate donation.
- Give up the donated 3 year lease already approved by Council for the former Sydney's location and forego a Crime Prevention Center in Rimrock Mall leaving no space for the Volunteer Program.

FINANCIAL IMPACT: In the current budget, we have approximately +/- \$18,000 to be used on the remodel project at Rimrock Mall.

RECOMMENDATION

Staff recommends that Council approve and accept all donations over \$500, whether cash, material, in-kind, or services for the renovation of the Crime Prevention Center in Rimrock Mall and agree to accept weekly updates on donations, while at the same time respecting the anonymity of the donor if requested.

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

INTRODUCTION

With the remodel of the former Sydney's location in Rimrock Mall and subsequent development of the Police Department's Crime Prevention Center, we are anticipating numerous donations in the form of cash, materials, in-kind or services exceeding \$500. As demolition nears completion, we are waiting for approval of the architectural drawings by Macerich Corporation and issuance of the building permit. Once the permit is attained, we will begin construction for the City's Crime Prevention Center which will house the BPD volunteer program, its 100 volunteers, and 18 Police Chaplains. As required by Administrative Order #96, we are hereby requesting from Council an all inclusive approval to accept donations over \$500, while respecting the anonymity of the donor if requested. Most donations are expected to be in the form of services, building materials, and equipment. Weekly updates will be submitted to Council detailing donations received. All checks will be made out to the City of Billings or the Billings Police Department, not the Billings Police Foundation.

BACKGROUND

For the past 4-1/2 years, the Volunteer Program has been searching for adequate donated space within the City of Billings. Rimrock Mall offered 4 properties over the last 2 years. However, each property was pulled when the Mall was able to lease the space for profit. The last space offered was 1,400 square feet and it was estimated that renovations would cost \$18,000. This is the amount budgeted in the 04/05 budget and carried forward to the 05/06 budget. Rimrock Mall pulled that space and subsequently donated 3,000 square feet with a better location in the Mall. The lease was approved by Council on September 26, 2005 and the property was presented to the Police Department on January 19, 2006. The City went out for contractor bids and only received one bid, that from Hardy Construction totaling \$95,000. The Police Department was unable to accept that bid because we did not have funds to cover the deficit. We have proceeded to seek donations in order to accomplish the completion of the Crime Prevention Center. Some of the donations received to date are:

- ▶ A&E Architects have already donated the architectural drawings;
- ▶ Hardy Construction is providing us on-going contractor advice throughout the project;
- ▶ Kenco Security has installed a temporary alarm system and will install a permanent system when the project is completed;
- ▶ UBC has donated part of the sheetrock, tape and mud that is needed;
- ▶ Star Service has capped the gas lines in order that demolition could be completed;
- ▶ Big Sky Fire Protection disconnected the fire suppressant system in order that demolition could progress and they will install a new fire suppressant system when renovations are complete.
- ▶ Hundreds of volunteer hours have been donated in order to accomplish the demolition.

With the difference between the bid amount of \$95,000 and the \$18,000 available in the budget, we need to rely heavily on donations in order to get the City's Crime Prevention Center operational. The Department's Volunteer Program is a proven success and will be tasked with managing the Crime Prevention Center. Volunteers will be relied upon to facilitate the numerous services and programs offered by the Police Department. The problem facing the Department and Crime Prevention Center is that there is a deadline of June 30th to use our budgeted funds for the renovation. There is no budget in 06/07 for renovations. Macerich Corporation is anxious for us to complete the area and open the Crime Prevention Center.

RECOMMENDATION

Staff recommends that Council approve and accept all donations over \$500, whether cash, material, in-kind, or services for the renovation of the Crime Prevention Center in Rimrock Mall and agree to weekly updates on donations, while at the same time, respecting the anonymity of the donor, if requested.

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