

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 22, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Jim Ronquillo

ROLL CALL

MINUTES – May 8, 2006; May 11, 2006.

COURTESIES

PROCLAMATIONS

- May 21-27: National Public Works Week

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #10 - #12 ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. Mayor's Appointments:

| | Name | Board/Commission | Term | |
|----|---------------|------------------------|---------|----------|
| | | | Begins | Ends |
| 1. | Timothy Smith | Homelessness Committee | 5/22/06 | 12/31/08 |
| 2. | Lucy Brown | Homelessness Committee | 5/22/06 | 12/31/10 |

| | | | | |
|-----|------------------|------------------------|---------|----------|
| 3. | Gary Drake | Homelessness Committee | 5/22/06 | 12/31/08 |
| 4. | Larry Gaalswyk | Homelessness Committee | 5/22/06 | 12/31/08 |
| 5. | Wayne Smithberg | Homelessness Committee | 5/22/06 | 12/31/10 |
| 6. | Judy Stewart | Homelessness Committee | 5/22/06 | 12/31/08 |
| 7. | Laura Dimmler | Homelessness Committee | 5/22/06 | 12/31/08 |
| 8. | Dustin Machler | Homelessness Committee | 5/22/06 | 12/31/08 |
| 9. | Kathie Shandera | Homelessness Committee | 5/22/06 | 12/31/10 |
| 10. | Bill Cochran | Homelessness Committee | 5/22/06 | 12/31/10 |
| 11. | Joseph Chalupa | Homelessness Committee | 5/22/06 | 12/31/08 |
| 12. | Mona Sumner | Homelessness Committee | 5/22/06 | 12/31/10 |
| 13. | Gary Huffmaster | Homelessness Committee | 5/22/06 | 12/31/10 |
| 14. | Adela Awner | Homelessness Committee | 5/22/06 | 12/31/10 |
| 15. | Linda Price | Homelessness Committee | 5/22/06 | 12/31/10 |
| 16. | Paul Chinberg | Homelessness Committee | 5/22/06 | 12/31/08 |
| 17. | Jacquelyn Wagner | Homelessness Committee | 5/22/06 | 12/31/10 |
| 18. | Clark Swan | Homelessness Committee | 5/22/06 | 12/31/08 |
| 19. | Joseph McClure | Homelessness Committee | 5/22/06 | 12/31/10 |
| 20. | Lisa Harmon | Homelessness Committee | 5/22/06 | 12/31/08 |

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

B. Bid Awards:

(1) **W.O. 03-10: 6th & Central Traffic Signal.** (Opened 5/9/06). Recommend rejecting all bids and authorizing Staff to restructure the project in an attempt to bring the construction costs within the budgeted funds available.

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

(2) W.O. 05-07: Central Avenue & Shiloh Road Traffic Signal Installation. (Opened 5/9/06). Recommend Ace Electric, \$55,467.79.
[\(Corresponding Staff Memo B2\)](#)

(3) Wastewater Treatment Plant Electrical Transformers. (Opened 5/9/06). Recommend delaying award to 6/12/06.
[\(Corresponding Staff Memo B3\)](#)

C. Change Order #5, W.O. 04-11: South Billings Boulevard, JTL Group, Inc., \$1,138.98.
[\(Corresponding Staff Memo C\)](#)

D. Amendment #1, Professional Services Contract, Landfill Master Plan Update, Great West Engineering, \$65,000.00.
[\(Corresponding Staff Memo D\)](#)

E. Amendment #4, Professional Services Contract, W.O. 02-10: Bench Connector Project, Morrison-Maierle, Inc, \$48,303.00.
[\(Corresponding Staff Memo E\)](#)

F. Amendment #12, Professional Services Contract, W.O. 05-14: Walter Pump Station, Morrison-Maierle, Inc., \$199,708.00.
[\(Corresponding Staff Memo F\)](#)

G. Contract with EFJohnson for 800 MHz Maintenance, \$426,258.00, term: 3 years.
[\(Corresponding Staff Memo G\)](#)

H. Contract with Eide Bailly for Audit Services, \$165,300.00, term: 3 years.
[\(Corresponding Staff Memo H\)](#)

I. Compensation Agreement for Private Contract #532: Lift Station Improvements for Vintage Estates Subdivision, Rick Dorn, Developer, \$198,196.00.
[\(Corresponding Staff Memo I\)](#)

J. Reimbursement Agreement for Private Contract #560: Falcon Ridge Estates Subdivision, First Filing, Phase I, Falcon Ridge, LLC (Dennis Buscher), Developer, \$16,715.60.
[\(Corresponding Staff Memo J\)](#)

K. Development Agreement for C/S 566, Tract 1C, Jeff Essmann, owner.
[\(Corresponding Staff Memo K\)](#)

L. Agreement for the transfer of the operation of certain rural special improvement districts (RSIDs): #535L, #548L, #558L, #560L, #562L, #569L, and #579L from Yellowstone County to the City of Billings and including them in the annual light district assessments.
[\(Corresponding Staff Memo L\)](#)

M. Professional Services Contract with CTA Architects and team for the Downtown Transit Operations Center, \$571,913.25. (Delayed from 5/8/06).
([Corresponding Staff Memo M](#))

N. Memorandum of Understanding with BikeNet for St. Vincent Healthcare Mission Fund Grant Application for Ponderosa School Trail, \$200,000.00.
([Corresponding Staff Memo N](#))

O. Memorandum of Understanding with BikeNet for PPL Montana Community Fund Grant Application for Big Ditch Trail, Phase 2, \$10,000.00.
([Corresponding Staff Memo O](#))

P. Recreational Trails Program Grant Application for Lampman Strip Park, \$35,000.00.
([Corresponding Staff Memo P](#))

Q. Acceptance of Economic Development Initiative Grant Funds from the U.S. Dept. of Housing and Urban Development for Garfield School Renovation, #B-06-SP-MT-0550, \$99,000.00.
([Corresponding Staff Memo Q](#))

R. Acceptance of Bikenet Donations:
(1) \$21,000.00 for a portion of the CTEP required matching funds for the Big Ditch Trail, Phase 1.
([Corresponding Staff Memo R1](#))
(2) \$25,000.00 for a portion of the CTEP required matching funds for the Bannister Drain Trail.
([Corresponding Staff Memo R2](#))

S. Acceptance of Donations:
(1) Proceeds from the June 2, 2006 fundraiser by Mission Ridge Independent Living to the Billings Fire Dept.
([Corresponding Staff Memo S1](#))
(2) Animal Shelter Landscape Project Donations from: Olsen Nursery (\$3,000 value), Tvetene Turf, Inc., (\$400 - \$600 value), Frontier Fencing (\$2200 value).
([Corresponding Staff Memo S2](#))
(3) Donations from three anonymous donors to send one School Resource Officer to the National Conference in Palm Springs/LaQuinta, CA in July, \$900.00.
([Corresponding Staff Memo S3](#))

T. Confirmation of Police Officer: Brian Heinze.
([Corresponding Staff Memo T](#))

U. Street Closure for Memorial Day Parade on May 29, 2006, United Veterans Council, sponsor, assembly at Albertson's parking lot on the corner of Central and 24th St. W, down Central Ave to Mountview Cemetery.

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

V. Resolution supporting the federal application by the Downtown Billings Partnership to designate the City of Billings a *Preserve America Community*.

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

W. Resolution allowing non-profit organizations holding valid Park Use Permits at City ballfields (i.e. Athletic Field) to display sponsor signage as a means of raising funds, setting a fee to be charged by the City for such advertising displays and establishing an effective date.

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

X. Resolution relating to \$851,000 Pooled Special Improvement District Bonds, Series 2006 (SIDs 1368, 1370 and 1373), authorizing the issuance and calling for the public sale thereof on 6/12/06.

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

Y. Second/final reading ordinance expanding the boundaries of Ward II to include recently annexed property in Annex #06-04, the contiguous City-owned land known as Tract 2B of Amended Tract 2, C/S 727, located on Alkali Creek Rd.

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

Z. Second/final 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.

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

AA. Preliminary Plat of Josephine Crossing Subdivision, generally located east off of Mullaney Lane, directly south of Elysian Road, north of the Yellowstone river (south of the West Billings I-90 Interchange); conditional approval of the plat, approval of the variances and adoption of the Findings of Fact.

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

BB. Preliminary Plat of Lake Hills Subdivision, 13th Filing Amended, generally located on Annandale Road, between Greenbriar Road and Cherry Hill Road; conditional approval of the plat and adopting of the Findings of Fact.

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

CC. Final Plat of Ironwood Estates Subdivision, 4th Filing.

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

DD. Final Plat of Kingston Place Subdivision.

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

EE. Final Plat of St. Thomas Subdivision.
([Corresponding Staff Memo EE](#))

FF. Bills and payroll.
(1) April 21, 2006
([Corresponding Staff Memo FF1](#))
(2) April 28, 2006
([Corresponding Staff Memo FF2](#))
(3) May 8, 2006
([Corresponding Staff Memo FF3](#))

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND SPECIAL REVIEW #813:** A special review to operate a 50-bed private correctional facility (SIC #8744) in the South 27th Street Corridor zoning district on a 4.266-acre parcel of land described as: Lot 1, Vernwood Subdivision and located at: 1001 South 27th Street. Corner Construction Company, owner; P. Bruce Harper, (Alternatives, Inc.), agent. Zoning Commission recommends approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

([Corresponding Staff Memo 2](#))

3. **PUBLIC HEARING AND RESOLUTION** vacating portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S, and the alley between S. 22nd Street and S. 23rd St. ConocoPhillips, petitioner. Staff recommends approval of the vacation and acceptance of an easement for public utilities running through the vacated streets. **(Action:** approval or disapproval of Staff recommendation.)

([Corresponding Staff Memo 3](#))

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #776:** A zone change request from Public to Planned Development on a 60.27 acre parcel of land described as: the NE4NW4NW4, S2NW4NW4 & LOT 3-4 LESS C/S 3223 in Section 20, Township 1S, Range 26 East (a/k/a the proposed Josephine Crossing Subdivision). McCall Development, Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

([Corresponding Staff Memo 4](#))

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #777:** A zone change request from R-6,000 to Residential Multi-Family on a .92 acre parcel described as: Lots 1-10, Block 1 of Green Acres Subdivision and Lot

1, Block 14 of Suncrest Acres Subdivision 3rd Filing. Azalea Co., owner, Matt Brosovich, agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

6. **PUBLIC HEARING AND SPECIAL REVIEW #810:** A special review to allow an all-beverage license with gaming in a Controlled Industrial zone on a 1.82-acre parcel of land described as Unit 12A, Block 1 Transtech Center Subdivision and located at: 3429 Transtech Way. Bottrell Family Investments, LP, the owner; James Bennett, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

7. **PUBLIC HEARING AND SPECIAL REVIEW #811:** A special review to locate a Church in a Residential-9,600 zone on a 5.595-acre parcel of land described as: Lot 2A, Missions United Subdivision and located at: 2425 Shiloh Road. St. John's Lutheran Ministries - Kent Burgess, owner; CTA Architects & Engineers - Jim Shepard, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. **PUBLIC HEARING AND SPECIAL REVIEW #812:** A special review to locate five (5) Community Residential Facilities (assisted living facilities) for more than eight (8) persons in a Residential-9,600 zone on a 4.761-acre parcel of land described as: Lot 1, Missions United Subdivision and located at: 2511 Shiloh Road. St. John's Lutheran Ministries - Kent Burgess, owner; CTA Architects & Engineers - Jim Shepard, agent. Zoning Commission recommends conditional approval. **(Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. **PUBLIC HEARING AND VARIANCE #CC06-01:** a variance from the Site Development Ordinance Sections 6-1203(u) re: concrete driveways and curb and gutter on Lot 1, Block 1, Bitterroot Subdivision. Susan J. Zurbuchen, owner. Staff recommends denial of the variance and requiring the owner to sign the Waiver of Right to Protest creation of an SID before issuance of a building permit. **(Action:** approval or disapproval of Staff recommendation.)

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

10. **DISPOSITION** of the Naval Reserve Center. Staff recommends rejection of the Navy's offer to repair the buildings and abate the environmental hazards identified in its 4/24/06 letter and report and request that the Navy remove all environmentally hazardous material and an outbuilding from the premises and

repair the damaged areas. **(Action:** approval or disapproval of Staff recommendation.)

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

11. **APPROVAL** of Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) FY2006 Annual Action Plan. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

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

12. **DISCUSSION** of City Administrator Salary. **(Action:** direction to Staff.)

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

13. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

COUNCIL INITIATIVES

ADJOURN

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

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| <p>Visit our Web site at: http://ci.billings.mt.us</p> |
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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MAY 22, 2006

SUBJECT: Committee on Homelessness
DEPARTMENT: City Administrator's Office
PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of appointments for the Committee on Homelessness. Ten (10) members will be appointed to serve a two (2) year term and ten (10) members will be appointed to serve a four (4) year term. Members may serve up to two (2) consecutive four (4) year terms.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

| | Name | Board/Commission | Term | |
|-----|-----------------|------------------------|----------|----------|
| | | | Begins | Ends |
| 1. | Timothy Smith | Homelessness Committee | 05/22/06 | 12/31/08 |
| 2. | Lucy Brown | Homelessness Committee | 05/22/06 | 12/31/10 |
| 3. | Gary Drake | Homelessness Committee | 05/22/06 | 12/31/08 |
| 4. | Larry Gaalswyk | Homelessness Committee | 05/22/06 | 12/31/08 |
| 5. | Wayne Smithberg | Homelessness Committee | 05/22/06 | 12/31/10 |
| 6. | Judy Stewart | Homelessness Committee | 05/22/06 | 12/31/08 |
| 7. | Laura Dimmler | Homelessness Committee | 05/22/06 | 12/31/08 |
| 8. | Dustin Machler | Homelessness Committee | 05/22/06 | 12/31/08 |
| 9. | Kathie Shandera | Homelessness Committee | 05/22/06 | 12/31/10 |
| 10. | Bill Cochran | Homelessness Committee | 05/22/06 | 12/31/10 |
| 11. | Joseph Chalupa | Homelessness Committee | 05/22/06 | 12/31/08 |
| 12. | Mona Sumner | Homelessness Committee | 05/22/06 | 12/31/10 |
| 13. | Gary Huffmaster | Homelessness Committee | 05/22/06 | 12/31/10 |

| | | | | |
|-----|------------------|------------------------|----------|----------|
| 14. | Adela Awner | Homelessness Committee | 05/22/06 | 12/31/10 |
| 15. | Linda Price | Homelessness Committee | 05/22/06 | 12/31/10 |
| 16. | Paul Chinberg | Homelessness Committee | 05/22/06 | 12/31/08 |
| 17. | Jacquelyn Wagner | Homelessness Committee | 05/22/06 | 12/31/10 |
| 18. | Clark Swan | Homelessness Committee | 05/22/06 | 12/31/08 |
| 19. | Joseph McClure | Homelessness Committee | 05/22/06 | 12/31/10 |
| 20. | Lisa Harmon | Homelessness Committee | 05/22/06 | 12/31/08 |

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

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B1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Work Order 03-10, 6th Street West and Central Traffic Signal – Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received for Work Order 03-10 on May 9, 2006. This project is for construction of a new traffic signal at the intersection of Central Avenue and 6th Street West. The project also includes milling and an asphalt pavement overlay on Central between Montana Avenue and a point approximately 1000 feet west of the intersection. Bids for the street widening, milling, and overlay portion of the contract were extremely high. Staff will explore separating the street construction work from the traffic signal work in an attempt to bring project costs within the available budget.

FINANCIAL IMPACT: Funding for Work Order 03-10, 6th Street West & Central Traffic Signal, is provided from Gas Tax Funds with a partial reimbursement from the Montana Department of Transportation. We received two bids for this project as follows:

| | |
|---------------------|---------------|
| Engineer's Estimate | \$ 180,239.90 |
| Midland Electric | \$ 269,376.00 |
| Ace Electric | \$ 246,404.10 |

Budget:

| | |
|--------------------------------|-------------------------------|
| Montana Dept of Transportation | \$128,372.00 |
| Gas Tax | \$ 73,095.00 |
| Total budgeted funds | \$201,467.00 (w/ contingency) |

RECOMMENDATION

Staff recommends that Council reject all bids and authorize staff to restructure the project in an attempt to bring construction costs within the budgeted funds available.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 22, 2006

TITLE: Work Order 05-07, Central and Shiloh Traffic Signal – Bid Award
DEPARTMENT: Public Works/Engineering
PRESENTED BY: David D. Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Bids were received and evaluated for Work Order 05-07 on May 9, 2006. This project will construct a temporary traffic signal at the intersection of Central Avenue and Shiloh Road. The traffic signal will be replaced with intersection improvements in the future with the construction of Shiloh Road by the Montana Department of Transportation. The original estimate for construction and engineering of this project was \$260,000. After the design was completed, a new cost estimate was done depicting the project to be estimated at \$120,000 for engineering and construction. This includes the purchase of signal equipment by the City to be used on the project (estimated to be \$27,000). The original cost estimate included building a span wire design, similar to the intersection of King Avenue West and Shiloh Road. The new design calls for the use of existing poles that were removed from the intersection of Central Avenue and 32nd Street West. For this reason, the new cost estimate is much lower than originally anticipated.

ALTERNATIVES ANALYZED:

1. Award Work Order 05-07 to Ace Electric in the amount of \$55,467.79; or
2. Not award Work Order 05-07.

FINANCIAL IMPACT: Funding for Work Order 05-07, Central and Shiloh Traffic Signal will be provided from Gas Tax Funds. We received one bid for this project as follows:

| | <u>Total</u> |
|---------------------|----------------------------------|
| Engineer's Estimate | \$ 65,000.00 (Construction only) |
| Ace Electric | \$ 55,467.79 |

CIP Project #ENG T007

| | |
|--|--------------|
| CIP Budgeted Amount | \$260,000.00 |
| Previous Encumbrances | \$ 20,000.00 |
| Total Amount of Construction and signal equipment | \$ 82,467.79 |

Budget Fund Balance \$157,532.21
(after this award and the purchase of equipment)

RECOMMENDATION

Staff recommends that Council approve the construction contract for Work Order 05-07, Central and Shiloh Traffic Signal with Ace Electric in the amount of \$55,467.79.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Bid Award – Wastewater Plant Electrical Transformers

DEPARTMENT: Public Works Department

PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: As part of an annual program, the Public Works Department routinely upgrades/replaces electrical components in the water and wastewater systems. These components typically have included switchgear and controls, transformers and electrical cables. The subject bid award is for the purchase of three electrical transformers to replace existing transformers at the Wastewater Treatment Plant that have been in service since the 1970's.

FINANCIAL IMPACT: Bids were publicly advertised and received on May 9, 2006. There is sufficient money in the FY06 recurring capital budget to cover the bid award.

RECOMMENDATION

Staff recommends that Council delay the bid award until the June 12, 2006 meeting to allow staff additional time for analysis of the bids received.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: W.O. 04-11, South Billings Boulevard, Change Order No. 5 – JTL Group, Inc.

DEPARTMENT: Public Works

PRESENTED BY: David Mumford, PE, Public Works Director

PROBLEM/ISSUE STATEMENT: Change Order No. 5 includes adjustments to the bike path and sidewalk on South Billings Blvd. and King Avenue East. Changes also include cost to relocate an existing street light pole and doweling of existing sidewalk.

ALTERNATIVES ANALYZED:

1. Approve Change Order No. 5 for a net increase of \$1,138.98.
2. Do not approve Change Order No. 5 for a net increase of \$ 1,138.98.

FINANCIAL IMPACT: Funding for the proposed Change Order No. 5 is available from the arterial fees. The following summarizes the financial impact to the project:

| Original Construction Contract | | <u>% of Contract</u> | <u>Cumulative % Contract</u> |
|--------------------------------|-------------------|----------------------|----------------------------------|
| Change Order No. 1 | \$8,407.75 | 0.413% | 0.413% |
| Change Order No. 2 | \$40,967.80 | 2.01% | 2.423% |
| Change Order No. 3 | \$11,459.32 | 0.563% | 3.986% |
| Change Order No. 4 | \$96,000.00 | 4.71 % | 7.699% |
| Change Order No. 5 | <u>\$1,138.98</u> | 0.560% | 8.259% |
| | \$157,973.85 | | |
| Total | \$2,195,115.55 | | |

RECOMMENDATION

Staff recommends that Council approve Change Order No. 5 in the amount of \$1,138.98 with JTL Group, Inc.

Approved By: City Administrator ____ City Attorney ____

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Contract Amendment #1 – Professional Services Contract with Great West Engineering

DEPARTMENT: Public Works/Solid Waste Division

PRESENTED BY: Dave Mumford, Public Works Director

PROBLEM/ISSUE STATEMENT: Great West Engineering recently completed work under a contract to update the Master Plan for the Billings Regional Landfill. The update has estimated that 24% of the landfill waste stream is classified as construction and demolition or inert waste. These wastes generally meet the Montana DEQ definition of Class IV wastes. Class IV wastes can be place din unlined waste pits as long as they are included in a Class II landfill groundwater and gas monitoring network and the site geology is appropriate. The Master Plan update has identified an area of landfill property that has a high potential to be developed as a Class IV waste unit. This contract amendment would provide for the necessary engineering, drilling, laboratory testing, and geotechnical services required to permit a Class IV landfill unit at the city of Billings Regional Landfill.

FINANCIAL IMPACT: The current FY06 Solid Waste Division budget includes funds to complete the necessary work to permit a Class IV landfill unit. The original contract to complete the Master Plan update was \$40,000. This contract amendment would not exceed \$65,000.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #1 for professional services with Great West Engineering in the amount of \$65,000.

Approved By: City Administrator _____ City Attorney _____

INTRODUCTION

The recently completed Landfill Master Plan update has estimated that approximately 24% of the current landfill waste stream consists of construction, demolition, and inert waste. These types of waste can be disposed of in a Class IV waste cell. The Master Plan has identified an area of landfill property that would be suitable for this type of waste. The report recommends the City proceed with permitting a Class IV landfill cell.

BACKGROUND

Following the city's normal selection process for professional services, the selection committee chose Entranco for the work of updating the landfill master plan. Subsequently on July 26, 2004, the City Council approved a contract with Entranco to prepare an update to the Landfill Master Plan. Great West Engineering, Inc. is the successor to Entranco and they recently completed the update. The previous Master Plan was completed by Emcon in 1996. The Master Plan provides an overall landfill development plan for the landfill for the next 45 years. During the master planning process, the Consultant identified an area of landfill property that has a high potential for permitting as a Class IV area. Class IV landfill units are exempt from liner requirements if the DEQ determines that the natural geology is sufficient to protect the groundwater from contamination. The existing landfill is licensed as a Class II landfill with the DEQ and includes a comprehensive groundwater monitoring network. This existing network can also be utilized to monitor the Class IV landfill unit. The advantages of developing a Class IV landfill unit include the following:

- Class IV areas require less capital cost to develop because they do not require liners
- Since liners are not required, wastes can be placed in areas where the construction of liners is not feasible
- Removal of Class IV wastes from the waste stream extends the life of the class II landfill and improves its efficiency. It is estimated that development of a Class IV area would provide capacity for 10-12 years of this type of waste, which would extend the overall life of the landfill.

The contract amendment would provide for the professional services necessary to design and permit a Class IV disposal area. This would include additional geotechnical drilling services, testing and reporting to verify that the soils are suitable and assess the stability of the area. It will also include the installation of one additional groundwater well, and update to the sampling and analysis plan, and an update of the hydro geologic report. The consultant will complete all work necessary to design and permit the Class IV area and will submit all required documents to the DEQ on behalf of the City. Since the consultant was originally chosen through the normal selection process for the master plan update and they are familiar with the overall landfill and the proposed project, staff believes it is prudent to amend their existing contract for the services outlined above.

RECOMMENDATION

Staff recommends that City Council approve Contract Amendment #1 for professional services with Great West Engineering in the amount of \$65,000.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: W.O. 02-10, Bench Connector Project - Professional Services Contract - Amendment #4

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation (MDT) and the City of Billings have been working together on the Bench Connector Project. This project will be constructed through MetraPark connecting Bench Boulevard to 4th and 6th Avenues North. Morrison-Maierle, Inc. is under contract with the City for design of the alignment and grade of the project. Morrison-Maierle, Inc. has submitted Contract Amendment #4 to change the project alignment. The original layout of the project greatly affected the Metra parking. The new alignment will not affect the parking at all. Amendment #4 will result in an increase of \$48,303.00. MDT has reviewed the scope of work and budget and feels the amendment is in line with the design required to change the alignment.

FINANCIAL IMPACT: The Professional Services Contract with Morrison-Maierle, Inc. was approved by Council on February 10, 2003, for \$548,502.00. Per the Construction Agreement between the City and MDT, the City is obligated to pay 13.42% (\$73,608.97) of the Professional Services Contract. The total amount of the amendments to the contract (\$87,685.00) will cost the city an additional \$11,767.33. Utilizing Gas Tax dollars, \$548,502.00 was allocated in the FY'03 CIP to pay for the Professional Services Contract. The City will be reimbursed by MDT for the Professional Services Contract and all approved contract amendments (86.58%) utilizing Federal Funds. Construction of this project will be paid for by MDT utilizing Federal Funds.

| | | <u>% Contract</u> |
|-----------------------|---------------------|-------------------|
| Contract Amount | \$ 548,502.00 | |
| Contract Amendment #1 | \$ 5,264.00 | 0.96% |
| Contract Amendment #2 | \$ 15,872.00 | 2.89% |
| Contract Amendment #3 | \$ 18,246.00 | 3.36% |
| Contract Amendment #4 | <u>\$ 48,303.00</u> | <u>8.81%</u> |
| Total | \$ 636,187.00 | 16.02% |

RECOMMENDATION

Staff recommends that Council approve Amendment #4 to the Professional Services Contract with Morrison-Maierle, Inc. in the amount of \$48,303.00.

Approved By: City Administrator _____ City Attorney _____

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: W.O. 05-14—Walter Pump Station, Professional Services Contract with Morrison Maierle, Inc.—Amendment No. 12

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings and Morrison-Maierle, Inc. (Consultant) agreed to a Master Contract on February 24, 1997. This original contract for Professional Services covers numerous Water/Wastewater Capital Improvement Projects, including improvements to the Walter Pump Station (W.O. 05-14). The City is recommending an amendment to the Master Contract to cover the Professional Services fees for W.O. 05-14.

The changes in Amendment No. 12 include providing Professional Engineering Services for preliminary and final design of improvements to the Walter Pump Station. Tasks include, but are not limited to, project administration and coordination, performing site surveys (including land surveying), civil and process design, architectural and structural design, electrical design, mechanical design, and final design. Amendment No. 12 does NOT provide construction administration services. A complete copy of Amendment No. 12 is on file in the City Clerk's office.

FINANCIAL IMPACT: The project is being funded by Water Revenue Funds. The associated CIP (FY 2006: PUD-102), providing a \$300,000 contribution to design services, has been approved by the Mayor and City Council. Amendment No. 12 represents an increase in the amount of the contract by \$199,708.00. There are funds available to cover this increase. Any remaining funds in this CIP account will be contributed to the forthcoming construction contract and/or construction administration services.

Funding Sources: Water Revenue Funds—CIP #PUD-102 (FY 2006)

| | |
|--------------------------------|---------------|
| Approved Dollar Amount: | \$ 300,000.00 |
| Spent (and obligated) to date: | \$ 0.00 |
| Funding available: | \$ 300,000.00 |

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 12 to the Professional Services Contract with Morrison-Maierle, Inc., in the amount of \$199,708.00.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, May 22, 2006**

SUBJECT: 800MHz Maintenance Contract EF Johnson**DEPARTMENT:** Fire**PRESENTED BY:** Marvin L. Jochems, Fire Chief
Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: The current 800 MHz radio maintenance agreement has expired. It is necessary to renew this maintenance agreement for the 800 MHz radio system. This is an extension of a current agreement. EF Johnson Company has made a fiscally prudent offer to extend the maintenance agreement for 3 years. An EF Johnson certification is required to perform maintenance work on the EF Johnson Radio System. EF Johnson has certified one local vendor, Acorn Technology. Currently much of the radio system infrastructure is still under warranty. EF Johnson is a sole source. EF Johnson is the only option for the everyday maintenance and particularly the warranty maintenance of our EF Johnson 800 MHz radio system.

ALTERNATIVES ANALYZED: None .

FINANCIAL IMPACT:

The financial impact of this contract is \$426,258.00 over 3 years. \$426,258.00 reflects an increase of approximately 5% over the previous three year contract.

This contract has been budgeted for in the FY 07 budget. The budgets affected include Fire, Police, Airport, Public Utilities Cemetery, Parks and Recreation, Met Transit, Solid Waste, 911 Communications Center and Finance. Signing a 3 year contract provides a predictable and stable maintenance cost.

RECOMMENDATION

Staff recommends that Council approve the EF Johnson contract offer.

Approved By: City Administrator ____ City Attorney ____

INTRODUCTION

The 800 MHz radio system maintenance agreement has expired. Staff recommends the 3 year Maintenance Agreement renewal be approved.

BACKGROUND

A maintenance agreement for the 800 MHz radio system is essential to the continued operation of the system. EF Johnson is the only maintenance option available to the city. The execution of the expired maintenance agreement, with EF Johnson, met the city's expectations.

RECOMMENDATION

Staff recommends that Council approve the EF Johnson Maintenance Contract.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

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

PROBLEM/ISSUE STATEMENT: The Finance division recently prepared an RFP for annual audit services required by State law. The RFP was advertised in the Billings Times on 03/16/06 and 03/23/06. Two firms, EideBailly and Anderson Zurmuehlen, were sent copies of the RFP per their request prior to issuance of the RFP. The contract would be for three years with an option to extend the contract for two years with Council approval.

Proposals were received from two firms to provide audit services for the city's regular audit, the state compliance audit, the state mandated audit of the Building Inspection Fund and federally required audit of the Airport Passenger Facilities charge. The firms and the fees quoted for each year are:

| <u>Firm</u> | <u>2006</u> | <u>2007</u> | <u>2008</u> | <u>Total</u> |
|---------------------|-------------|-------------|-------------|--------------|
| EideBailly | \$54,500 | \$55,100 | \$55,700 | \$165,300 |
| Anderson Zurmuehlen | \$60,000 | \$60,500 | \$65,300 | \$182,800 |

The selection committee included Council Member Ulledalen, Alene Malloy, Liz Kampa-Weatherwax, Vicky Harrison and Pat Weber.

FINANCIAL IMPACT

The FY 07 Finance division budget for audit services is \$56,400 which was the same amount budgeted in FY 06.

RECOMMENDATION

The Committee recommends that City Council accept EideBailly's proposal based on their experience with similar sized cities and Excellence in Financial Reporting.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Compensation Agreement for Private Contract No. 532--
Lift Station Improvements for Vintage Estates Subdivision

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to provide sanitary sewer service for all lots within Vintage Estates Subdivision, the Developer, Rick Dorn, is constructing a public sewer lift station. Since the City is requiring this lift station to be oversized to serve a significantly larger future service area, the lift station will cost more to construct than what is necessary to satisfy the Developer's current needs. The Developer desires to be compensated for the oversized portion of the lift station construction costs. Payment back to the Developer shall be accomplished through the attached Compensation Agreement.

FINANCIAL IMPACT: Based on cost and bid tabulation data received to date, the PWD has determined that the amount eligible to be recovered by the Developer is \$198,196. An annual budget of \$1,000,000 (\$500,000 each for water and sewer projects) is available in the CIP for water and sewer utility projects calling for City funding. Since nearly all Fiscal Year 2007 sewer funds have already been reserved for other projects, a plan has been devised that would repay Mr. Dorn \$50,000 in FY 2007 and the projected remaining \$148,196 in FY 2008.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Compensation shall be based on final water and sewer utility construction costs but shall not exceed \$198,196.

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

ATTACHMENT

Attachment A--Compensation Agreement

BACKGROUND

Of the 42 lots within the approved first phase of Vintage Estates Subdivision, 26 will rely on the proposed sewer lift station in order to receive sanitary sewer service. The remaining 70 lots in future phases of this subdivision, as well as all 58 lots in proposed Legacy Subdivision bordering to the south, will also rely on the lift station. While it only currently needs to serve these described properties, the PWD has required the lift station to be oversized to serve a significantly larger future service area.

Private Contract 532 design plans for Vintage Estates Subdivision were approved by the City on April 28, 2005 on the basis that approval of a separate design submittal would be required for the public sewer lift station; this additional submittal has recently been approved by the City and is currently under review by the Montana Department of Environmental Quality (MDEQ).

While the lift station was in the design phase over the past several months, approved Phase 1 subdivision improvements were being constructed. On the assumption that various lift station design features were going to be eventually approved, the Developer purchased certain lift station equipment and constructed the wet well. Work on the lift station stopped when the construction and equipment purchasing costs reached an estimated \$81,609.

Public bidding on January 10, 2006 to complete the lift station yielded a single bid of \$227,200. Adding this amount to the \$81,609 in improvements already spent brings the total projected lift station cost to \$308,809. After meeting with the Engineer and Developer, the City determined that the Developer's share of the total cost is \$110,613; and, the City will contribute \$198,196.

An annual budget of \$1,000,000 (\$500,000 each for water and sewer projects) is available in the CIP for water and sewer utility projects calling for City funding. Since nearly all Fiscal Year 2007 sewer funds have already been reserved for other projects, a plan has been devised that would repay Mr. Dorn \$50,000 in FY 2007 and the projected remaining \$148,196 in FY 2008. The PWD proposes that this compensation plan be carried-out through the attached Agreement.

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute the attached Agreement. Compensation shall be paid back to the Developer according to the schedule outlined in the approved CIP.

ATTACHMENT

Attachment A--Compensation Agreement

COMPENSATION AGREEMENT

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

W I T N E S S E T H

WHEREAS, the CITY'S Water/Wastewater Extension Policy outlines the procedure and criteria the CITY uses in approving extensions of the public water and wastewater systems; and

WHEREAS, the CITY'S Utilities Fees Practice outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater construction fees and system development fees to developments; and

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

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

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water and/or wastewater facilities hereafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for a portion of such water and/or wastewater facilities.

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

1. The water and/or wastewater facilities which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to compensation, the CITY and

DEVELOPER agree that the conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any compensation. Said conditions are:

- (a) The extent, timing, and manner of the CITY'S participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the CITY'S Water/Wastewater Extension Policy and the CITY'S Utilities Fees Practice. Extensions or replacements not eligible for compensation according to these CITY policies and practices must be constructed by the DEVELOPER at his expense.
- (b) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water and/or wastewater facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (c) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of water and/or wastewater facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.
- (d) Upon completion of the extension or replacement of the water and/or wastewater facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.
- (f) Extension or replacement of water and/or wastewater facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities.

DEVELOPER agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein may, at the option of the CITY, result in denial of any and all compensation to the DEVELOPER.

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

- (a) Compensation is limited to costs attributable to water and/or wastewater facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will compensation exceed the actual cost to the

DEVELOPER of extending or replacing the water and/or wastewater facilities.

- (b) Compensation shall not include any interest charges.

Acceptance of the water and/or wastewater facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the CITY and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under its Water/Wastewater Extension Policy and Utilities Fees Practice that will recommend that compensation for water and/or wastewater facilities which have been extended or replaced at the DEVELOPER'S expense will be made. Compensation is currently estimated to be paid to the DEVELOPER as follows: for fiscal year 2007, which begins July 1, 2006--\$50,000; and, for fiscal year 2008, which begins July 1, 2007--\$148,196. Compensation does not apply to additional extensions or replacements of the water and/or wastewater facilities. Compensation shall be based upon the final total project costs.

5. The address for mailing compensation to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, MT 59103. The designation of a new address shall be accompanied by a copy of this agreement.

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

DATED this _____ day of _____, 20____.

DEVELOPER

By _____

CITY OF BILLINGS

By _____
Mayor

ATTEST:

City Clerk

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

J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Reimbursement Agreement for Private Contract No. 560--
Falcon Ridge Estates Subdivision, First Filing, Phase I

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: In order to obtain city water service for Falcon Ridge Estates Subdivision, the Developer, Dennis Buscher, is extending a 12-inch (interior) water main in Molt Road across other property frontage. City water service is not desired by the property owner to the north of the Developer's property at the present time; so, the Developer is paying the entire cost of the project. At such time that the owner to the north requests to connect to this new main, the Developer desires to be reimbursed a portion of his construction costs. Under the above-described conditions, established Public Works Department (PWD) policy calls for reimbursement to be accomplished through the attached Reimbursement Agreement.

FINANCIAL IMPACT: Based on the Engineer's estimate of probable cost for P-560, the PWD has determined that half of the cost of the section of water main north of Falcon Ridge Estates--\$16,715.60--is eligible to be recovered by the Developer. In accordance with a PWD standard Reimbursement Agreement, reimbursement fees paid to the City are accumulated and paid to the Developer annually on each November 1st following acceptance of the constructed utilities. Payments are limited to reimbursement fees paid to the City on or before the seventh anniversary of the date of acceptance.

RECOMMENDATION

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

Approved By: City Administrator _____ City Attorney ____

ATTACHMENT

Attachment A--Reimbursement Agreement

BACKGROUND

A local (20-inch) city water main stub exists in Molt Road at its intersection with Aviara Boulevard; this stub is approximately 600 feet north of the north property line of Falcon Ridge Estates Subdivision. The Developer must connect to this stub and extend an interior water main (12-inch) south across other property frontage in Molt Road in order to serve his subdivision at the Western Bluffs Boulevard entrance.

Under the City Utilities Fees Practice (A.O. 84), Developers desiring interior main extensions are responsible for the cost of their fair share portion of improvements that front the development or are necessary to get service to the development. In the case of the subject project, the non-participating property to the north will need to obtain future service off the new 12-inch main in Molt Road. The PWD utilizes a standard Reimbursement Agreement as the mechanism by which Developers may be paid back over time as additional properties connect directly to utility mains constructed by the original Developer.

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

Based on the Engineer's estimate of probable cost for P-560, the PWD has determined that half of the cost of the section of water main north of Falcon Ridge Estates--\$16,715.60--is eligible to be recovered by the Developer. Actual final project costs will determine the exact compensation amount.

RECOMMENDATION

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

ATTACHMENT

Attachment A--Reimbursement Agreement

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

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

W I T N E S S E T H

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

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

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

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

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

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

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

4. With respect to DEVELOPER'S entitlement to reimbursement, the CITY and

DEVELOPER agree that the conditions specified in Section 26-504 BMCC, and the further conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any reimbursement. Said conditions are:

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

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

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

- (c) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in Article 26-500 BMCC. Reimbursement payments are limited to reimbursement fees actually collected for connections with the special benefit facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will reimbursement payments exceed the actual cost to the DEVELOPER of extending the special benefit facilities.
- (d) Reimbursement fees paid to the CITY shall be accumulated and paid to the DEVELOPER annually on each November 1st following acceptance of the special benefit facilities by the CITY beginning on November 1, 20____, and ending on November 1, 20____.
- (e) Reimbursement payments shall not include any interest charges.
- (f) Reimbursement payments to the DEVELOPER shall be limited to reimbursement fees paid to the CITY on or before the seventh anniversary of the date of acceptance by the CITY of the special benefit facilities described in Exhibit 1 attached hereto. Any reimbursement fees paid to the CITY after said anniversary date shall be retained by the CITY and used for construction of additional water and/or wastewater system facilities.

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

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

5. The CITY, by this agreement, is not guaranteeing that reimbursement fees in a sufficient amount to fund full reimbursement to the DEVELOPER will be collected within the seven-year period. The CITY is only agreeing that it will develop a plan under Section 26-503 BMCC that will assure that prospective customers owning property located outside a DEVELOPER'S subdivision and desiring to connect a service line or liens to the special benefit facility described in Exhibit 1, which has been extended at the DEVELOPER'S expense, shall

pay a fee and said fee shall be distributed as set forth herein. This fee applies only to connections and does not apply to additional extensions of the special benefit facility. The fee to be charged said prospective customers shall be based upon the final total project costs and _____.

(basis for assessment – square foot or lineal footage)

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

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

DATED this _____ day of _____, 20____.

DEVELOPER

By:_____

CITY OF BILLINGS

By:_____ Mayor

ATTEST:

By:_____ City Clerk

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Development Agreement with Jeff Essmann, owner of Certificate of Survey 566, Tract 1C

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: City Council approved the annexation of Certificate of Survey 566, Tract 1C at the December 19, 2005, council meeting. As a condition of approval of the annexation, the property was to enter into a development agreement with the City of Billings outlining necessary public improvements. Mr. Essmann has submitted the attached Development Agreement, and the council will consider whether to approve it.

ALTERNATIVES ANALYZED:

1. Approve development agreement with Jeff Essmann for Certificate of Survey 566, Tract 1C.
2. Do not approve development agreement with Jeff Essmann for Certificate of Survey 566, Tract 1C.

FINANCIAL IMPACT: There is no financial impact to the City with this development agreement. Mr. Essmann will be subject to all water and sanitary sewer fees once he chooses to connect to City water and sanitary sewer.

RECOMMENDATION

Staff recommends that Council approve the development agreement with Jeff Essmann for Certificate of Survey 566, Tract 1C.

Approved By: City Administrator ____ City Attorney ____

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L

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Transferring County Light Districts to the City of Billings

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The properties in several rural special improvement districts (RSIDs) have been annexed by the City of Billings. Because these RSIDs are now located within the boundaries of the City of Billings, Yellowstone County would like to transfer the operation, management, and control of those districts to the City of Billings pursuant to §7-12-2126, MCA. Section 7-12-2126, MCA, requires that the county and city involved must enter into an agreement for the transfer of the operation, management, and control for the districts.

The RSIDS that Yellowstone County would like to transfer to the City of Billings are listed in Attachment C. The light poles are owned and maintained by Northwestern Energy.

FINANCIAL IMPACT

Yellowstone County has been assessing annual maintenance fees and paying monthly power bills for each district. The balance of funds for each district will be transferred to the City of Billings as of the date of the transfer of operation, management, and control of these districts. All districts have positive cash balances as of 05/03/06

RECOMMENDATION

Staff recommends accepting the County light districts and include them in the annual light district assessments.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

A – Agreement

B – Maps

C – New District Numbers

ATTACHMENT C

| <u>County Number</u> | <u>Location</u> | <u>City's reassigned number</u> |
|----------------------|--|---------------------------------|
| 535L | Hawthorne Park | #292 |
| 548L | Dunbar Subdivision | #293 |
| 558L | Vista Heights | #294 |
| 560L | Bender Subdivision | #295 |
| 562L | Primrose Subdivision | #296 |
| 569L | Heyn Subdivision | #297 |
| 579L | Heyn Subdivision, 2 nd Filing | #298 |

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 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. This item was postponed from the May 8, 2006 City Council meeting so that staff could finalize contract language for the new 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 59101, 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' 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

At any time during the term of this Agreement or any extension hereof, CITY may terminate this Agreement, in whole or in part, by giving ARCHITECT written notice specifying the extent of termination and the effective date of said termination. CITY may terminate this Agreement for the CITY's convenience and without cause. CITY will pay ARCHITECT for all services performed prior to termination, together with reimbursable expenses then due. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.

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. INSURANCE

- A. The ARCHITECT shall, at its own expense, provide and maintain in good standing the insurance described in Section B herein below for the entire term of the Agreement.
- B. The ARCHITECT will provide the following insurance:
 1. Workers Compensation Insurance
 - Coverage A Statutory Limits
 - Coverage B \$1,500,000
 2. Commercial General Liability Insurance
 - \$1,500,000 Per Occurrence
 - \$3,000,000 General Aggregate
 - \$3,000,000 Products and Completed Operations Aggregate
 - City of Billings – Primary Additional Insured
 - Waiver of Subrogation in favor of the City of Billings
 3. Commercial Automobile Liability Insurance
 - \$1,500,000 Per Occurrence
 - Owned, Hired, Non Owned Vehicle Liability
 4. Professional Liability Insurance
 - \$1,000,000 Each Claim/\$2,000,000 Annual Aggregate
 5. Each policy of Insurance required by this section shall provide for no less than forty-five (45) days of advanced written notice to the City of Billings prior to cancellation or termination by any party.
 6. City of Billings will be listed as a Primary Additional Insured on all policies except Professional Liability and Workers Compensation Insurance. The Architect or Engineer's General Liability Insurance Policy

will be endorsed to be Primary and Noncontributory with all policies maintained by the City of Billings.

7. A waiver of subrogation in favor of the City of Billings will be endorsed on all policies maintained by the Architect or Engineer except for Workers Compensation Insurance and Professional Liability Insurance.
 8. All insurance requirements may be satisfied with a primary policy or a combination of primary and excess or umbrella policies.
- C. Certificates of insurance acceptable to CITY shall be filed with CITY before the commencement of this Agreement and shall name CITY as a primary additional insured provided further, that no insurance hereunder shall be cancelable upon less than forty-five (45) 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 AND 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))
(My commission 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).

(Seal, if any)

(Signature of Notary Officer)

(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).

(Seal, if any)

(Signature of Notarial Officer)

(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)
) 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))

(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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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Memorandum of Understanding (MOU) with BikeNet for St. Vincent Healthcare Mission Fund Grant Application for Ponderosa School Trail

DEPARTMENT: Planning and Community Services

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking grant monies for a portion of an approved trail connecting King's Green Subdivision with Ponderosa School which is located north of Interstate 90 and south of King Ave. E. As part of the King Green Subdivision a parkland berm with a trail will be developed along the south edge of the subdivision that will provide a buffer to the homes along Interstate 90. There is no maximum amount delineated for this grant, but BikeNet will request \$200,000 which should provide enough funding to develop a trail link from King's Green to the west side of Ponderosa School. The criteria specifies that St. Vincent Healthcare is committed to improving the health and well-being of the people in our community and their outreach is primarily targeted to those most in need (the poor, the elderly, children, minorities, etc.) to ensure that all in our region have access to quality care. This mission seems to fit with the needs of this area of Billings. However, only a not-for-profit organization with a 501 (c) (3) status can apply for this grant. BikeNet is willing to apply for this Mission Fund on behalf of the City of Billings in accordance with the attached Memorandum of Understanding

FINANCIAL IMPACT: The application will request \$200,000 which should cover the development of this segment of trail. Additional funding from other sources would eventually be needed to connect this trail segment to the trail that has already been built further west along King Ave. E.

RECOMMENDATION

Staff recommends that Council approve the Memorandum of Agreement and assist BikeNet in submitting a grant to the St. Vincent Healthcare Mission Fund contingent upon the agreement to transfer grant funds to the City for a trail segment between King's Green Subdivision and Ponderosa School.

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

ATTACHMENT

- A. Memorandum of Understanding Agreement
- B. Letter of Request from BikeNet

Memorandum of Understanding

This is an agreement between the CITY OF BILLINGS, a municipal corporation, hereinafter referred to as "CITY", and BIKENET, a local non-profit 501(c)(3) advocacy group for trails, hereinafter referred to as "BIKENET" for a mutual agreement concerning grants.

- A. BIKENET agrees that it will submit a grant application to St. Vincent Healthcare Mission Fund Grant which requires application from a non-profit 501 (c) (3) status organization.
- B. The grant submitted through BIKENET for this City trail project, the Ponderosa School Trail, is designated in the approved Heritage Trail Plan, the Capital Improvement Plan and grant submittal needs approval from the City Council and the BikeNet Board of Directors.
- C. The Planning and Community Service Department hereby agrees to provide grant writing assistance to BIKENET including word processing, copying, postage and other administrative items.
- D. BIKENET agrees to transfer the grant funding to the CITY for construction of the project in the event the grant application is approved by St. Vincent Healthcare Mission Fund. The grant application will expressly advise St. Vincent Healthcare Mission Fund that any funds given to BIKENET for this purpose will ultimately be transferred to the CITY on the condition that all funds so transferred are to be used entirely in the construction of the proposed trail.

IN WITNESS WHEREOF, the parties have executed this agreement on this 22nd day of May, 2006.

BIKENET

BY: _____

Authorized Signature

THE CITY OF BILLINGS

BY: _____

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Memorandum of Understanding (MOU) with BikeNet for PPL Montana Community Fund grant application for Big Ditch Trail, Phase 2

DEPARTMENT: Planning and Community Services

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking grant monies for approved trail projects to help supplement the required local match dollars. BikeNet with a Memorandum of Understanding with the City, applied for this grant in January, 2006, but was not one of the 15 out of 152 requests that received funding. Another application deadline cycle is at the end of July. Only a non-profit organization with a 501 (c) (3) status can apply for this grant. BikeNet would consider applying again for this Community Fund on behalf of the City of Billings in accordance with the attached Memorandum of Understanding. Council action is required at this time in order to meet the funding application cycle.

FINANCIAL IMPACT: The CTEP funding of \$147,620.00 has been approved for the Big Ditch Trail, Phase 2, but it requires a local match of 14% or \$22,880. PPL Montana Community Fund Grant application could provide up to \$10,000 for the required match. The City has already received \$5,000 in a supplemental grant from the Bikes Belong Coalition. Even if both of these grants materialize for a total of \$15,000, the City would still need to provide \$7,800 from 1999 General Obligation Bond for matching dollars for this trail project. Currently the GO Bond account has approximately \$90,000 left of the original \$599,000 that has not been spent or has not been obligated to trail related projects. There is also an additional \$51,500.00 of interest that has been earned on the trail segment of the bond issue, giving the City a total of approximately \$141,500 for matching trail funds.

RECOMMENDATION

Staff recommends that Council approve the Memorandum of Agreement and assist BikeNet in submitting a grant to the PPL Montana Community Fund contingent upon the agreement to transfer grant funds to the City for the Big Ditch, Phase 2, project.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A-Memorandum of Understanding Agreement

B-Letter of Request from BikeNet

INTRODUCTION

The City of Billings is seeking additional funding sources to provide the required 14% local match for the CTEP Big Ditch Trail, Phase 2 project.

BACKGROUND

The 1999 General Obligation Bond issue that was passed to provide matching dollars for trails in various areas of Billings, is diminishing rapidly and the City is looking for other opportunities for acquiring those matching dollars. Two grants that the City has consistently received are the Federal CTEP (Community Transportation Enhancement Program) which requires a 14% local match and the RTP (Recreational Trails Program) which requires a 20% local match. In order to receive these federal funds, the City of Billings needs a source of funding which can provide that match whether it is through the general obligation bond program or through other grants. Some grants can only be applied for through a non-profit 501 (c) (3) organization such as the BikeNet group. The PPL Montana Community Fund Grant could provide up to \$10,000 and the deadline for the application is July 28, 2006. PPL Montana requires that only community and environmental organizations, school districts, community colleges, and universities are eligible to apply. BikeNet is willing to assist the City of Billings in securing additional funds for trails, but needs help writing grants. The Planning and Community Service Department could provide grant writing assistance to the BikeNet group with a Memorandum of Understanding (MOU) that if the grant is awarded, BikeNet would transfer the funding to the City for that project. The PPL Montana Community Fund Grant would be submitted for a maximum \$10,000 request towards the Big Ditch Trail, Phase 2, which has been approved for the 2006 CTEP funding cycle and requires a local match of \$22,880. BikeNet previously submitted this grant during the January application cycle, but was not one of the 15 out of the 152 applications that was awarded. PPL Montana does welcome a reapplication during this next funding cycle.

STAKEHOLDERS

The stakeholders would include the City of Billings and the citizens and visitors of the Greater Billings community who access and use the trail network for recreation and as a transportation corridor. BikeNet, the local advocacy group, has a strong interest in helping to support the trails in the Billings area and have showed their support by holding an annual fund raiser to help provide matching dollars for federally funded trail projects. A trail census was conducted in 2003 and 2005 and the results confirmed an increased usage of the trail system.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The adopted Heritage Trail Plan suggests possible funding sources for potential trail projects. This list includes private funding sources from local or national foundations.

RECOMMENDATION

Staff recommends that Council approve the Memorandum of Agreement and assist BikeNet in submitting a grant to the PPL Montana Community Fund contingent upon the agreement to transfer grant funds to the City for the Big Ditch, Phase 2, project.

ATTACHMENTS

A-Memorandum of Understanding Agreement

B-Letter of Request from BikeNet

Memorandum of Understanding

This is an agreement between the CITY OF BILLINGS, a municipal corporation, hereinafter referred to as "CITY", and BIKENET, a local non-profit 501(c)(3) advocacy group for trails, hereinafter referred to as "BIKENET" for a mutual agreement concerning grants.

BIKENET agrees that it will submit a grant application to PPL Montana Community Fund Grant which requires application from a non-profit 501 (c) (3) status organization.

The grant submitted through BIKENET for this City trail project, Big Ditch Trail, Phase 2, is designated in the approved Rimrock West Master Park Plan, the Heritage Trail Plan, the Capital Improvement Plan and grant submittal needs approval from the City Council and the BikeNet Board of Directors.

The Planning and Community Service Department hereby agrees to provide grant writing assistance to BIKENET including word processing, copying, postage and other administrative items.

BIKENET agrees to transfer the grant funding to the CITY for construction of the project in the event the grant application is approved by PPL Montana Community Fund Grant. The grant application will expressly advise PPL Montana Community Fund Grant that any funds given to BIKENET for this purpose will ultimately be transferred to the CITY on the condition that all funds so transferred are to be used entirely in the construction of the proposed trail.

IN WITNESS WHEREOF, the parties have executed this agreement on this 22nd day of May, 2006.

BIKENET

BY: _____
Authorized Signature

THE CITY OF BILLINGS

BY: _____
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Recreational Trails Program Grant application for Lampman Strip Park

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

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is seeking funding for a portion of the Stewart Park/Lampman Strip Park Trail that will run from approximately Monad Rd. to the trail segment that was built along Famous Dave's on King Ave. The first segment of this trail project from Central Ave. to Monad Rd. will be constructed during the 2006 construction season. Due to escalating construction costs and the inability to get an easement from the BBWA (Billings Bench Water Association), the City will not build this segment of trail to Famous Dave's as originally planned. The trail is now longer to route it through Stewart Park away from the BBWA corridor so additional funding is needed. The Recreational Trails Program (RTP) grant for the year 2007 is due on July 1, 2006, so the City Council is being asked for approval to submit this grant application. The RTP grant is designated for the development of trails and has a maximum grant amount of \$35,000. The RTP grant provides reimbursement after monies have been expended for construction and requires a 20% match. The match of \$8,750 could be provided through the 1999 GO Bond or from a BikeNet contribution.

FINANCIAL IMPACT: The Recreational Trails Program Grant is being written to provide some funding for the trail segment through Lampman Strip Park. The application will request \$35,000 which is the maximum amount the City can receive. The RTP grant will be submitted for the portion of trail that runs from Monad Rd. to the segment of trail built along Famous Dave's on King Ave. This trail will run through the City's Lampman Strip Park. A trail corridor in the Stewart Park/Lampman Strip Park Master Park Plan addendum was adopted this past year by the City Council. This grant provides reimbursement after monies have been expended for the development and requires a 20% match. The match, which will not exceed \$8,750 can be awarded from the 1999 GO Bond with the approval of the City Council. The 1999 GO Bond was identified for the development of the west end trail and was approved by the voters to be used for matching dollars for the trails. Currently the GO Bond account has approximately \$90,000 left of the original \$599,000 that has not been spent or has not been obligated to trail related projects. There is also an additional \$51,500.00 of interest that has been earned on the

trail segment of the bond issue, giving the City a total of approximately \$141,500 for matching trail funds.

RECOMMENDATION

Staff recommends that Council approve the submittal of a Recreational Trails Program grant for a portion of the Stewart Park/Lampman Trail Project.

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

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Q

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Economic Development Initiative Grant Funds for Garfield School
Renovation, #B-06-SP-MT-0559

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The City of Billings has been awarded an Economic Development Initiative Grant of \$99,000 from the U.S. Department of Housing and Urban Development to fund continued renovations at Garfield School. The grant was awarded through a federal appropriation initiated by the Child and Family Intervention Center in order to fund fire code and ADA improvements.

ALTERNATIVES ANALYZED: Alternatives include accepting the grant or not accepting the grant on behalf of the Child and Family Intervention Center. Not accepting the grant would impair continued renovations to Garfield School which include fire code and ADA compliance improvements.

FINANCIAL IMPACT: The City would receive \$99,000 as a pass-through grant to the Child and Family Intervention Center. The City would also receive finance and administrative processing fees of \$1,980 equaling 2% of the total grant amount.

RECOMMENDATION

Staff recommends that Council accept the Economic Development Initiative Grant funds and allow the City Administrator to amend the Community Development Division's budget to accommodate processing the grant.

Approved By: City Administrator ____ City Attorney ____

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R1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: BikeNet Matching Funds for The Big Ditch Trail
DEPARTMENT: Planning and Community Services
PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is required to provide a local match of 13.42% for Federal CTEP (Community Transportation Enhancement Program) dollars that are used for trail projects. BikeNet, a local advocacy group for trails, has secured donations through their Ales for Trails fundraising event to help develop trails in the Billings' community. Last year at their May 18, 2005 meeting, the BikeNet Board of Directors voted to provide \$21,000 to the City of Billings for the local match for the Big Ditch Trail Project, Phase 1. This trail project is part of the City approved Capital Improvements Program and will be constructed this summer. The Big Ditch Trail, Phase 1 is the segment of trail in line with Colton Rd. from Shiloh Rd. underpass to Larchwood. Council approval is needed to accept the BikeNet contribution for the local Federal CTEP match to cover the trail construction costs.

FINANCIAL IMPACT: The CTEP funding of \$135,169.00 has been approved for the Bannister Drain Trail, but it requires a local match of 13.42% or \$20,951.35. BikeNet has voted to provide \$21,000 towards that required match. The 2nd Phase of this project from Larchwood to 46th St. W. and Rimrock West Park is planned for development in 2007.

RECOMMENDATION

Staff recommends that Council approve the donation of \$21,000 from BikeNet for the CTEP required matching funds for the Big Ditch Trail, Phase 1.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: BikeNet Matching Funds for Bannister Trail

DEPARTMENT: Planning and Community Services

PRESENTED BY: Darlene Tussing, Alternate Modes Coordinator

PROBLEM/ISSUE STATEMENT: The City of Billings is required to provide a local match of 13.42% for Federal CTEP (Community Transportation Enhancement Program) dollars that are used for trail projects. BikeNet, a local advocacy group for trails, has secured donations through their Ales for Trails fundraising event to help develop trails in the Billings' community. The BikeNet Board of Directors has voted to provide \$25,000 to the City of Billings for a portion of the local match for the Bannister Drain Trail Project. This trail project is part of the City approved Capital Improvements Program. Council approval is needed to accept the BikeNet contribution for a portion of the local Federal CTEP match so funding is in place to cover the trail construction costs, pending the approval of the PSA (Project Specific Agreement) from MDT (Montana Department of Transportation).

FINANCIAL IMPACT: The CTEP funding of \$312,404.88 has been approved for the Bannister Drain Trail, but it requires a local match of 13.42% or \$48,423.12. BikeNet would like to provide \$25,000 towards that required match. The additional matching dollars of \$23,423.12 will be provided from the 1999 GO Bond.

RECOMMENDATION

Staff recommends that Council approve the donation of \$25,000 from BikeNet for a portion of the CTEP required matching funds for the Bannister Drain Trail pending the approval of the PSA (Project Specific Agreement) from MDT.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Donation from Mission Ridge Independent Living
DEPARTMENT: Fire
PRESENTED BY: Marv Jochems, Fire Chief

PROBLEM/ISSUE STATEMENT: Mission Ridge Independent Living is planning on holding a fund raising event on June 2, 2006. Mission Ridge Independent Living would like to donate the proceeds of this dinner theatre event to the members of the Billings Fire Department. The proceeds will be used to buy commercial grade barbecues for each of the 7 fire stations. Any additional revenue would be donated to the Public Education efforts of the Billings Fire Department. The fire department frequently responds to emergencies at this location.

FINANCIAL IMPACT: The donation is forecasted to be between \$3000 and \$5000. Exact amount is unknown at this time. The cost of the barbecues is estimated to \$500-\$600

RECOMMENDATION

Staff recommends that Council approve accepting the donation, not to exceed \$5500, from Mission Ridge Independent Living.

Approved By: City Administrator ____ City Attorney ____

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 22, 2006

TITLE: Approval and Acceptance of \$900 Donation to Help Defray Costs of Sending One School Resource Officer to the National Association of School Resource Officer Conference (NASRO) in July, 2006

DEPARTMENT: Billings Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: One of our School Resource Officers (SRO) recently spoke at a local meeting of the Safe Schools Committee regarding the School Resource Officer Program. This committee is comprised of school principals, law enforcement, judicial representatives and interested citizens of the community. During the presentation, the SRO talked about the benefits of the SRO National Conference, this year being held in Palm Springs/La Quinta, California. Since this conference was not budgeted in the Police Department budget, 3 donors, who wish to remain anonymous, each contributed \$300, for a total of \$900, to send a School Resource Officer to the national conference in July. Staff is requesting City Council approval to accept the \$900 donation to help defray the cost of sending one School Resource Officer to the National Conference in July, 2006.

ALTERNATIVES ANALYZED:

- Accept the three \$300 donations (\$900) to help defray the cost of sending one School Resource Officer to the National Conference in July.
- Return the three \$300 (\$900) donations to the donors and do not send a School Resource officer to the National Conference in July.

FINANCIAL IMPACT: The \$900 will be placed in a donation account and budget authority will be requested to expend the funds to send one School Resource Officer to the National Conference in California during the month of July. The donation will pay for the registration and airline ticket. The Police Department agrees to fund the balance of the expenses, which will be the hotel and per diem costs estimated at \$600-\$700.

RECOMMENDATION

Staff recommends that Council accept the \$900 donation to help defray the cost of sending one School Resource Officer to the National SRO Conference in July, 2006.

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 22, 2006

TITLE: Approval and Acceptance of \$900 Donation to Help Defray Costs of Sending One School Resource Officer to the National Association of School Resource Officer Conference (NASRO) in July, 2006

DEPARTMENT: Billings Police Department

PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: One of our School Resource Officers (SRO) recently spoke at a local meeting of the Safe Schools Committee regarding the School Resource Officer Program. This committee is comprised of school principals, law enforcement, judicial representatives and interested citizens of the community. During the presentation, the SRO talked about the benefits of the SRO National Conference, this year being held in Palm Springs/La Quinta, California. Since this conference was not budgeted in the Police Department budget, 3 donors, who wish to remain anonymous, each contributed \$300, for a total of \$900, to send a School Resource Officer to the national conference in July. Staff is requesting City Council approval to accept the \$900 donation to help defray the cost of sending one School Resource Officer to the National Conference in July, 2006.

ALTERNATIVES ANALYZED:

- Accept the three \$300 donations (\$900) to help defray the cost of sending one School Resource Officer to the National Conference in July.
- Return the three \$300 (\$900) donations to the donors and do not send a School Resource officer to the National Conference in July.

FINANCIAL IMPACT: The \$900 will be placed in a donation account and budget authority will be requested to expend the funds to send one School Resource Officer to the National Conference in California during the month of July. The donation will pay for the registration and airline ticket. The Police Department agrees to fund the balance of the expenses, which will be the hotel and per diem costs estimated at \$600-\$700.

RECOMMENDATION

Staff recommends that Council accept the \$900 donation to help defray the cost of sending one School Resource Officer to the National SRO Conference in July, 2006.

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

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T

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Confirmation of Probationary Police Officer Brian Heinze
DEPARTMENT: Police Department
PRESENTED BY: Rich St. John, Chief of Police

PROBLEM/ISSUE STATEMENT: On May 9, 2005, Officer Brian Heinze was hired by the Billings Police Department as a probationary Police Officer. According to MCA 7-32-4113, his probationary period is for one year from date of hire. At this time Officer Heinze has completed his one year probation, and according to state statute, his name is to be submitted to City Council within 30 days for confirmation. All of the supervisor comments concerning Officer Heinze's performance are positive and indicate that he is doing a good job, and recommend confirmation.

RECOMMENDATION

City staff recommends Officer Brian Heinze be confirmed as a Billings Police Officer.

Approved By: City Administrator ____ City Attorney ____

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Memorial Day Parade Closure
 DEPARTMENT: Parks, Recreation and Public Lands
 PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The United Veterans Council requests temporary street closure for an annual Memorial Day Parade on Monday, May 29, 2006. They will assemble at the Albertson's parking lot on the corner of Central and 24th at 9:30am and will then march down Central to Mountview Cemetery and disband at 10:30am.

Recommended conditions of approval include the United Veterans Council:

1. Have no alcohol consumption in the public right of way
2. Contact all businesses and make them aware of the event as soon as possible
3. Clean the area to be used and provide and empty waste cans
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide a certificate of insurance naming City of Billings as additional insured
6. Provide and install adequate traffic barricades and signs directing motorists around closure

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: There are no costs to the city other than administrative time to process the application.

RECOMMENDATION

Staff recommends that Council approve closure of the event route described above on Monday, May 29, 2006, for the annual Memorial Day Parade.

Approved By: City Administrator ____ City Attorney ____

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V

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Preserve America Community Designation
DEPARTMENT: Planning and Community Services
PRESENTED BY: Lora Mattox, Planner II, Neighborhood Planner

PROBLEM/ISSUE STATEMENT: The Planning & Community Services Department was approached by the Downtown Billings Partnership, Inc. to assist in their effort to pursue a historic preservation designation known as a Preserve America Community. Downtown Billings Partnership, Inc. will be making application for this designation. As part of the application, the City of Billings is required to pass a resolution supporting the designation.

ALTERNATIVES ANALYZED: The City Council may:

1. Approve the resolution
2. Deny the resolution
3. Delay action

FINANCIAL IMPACT: City Council approval would allow the Downtown Billings Partnership to apply for the City of Billings to be designated as a Preserve America Community. There is no cost associated with applying for this designation. With the designation, grant funds could be accessed in the future for local historic preservation activities.

RECOMMENDATION

Staff recommends that the City Council approve the resolution supporting the application for the City of Billings to be designated as a Preserve America Community.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

- A. Resolution

INTRODUCTION

Preserve America is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation and the U.S. Department of the Interior, Commerce, Agriculture, and Housing and Urban Development. It highlights the efforts of the President and Mrs. Bush to preserve our national heritage.

BACKGROUND

By being designated as a Preserve America Community, the City of Billings would be eligible to apply for grant funds through The State of Montana Historic Preservation Office that received funds through the Preserve America Grant. Grant funds can be used to support planning, development, implementation, or enhancement of innovative activities and programs in heritage tourism, including documentation of cultural resources, interpretation/education, planning, marketing, and training. Projects will involve activities that involve the promotion and preservation of the community's cultural resources and involve public-private partnerships.

Preserve America Community designation will be granted to communities that meet three general criteria:

1. The community has recently supported a historic or cultural preservation project that promotes heritage tourism or otherwise fosters economic vitality, and involves a public-private partnership between government entities and at least one civic association, nonprofit, and/or business enterprise.
2. The governing body of the community has adopted a resolution indicating its commitment to the preservation of its heritage assets.
3. The community meets at least five criteria specified in three board categories: discovering heritage through historic places, protecting historic resources, and promoting historic assets.

RECOMMENDATION

Staff recommends that the City Council approve the resolution supporting the application for the City of Billings to be designated as a Preserve America Community.

ATTACHMENT

A. Resolution

ATTACHMENT A

RESOLUTION 06-_____

RESOLUTION TO ACCOMPANY APPLICATION FOR PRESERVE AMERICA COMMUNITY DESIGNATION.

WHEREAS, Preserve America is a White House initiative developed in cooperation with the Advisory Council on Historic Preservation, the U.S. Department of the Interior, and the U.S. Department of Commerce; and

WHEREAS, the goals of this initiative include a greater shared knowledge about our Nation's past, strengthened regional identities and local pride, increased local participation in preserving the country's irreplaceable cultural and natural heritage assets, and support for the economic vitality of communities; and

WHEREAS, this initiative is compatible with our community's interests and goals related to historic preservation; and

WHEREAS, designation as a Preserve America Community will improve our community's ability to protect and promote its historical resources; now therefore be it

RESOLVED, that the Billings City Council will apply for the designation of Billings as a Preserve America Community; and be it further

RESOLVED, that the Billings City Council will protect and celebrate our heritage, use our historic assets for economic development and community revitalization, and encourage people to experience and appreciate local historic resources through education and heritage tourism programs.

APPROVED AND PASSED by the City Council of the City of Billings this 22nd day of May, 2006.

THE CITY OF BILLINGS:

BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

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W

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, May 22, 2006

TITLE: Athletic Field Fence Advertising Resolution
DEPARTMENT: Parks, Recreation & Public Lands
PRESENTED BY: Gene Blackwell, Interim PRPL Director
Joe Fedin, Supt. of Recreation

PROBLEM/ISSUE STATEMENT: A resolution pertaining to athletic field fence advertising was adopted in 1998 (See Attachment B) and to date no organization has undertaken any advertising. The main reason given for non-use has been the \$500 fee associated with the resolution which makes it prohibitive to most organizations. A request has been made by the Little Leagues to re-evaluate the resolution and make necessary changes so that organizations can profitably sell advertising to benefit both the organization and the city. The proposed resolution had been reviewed by both the Little League organizations and Billings Parks, Recreation, and Cemetery Board at their May, 11th, 2005 regular meeting. The PRC Board recommended adoption. It has been delayed while it has been determined how to reconcile it to the Billings sign ordinances proposed ordinance changes that were under way when it was considered. The City Planning Department will bring forward text changes that will exempt the park ballfield signs from the zoning sign code if this resolution is approved.

ALTERNATIVES ANALYZED:

1. Amend current resolution – review and/or revise proposed current resolution (See Attachment A) to make it more palatable for the organizations to sell advertising space so that both the organizations and the city will benefit through the implementation of the new resolution. (Recommended)
2. Make no changes – leave current resolution as is with no changes.

FINANCIAL IMPACT: Since the authorizations contained in the original resolution have not been taken advantage of, there has been no revenue generated to date since 1998. Amenable changes in the resolution can do nothing but increase revenue for both the City and user organizations selling advertising space. With the proposed reduction in the fee, to \$100 per ballfield, the annual revenue won't be substantial but will benefit both parties – estimated to be \$1,000 annually or less for the city, at least initially.

RECOMMENDATION The Parks, Recreation and Cemetery Board and staff recommends that Council adopt the attached (Attachment A) Athletic Field Fence Advertising Resolution and that City-County Planning initiate a zoning ordinance text amendment to exempt them from the Billings zoning regulations.

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

ATTACHMENTS

- A. Proposed Athletic Field Fence Advertising Resolution
- B. Original 1998 Athletic Field Fence Advertising Resolution

INTRODUCTION

The re-evaluation of the 1998 resolution pertaining to athletic field fence advertising was initiated by a request from the area Little Leagues. The main reason given was that the fee of \$500/field made it cost prohibitive to sell and maintain the advertising.

PROCEDURAL HISTORY

- **March 23, 1998** – Resolution 98-17335 adopted by City Council regarding Athletic Field Fence Advertising.
- **1998 to Present** – No organization has utilized the ability to advertise as permitted under Resolution 98-17335.
- **Early spring, 2005** - Staff presented with a request from Little Leagues to consider changes to the original resolution to make it more viable.
- **April 13, 2005** – Staff prepared a draft revised resolution to present to the PRC advisory board. Little League officials were present to discuss recommended changes. The PRC board recommended several changes on the draft and voted to re-consider it at the May meeting.
- **May 11, 2005** – The PRC board voted unanimously to recommend for consideration from the City Council the Attached (Attachment A) revised resolution.
- City-County Planning staff has reviewed the proposed resolution, and has determined that they will provide zoning sign code text changes that exempt the ballfield signs permitted under this resolution from the zoning sign code if approved.

BACKGROUND Since the original advertising resolution was adopted in 1998 there has been no advertising placed at any city ball fields. The main reason cited has been the price. User groups have indicated that with the cost to purchase the sign initially along with the limited season and advertising audience, it made it difficult to make a reasonable profit in selling the signs. The other major factor was that putting them up and taking them down daily at most fields made it very inconvenient. This was originally required because the signs would have interfered with irrigation patterns, but since the newer systems have been installed this problem has been eliminated. The proposed resolution changes address these two main factors and the primary stakeholder feels that this would make it a workable solution. Most other changes in the proposed resolution were minor wording changes.

ALTERNATIVES ANALYSIS

1. **AMEND CURRENT RESOLUTION** – review and/or revise proposed current resolution (See Attachment A) to make it more palatable for the organizations to sell

advertising space so that both the organizations and the city will benefit through the implementation of the new resolution. (Recommended)

2. **MAKE NO CHANGES** – since the original resolution has not been utilized, it is apparent that some changes need to be considered. If no changes are made, it will in reality prevent rather than enable field advertising.

STAKEHOLDERS

The primary organization which will be impacted by this resolution change is the area Little Leagues since they utilize the majority of City ball fields.

Merle Peifer, the District Administrator for the Little League organization, and Randy Bishop, President of the Big Sky Little League, were in attendance at the April 2005 meeting of the PRC Board when the draft proposal was reviewed by the Board. They both indicated that they support the resolution as recommended by the PRC Board. By lowering the fee and amending the signage regulations they definitely feel that the resolution as amended would be viable and used in the future.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This policy is fairly consistent with the intent of the original resolution, but makes its application more feasible due to the change in fee structure and signage regulations.

SUMMARY

This proposed resolution change is supported by the area Little Leagues, PRPL staff and the PRPL Advisory Board. The modifications from the original 1998 resolution should allow it to be utilized by athletic organizations to raise much needed funds and generate additional revenue for the City while having appropriate safeguards in place regarding the signage.

RECOMMENDATION The Parks, Recreation and Cemetery Board and staff recommends that Council adopt the attached (Attachment A) Athletic Field Fence Advertising Resolution and that City-County Planning initiate a zoning ordinance text amendment to exempt them from the Billings zoning regulations.

ATTACHMENTS

- A. Proposed Athletic Field Fence Advertising Resolution
- B. Original 1998 Athletic Field Fence Advertising Resolution

RESOLUTION NO. 06_____

A RESOLUTION OF THE CITY OF BILLINGS ALLOWING NON-PROFIT ORGANIZATIONS HOLDING VALID PARK USE PERMITS AT CITY BALLFIELDS TO DISPLAY SPONSOR SIGNAGE AS A MEANS OF RAISING FUNDS; SETTING A FEE TO BE CHARGED BY THE CITY FOR SUCH ADVERTISING DISPLAYS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Billings adopted RESOLUTION NO. 98-17335 in 1998 governing advertising at City ball fields; and

WHEREAS, no advertising permits have been purchased pursuant to said policy, which has been identified by local athletic organizations as an impediment to fundraising by the sale of sponsor advertising; and

WHEREAS, the City of Billings recognizes the significant contribution to the maintenance and upkeep of city ball fields provided by area Athletic Organizations; and

WHEREAS, the City of Billings also recognizes the importance of monetary sponsorships and fundraising to the operations of non-profit athletic organizations, including their capacity to maintain and improve City ball fields; and

WHEREAS, the City of Billings provides certain services to the public through the Parks Division of the Department of Parks, Recreation, and Public Lands; and

WHEREAS, is in the best interests of the citizens of the City of Billings that the City provides said services and that the City Council allow non-profit athletic organizations holding valid Park Use Permits at City ball fields to display sponsor signage as a means of raising funds for field improvements;

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

1. RESOLUTION NO. 98-17335 is hereby repealed.
2. Advertising Permitted at City Park Ball Fields. Non-profit organizations with valid Park Use Permits for the use of City of Billings Park ball fields shall be allowed to sell advertising and display such advertising at the park ball field to which such Park Use Permit applies, subject to the following limitations and restrictions:

- (a) No wooden signs are permitted. Only banner signs constructed of polyvinyl or similar material with advertisements on one face and a solid white color on the back are allowed;
- (b) Advertising signs shall only be placed on sideline and outfield fences with the ad side facing the playing field with only one sign per fence section being allowed. Signs may also be placed on the backs of dugouts;
- (c) The size of each sign shall not be longer than any single fence section to which it is affixed and shall not be closer than 6 inches to the ground. It shall be designed and placed in a manner which does not alter, damage or interfere with either City property or City operations, including the maintenance, irrigation patterns and upkeep of the surrounding grounds;
- (d) Advertising signs shall be placed no earlier than April 15th, and shall be removed from all ball fields no later than the date of the last scheduled league or tournament game at the end of the season;
- (e) Advertising signs that are visibly deteriorated shall be immediately removed or replaced upon notice from the PRPL Department so as to preserve the park aesthetics and the advertising values for subscribers;
- (f) No advertisements for products or services detrimental or inappropriate to the health or welfare of children including, but not limited to, alcoholic beverages, tobacco products, adult entertainment, gambling, or questionable content will be permitted;
- (g) Where field use is shared by a primary and secondary users, the primary user may sell sign space on up to 75% of the available fence panels and the secondary users may sell the remaining 25% of the space unless a mutual agreement is made otherwise between the using organizations.
- (h) On Nov. 1st of each year organizations who have advertised at fields must provide the PRPL Department with a financial report showing the amount of revenue that was generated from the advertisement sales and what money went into field improvements during the past season.

3. Dispute Resolution. Any section of this resolution being disputed will be reviewed by PRPL Staff who are authorized to make a final binding determination.

4. Advertising Permit Fee and Use. The annual fee paid to place advertising signs at a single ball field shall be \$100.00/field.

5. Terms of Fees: Said fee shall continue in full force and effect from the date of approval until changed by the City Council by subsequent resolution.

PASSED by the Billings City Council and APPROVED this ____ day of _____,
2006.

CITY OF BILLINGS:

BY: _____
MAYOR

ATTEST:

BY: _____
CITY CLERK

ATTACHMENT B – Original 1998 Athletic Field Fence Advertising Resolution

RESOLUTION NO. 98 - 17335

**A RESOLUTION OF THE CITY OF BILLINGS
ESTABLISHING A FEE TO BE CHARGED BY THE CITY
FOR SERVICES PROVIDED BY THE PARKS,
RECREATION, AND PUBLIC LANDS DEPARTMENT IN
THE PARKS DIVISION AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, The City of Billings provides certain services to the public in the Parks Division through the Department of Parks, Recreation, and Public Lands; and

WHEREAS, It is in the best interest of the citizens of the City of Billings that the City provides said services and that the City Council establish a fee for said services;

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

1. Advertising Permitted at City Park Ballfields. All non-profit organizations with valid Park Use Permits for the use of City of Billings Park ballfields shall be permitted to sell advertising and display such advertising at the park ballfield for which it was sold, subject to the following limitations and restrictions:

- 1) No wooden signs permitted. Only polyvinyl banner signs with advertisements on one face and a single color on the back that is uniform to all the signs on each field would be allowed;
- 2) The size of each sign shall be no wider than Two (2) feet and no longer than six (6) feet;
- 3) Signs shall only be permitted on outfield fences and the backs of dugouts and only one sign per fence section shall be allowed centered 6 inches from the top rail of each fence panel used;
- 4) All such advertising signs shall be put up and taken down daily from all fields except these: the Joe Pirtz Legion Ballfield in Stewart Park, the ballfields at Clevenger Park, and the softball fields in Poly-Vista Park;
- 5) All advertising shall be put up no earlier than April 15th, and shall be removed from all ballfields by no later than the date of the last scheduled league or tournament game at the end of the season;
- 6) Advertising signs that are weathered or damaged and are visibly deteriorated shall be removed and repainted upon notice from the PRPL Department so as to preserve the park aesthetics and the advertising value for subscribers.
- 7) No advertisements for alcoholic beverages or tobacco products will be permitted.

2. Advertising Permit Fee Amount and Use. The fee amount paid to place advertising signs at a single ballfield shall be \$500.00. Said fee shall be used by the City Department of Parks, Recreation, & Public Lands for weed control and fertilizer on and around ballfields throughout Billings' parks.
3. Term of Fees. Said fee shall continue in full force and effect until changed by the City Council by subsequent resolution.

PASSED by the Billings City Council and APPROVED this 23rd day of March, 1998.

CITY OF BILLINGS

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE City Clerk

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

X

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Resolution Relating to \$851,000 Pooled Special Improvement Districts Bond, Authorizing the Issuance and Calling for the Public Sale Thereof

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved Special Improvement District (SID) projects and has awarded construction contracts for SID 1368, 1370 and 1373. The following resolution authorizes the sale of \$851,000 in bonds for financing of the above stated projects.

FINANCIAL IMPACT:

| | |
|--|------------|
| SID 1368-Annandale Road extension | \$ 227,000 |
| SID 1370-Interlachen Drive improvements | \$ 333,000 |
| SID 1373-South Billings Boulevard improvements | \$ 291,000 |

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$851,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2006 (SPECIAL IMPROVEMENT DISTRICT NOS. 1368, 1370, AND 1373); AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on May 22, 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 and seal officially this ____ day of May, 2006.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$851,000 POOLED SPECIAL IMPROVEMENT DISTRICT BONDS, SERIES 2006 (SPECIAL IMPROVEMENT DISTRICT NOS. 1368, 1370, AND 1373); AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF

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

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”), special improvement districts, designated as Special Improvement District Nos. 1368 (“District No. 1368”), 1370 (“District No. 1370”), and 1373 (“District No. 1373”) (collectively, the “Districts”), for the purpose of financing costs of certain public improvements of special benefit to the properties within the Districts (the “Improvements”) and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds of the City drawn on the Districts (the “Bonds”), the creation and administration of the Districts, and the funding of a deposit to the City’s Special Improvement District Revolving Fund (the “Revolving Fund”). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Districts is \$851,000. The costs of the Improvements are to be paid from the proceeds of the Bonds, which are to be payable primarily from special assessments to be levied against property in the Districts, which property will be specially benefited by the Improvements in an amount not less than \$851,000.

(b) It is necessary that Bonds be issued and sold in an aggregate principal amount of \$851,000 to finance the costs of the Improvements within each of the Districts, including incidental costs, described in Subsection (a). The costs of the Improvements are currently estimated and financed as follows:

District No. 1368

| | |
|-------------------------|--------------|
| Construction | \$611,154.45 |
| Rounding Amount | (479.78) |
| City Finance Fee | 5,675.00 |
| Engineering Fee | 7,945.00 |
| Revolving Fund Deposit | 11,350.00 |
| Bond Discount | 3,859.00 |
| Costs of Issuance | 4,540.00 |
| Subtotal | \$644,043.67 |
| Less City Contributions | - 417,043.67 |
| Total | \$227,000.00 |

District No. 1370

| | |
|------------------------|--------------|
| Construction | \$262,333.00 |
| Rounding Amount | 71.00 |
| City Finance Fee | 8,325.00 |
| Engineering Fee | 33,300.00 |
| Revolving Fund Deposit | 16,650.00 |
| Bond Discount | 5,661.00 |
| Costs of Issuance | 6,660.00 |
| Total | \$333,000.00 |

District No. 1373

| | |
|-------------------------|--------------|
| Construction | \$339,001.27 |
| Rounding Amount | (421.93) |
| City Finance Fee | 7,275.00 |
| Engineering Fee | 10,185.00 |
| Revolving Fund Deposit | 14,550.00 |
| Bond Discount | 4,947.00 |
| Costs of Issuance | 7,275.00 |
| Subtotal | \$382,811.34 |
| Less City Contributions | - 91,811.34 |
| Total | \$291,000.00 |

(c) The City is authorized pursuant to Montana Code Annotated, Section 7-12-4193, to issue and sell special improvement district bonds of more than one district in a single offering on a pooled basis upon a determination that such pooling is in the best interests of the Districts and the City.

(d) The City is further authorized by Montana Code Annotated, Section 7-12-4204(1) to sell the Bonds at a price less than the principal amount thereof, but including interest thereon to the date of delivery, if this Council determines that such sale is in the best interests of the Districts and the City.

Section 2. Determinations of Public Interest in Allowing Bond Discount and Permitting Pooling of Bonds. Pursuant to the authority described in Section 1, this Council hereby determines that the issuance and sale of the Bonds in a pooled single offering for the following Special Improvement Districts in the respective principal amounts set forth below:

| <u>District No.</u> | <u>Principal Amount</u> |
|---------------------|-------------------------|
| 1358 | \$227,000.00 |
| 1370 | 333,000.00 |
| 1373 | 391,000.00 |
| Total: | \$851,000.00 |

is in the best interest of each of the Districts and the City and will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus help to lower

interest rates on the Bonds and because a single issue will reduce the costs of issuance. This Council further determines to fix the minimum price for the Bonds at \$836,533.00 (98.3% of par). Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of each of the Districts and the City.

Section 3. Findings and Determination To Pledge the Revolving Fund. In the Resolutions of Intention To Create Special Improvement District Nos. 1368, 1370, and 1373, adopted on July 11, 2005, July 26, 2004, and February 28, 2005, respectively, this Council found it to be in the public interest, and in the best interest of the City and the Districts, to secure payment of principal of and interest on the Bonds by the Revolving Fund and authorized the City to enter into the undertakings and agreements authorized in the Act in respect of the Bonds, based on the factors required to be considered under Section 7-12-4225(4) of the Act. Those findings and determinations were ratified and confirmed in the resolutions creating Special Improvement District Nos. 1368, 1370, and 1373, adopted by this Council on August 8, 2005, September 13, 2004, and March 28, 2005, respectively, and are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of Pooled Special Improvement District Bonds, Series 2006 (Special Improvement District Nos. 1368, 1370, and 1373) of the City in the aggregate principal amount of \$851,000 (the "Bonds") for the purpose of financing the Improvements. The Bonds shall be dated, as originally issued, as of June 29, 2006, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2007, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts:

| <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| 2007 | \$36,000 | 2015 | \$60,000 |
| 2008 | 40,000 | 2016 | 60,000 |
| 2009 | 45,000 | 2017 | 60,000 |
| 2010 | 50,000 | 2018 | 70,000 |
| 2011 | 50,000 | 2019 | 70,000 |
| 2012 | 50,000 | 2020 | 75,000 |
| 2013 | 55,000 | 2021 | 75,000 |
| 2014 | 55,000 | | |

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine at the time of the sale, and the principal of and interest on the Bonds shall be payable annually in equal payments on each July 1, commencing January 1, 2007, and concluding July 1, 2021, unless the Bonds are earlier redeemed. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities, except that one bond maturing in 2007 shall be in the denomination of \$6,000.

Bidders will have the option of combining the Bonds maturing on and after 2007 through and including 2011 and on and after 2012 through and including 2021 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

The Bonds shall be issuable only as fully registered bonds and shall be executed by the manual or facsimile signatures of the Mayor, Financial Services Manager and the City Clerk. The Bonds shall be secured by the Revolving Fund.

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale until 12:00 noon, M.T., on June 12, 2006, in accordance with the Notice of Sale hereinafter prescribed. At a regular meeting of this Council on June 12, 2006, at 6:30 P.M., M.T, the City will award the sale of the Bonds. The City Clerk is authorized and directed to cause notice of the sale to be published, as required by Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106, in *The Billings Times* once each week for two successive weeks preceding the week which contains the date of sale. The notice of sale shall be published and mailed in substantially the form set forth as Exhibit A to this resolution and this Council hereby adopts the terms and conditions set forth in such notice of sale as the terms and conditions of the sale of the Bonds.

Section 6. Continuing Disclosure. In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds, to provide annual reports of specified information and notice of the occurrence of certain events, if material. The Sinking Fund and Revolving Fund of the City are the only "obligated persons" in respect of the Bonds within the meaning of the Rule for the purposes of disclosing information on an ongoing basis. A description of the undertaking is set forth in the Official Statement. Failure of the City to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds.

Section 7. Official Statement. The Financial Services Manager and other officers of the City are hereby authorized and directed to prepare on behalf of the City an official statement to be distributed to potential purchasers of the Bonds. Such official statement shall contain the terms and conditions of sale set forth in the notice of sale referred to in Section 5 and such other information as shall be advisable and necessary to describe accurately the City and the security for, and terms and conditions of, the Bonds. The Financial Services Manager is authorized on behalf of the City to deem the official statement near "final" as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934.

Passed by the City Council of the City of Billings, Montana, this 22nd day of May, 2006.

THE CITY OF BILLINGS:

Mayor

Attest: _____
City Clerk

EXHIBIT A

NOTICE OF BOND SALE

\$851,000 Pooled Special Improvement District Bonds, Series 2006
(Special Improvement District Nos. 1368, 1370, and 1373)

CITY OF BILLINGS, MONTANA

NOTICE IS HEREBY GIVEN that the City of Billings, Montana (the "City"), will sell to the highest and best bidder for cash, as evidenced by sealed bids, the above-described Bonds drawn against the funds of the following special improvement districts in the respective principal amounts set forth below:

| <u>District No.</u> | <u>Principal Amount</u> |
|---------------------|-------------------------|
| 1358 | \$227,000.00 |
| 1370 | 333,000.00 |
| <u>1373</u> | <u>291,000.00</u> |
| Total: | \$851,000.00 |

Sealed bids for the purchase of the Bonds will be received in the City Clerk's office, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by the City by electronic transmission through Parity™, in either case until 12:00 noon, M.T., on Monday, June 12, 2006, at which time the bids will be opened and tabulated. The City Council of the City will meet at their regular meeting at 6:30 P.M., M.T., on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids and to award the sale of the Bonds.

Bids may be submitted by facsimile to the City Clerk at (406) 657-8390 or to Springsted Incorporated at (651) 223-3046 until 12:00 noon, M.T., on Monday, June 12, 2006.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of Special Improvement District Nos. 1368, 1370, and 1373 (collectively, the "Districts"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended. The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the respective Districts benefited by the Improvements to be undertaken therein or therefor. The special assessments are payable in equal, semiannual installments over a 15-year term, with unpaid installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate

of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The Bonds are further secured by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"). The City will agree to make a loan from the Revolving Fund to the Sinking Fund established for the Districts to make good any deficiency then existing in the principal and interest subaccounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City's general fund to the extent authorized by law.

Date and Type

The Bonds will be dated, as originally issued, as of June 29, 2006, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Redemption

If issued as serial bonds, the Bonds shall mature, subject to redemption, on July 1 in the following years and amounts:

| <u>Year</u> | <u>Amount</u> | <u>Year</u> | <u>Amount</u> |
|-------------|---------------|-------------|---------------|
| 2007 | \$36,000 | 2015 | \$60,000 |
| 2008 | 40,000 | 2016 | 60,000 |
| 2009 | 45,000 | 2017 | 60,000 |
| 2010 | 50,000 | 2018 | 70,000 |
| 2011 | 50,000 | 2019 | 70,000 |
| 2012 | 50,000 | 2020 | 75,000 |
| 2013 | 55,000 | 2021 | 75,000 |
| 2014 | 55,000 | | |

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine, and the principal of the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2007, and continuing through July 1, 2021, subject to prior redemption. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities, except that one bond maturing in 2007 shall be in the denomination of \$6,000.

Bidders will have the option of combining the Bonds maturing on and after 2007 through and including 2011 and on and after 2012 through and including 2021 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

The Bonds shall be issuable only as fully registered bonds and shall be executed by the manual or facsimile signatures of the Mayor, Financial Services Manager and the City Clerk. The Bonds shall be secured by the Revolving Fund.

Book Entry

The Bonds will be issued by means of a book entry system with no physical distribution of Bonds made to the public. The Bonds will be issued in fully registered form and one Bond, representing the aggregate principal amount of the Bonds maturing in each year, will be registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as securities depository of the Bonds. Individual purchases of the Bonds may be made in the principal amount of \$5,000 or any multiple thereof of a single maturity, through book entries made on the books and records of DTC and its participants. Principal and interest are payable by the registrar to DTC or its nominee as registered owner of the Bonds. Transfer of principal and interest payments to participants of DTC will be the responsibility of DTC; transfer of principal and interest payments to beneficial owners by participants will be the responsibility of such participants and other nominees of beneficial owners. The purchaser, as a condition of delivery of the Bonds, will be required to deposit the Bonds with DTC.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the Sinking Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Districts or from the transfer of surplus money from the Construction Subaccount to the Principal Subaccount, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the Sinking Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under "Mandatory Redemption" on any interest payment date; provided, however, the Bonds shall not be called for redemption before July 1, 2012, from the proceeds of refunding special improvement district bonds or warrants. The redemption price shall equal the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Selection of Bonds for Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of the stated maturities thereof. If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in \$5,000 principal amounts selected by the Registrar by lot or other manner it deems fair.

Interest Payment Dates, Rates

Interest will be payable each January 1 and July 1, commencing January 1, 2007, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month.

All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 5/100 of 1%. No supplemental or “B” coupons or additional interest certificates are permitted. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent
and Paying Agent

U.S. Bank National Association, of Seattle, Washington, will act as bond registrar, transfer agent and paying agent (the “Registrar”). The bond register will be kept, transfers of ownership will be effected and principal of and interest on the Bonds will be paid by the Registrar. The City will pay the charges of the Registrar for such services. The City reserves the right to remove the Registrar and to appoint a suitable successor.

Delivery

Within 45 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the authorized denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of bond counsel hereinafter described, an arbitrage certification and a certificate verifying that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing. As a condition of delivery, the purchaser must certify to the City in writing the initial reoffering prices of the Bonds.

Qualified Tax-Exempt Obligations

The Bonds will be designated by the City as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the Code), and financial institutions described in Section 265(b)(5) of the Code may treat the Bonds for purposes of Sections 265(b)(2) and 291(e)(1)(B) of the Code as if they were acquired on August 7, 1986.

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion from gross income for federal income tax purposes and Montana individual income tax purposes of the interest thereon will be furnished by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as Bond Counsel. The legal opinion will be provided at closing. The legal opinion will state that the Bonds are valid and binding special obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited

by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights; however, Dorsey & Whitney LLP will not express an opinion as to the enforceability of the agreement of the City to make loans or advances from the Revolving Fund to the Sinking Fund as may be required to pay principal and interest on the Bonds.

Type of Bid and Good Faith Deposit

Sealed or electronic bids for not less than \$836,533.00 (98.3% of par) on the principal sum of \$851,000 must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional. Bids may be transmitted electronically through Parity™ in accordance with these terms and conditions.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the "Deposit") in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$17,020.00 payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the City Clerk. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the Financial Services Manager prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City) not later than 1:00 P.M., M.T., on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Award

The bid authorizing the lowest net interest cost (total interest on all Bonds from June 29, 2006, to their maturities, less any premium or plus any discount) will be deemed the most favorable. In the event that two or more bids state the lowest net interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The Council will consider sealed bids or bids transmitted electronically through the Parity™ system. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

Electronic Transmission

To the extent any instructions or directions set forth in ParityTM conflict with this Notice of Sale, the terms of this Notice of Sale shall control. For further information about ParityTM, potential bidders may contact the Financial Advisor, Springsted Incorporated at (651) 223-3000 (Bond Services), or ParityTM at (212) 404-8102 (Client Services). In the event of a malfunction in the electronic bidding process, bidders may submit their bids by sealed bid including facsimile transmission to the City Clerk, Marita Herold, at facsimile number (406) 657-8390 (phone (406) 657-8210).

Official Statement

The City will prepare an Official Statement relating to the Bonds which the City will deem, for purposes of SEC Rule 15c2-12, to be final as of its date. The City will deliver, at closing, a certificate executed by the Mayor, Financial Services Manager and the City Clerk to the effect that, to the best of their knowledge, as of the date of closing, the information contained in the Official Statement, including any supplement thereto, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading; provided that no comment will be made with respect to any information provided by the successful bidder for inclusion in any supplement to the Official Statement.

By submitting a bid for the Bonds, the successful bidder agrees: (1) to disseminate to all members of the underwriting syndicate copies of the Official Statement, including any supplements prepared by the City, (2) to file promptly a copy of the Official Statement, including any supplement prepared by the City, with a nationally recognized municipal securities repository, and (3) to take any and all other actions necessary to comply with applicable rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board governing the offering, sale and delivery of the Bonds to ultimate purchasers.

Within seven business days after the sale the City will furnish to the successful bidder without charge up to 75 copies of the final Official Statement relating to the Bonds. The successful bidder must notify the Financial Services Manager in writing within five business days after the award of sale of the Bonds if it requires additional copies of the Official Statement. The cost of additional copies shall be paid by the successful bidder.

Continuing Disclosure

In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution prescribing the terms of the Bonds, to provide annual reports of specified information and notice of the occurrence of certain events, if material. The Sinking Fund and Revolving Fund of the City are the only "obligated persons" in respect of the Bonds within the meaning of the Rule for the purposes of disclosing

information on an ongoing basis. A description of the undertaking is set forth in the Official Statement. Failure of the City to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds.

CUSIP Numbers

The City will assume no fee or obligation for the assignment or printing of CUSIP numbers on the Bonds or for the correctness of any numbers printed thereon, but will permit such numbers to be assigned and printed at the expense of the purchaser, if the original purchaser waives any delay in delivery occasioned thereby.

Information for bidders and bidding forms may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Dated: May 22, 2006.

BY ORDER OF THE CITY COUNCIL

City Clerk
City of Billings, Montana

Publish: May 28, 2006
June 4, 2006

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

Y

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Second Reading of an Ordinance Expanding Ward II

DEPARTMENT: Planning and Community Services

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 the property. 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 May 8, 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 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.

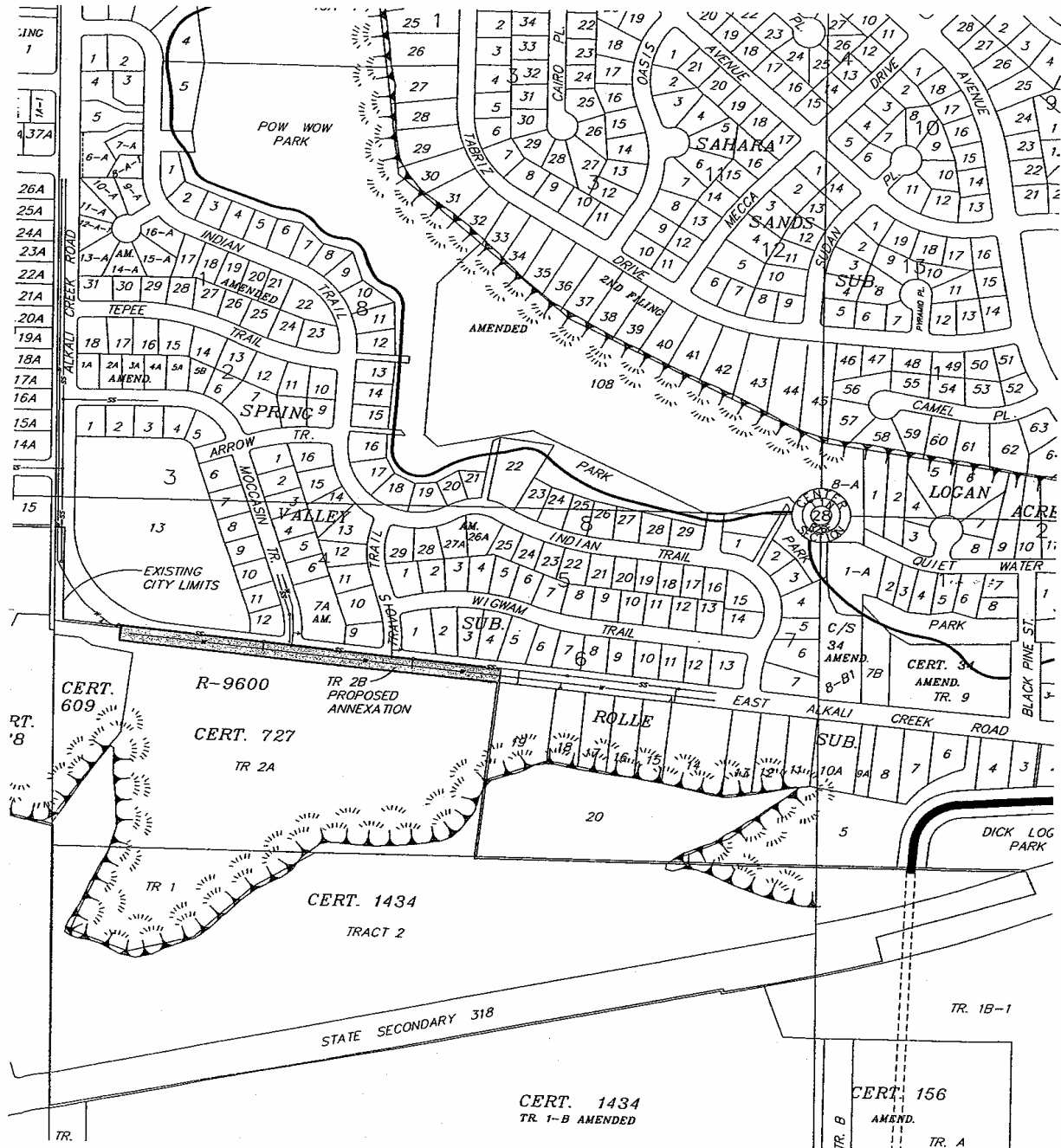
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Second Reading of an Ordinance Expanding Ward I

DEPARTMENT: Planning and Community Services

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 the owners of the property, McCall Development, Inc. Upon annexation, the property must be added to one (1) of the City's election wards. The City Council conducted a public hearing on May 8, 2006, and approved the ordinance on the first reading to add the subject property to Ward I. 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 I.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. 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 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to the following designated Ward the following described real property:
2. 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
3. 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.
4. 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.

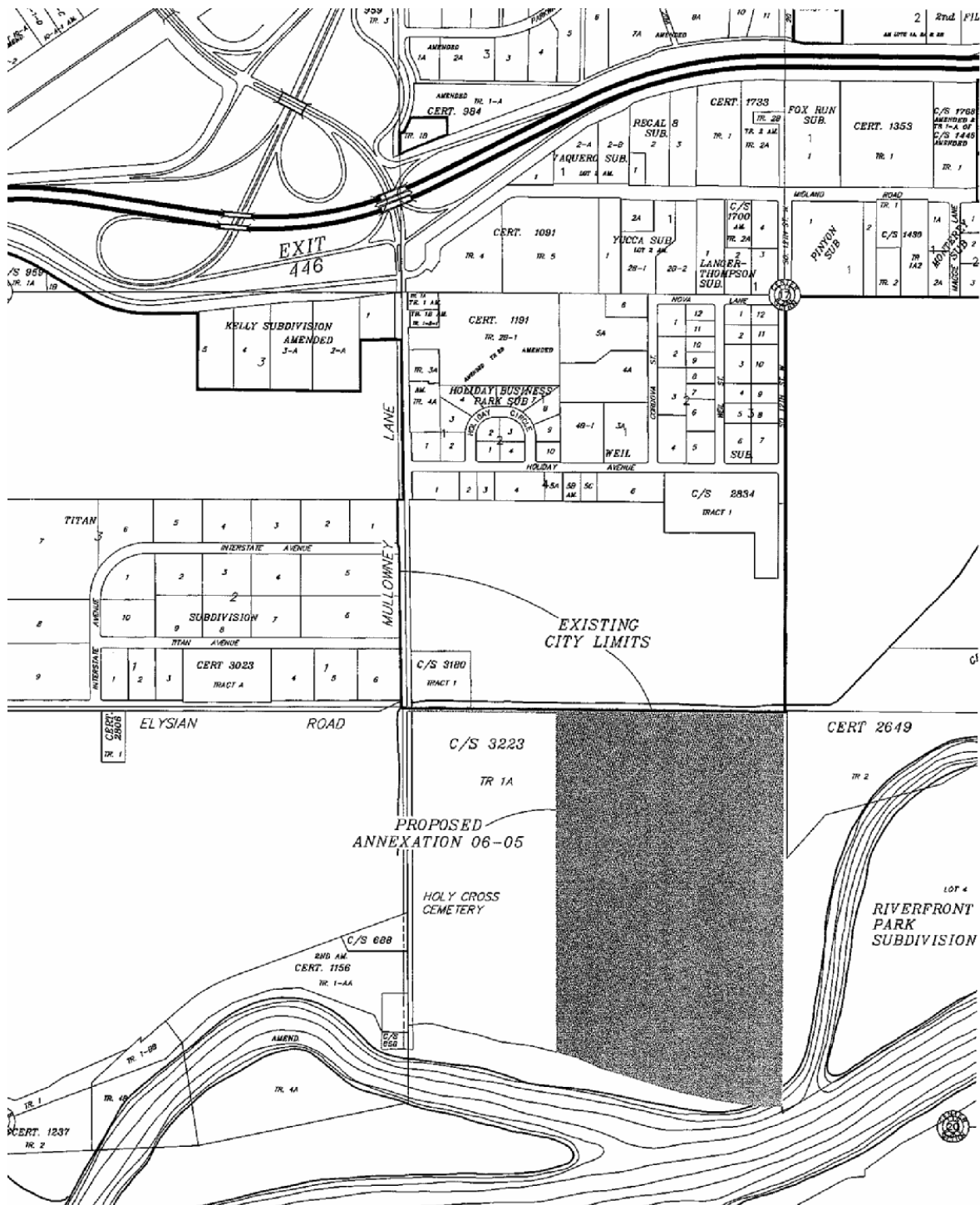
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, May 22, 2006**

TITLE: Josephine Crossing Subdivision Major Preliminary Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On March 1, 2006, the subdivider applied for preliminary plat approval of Josephine Crossing Subdivision, which contains 143 lots for residential and commercial development. The subject property contains approximately 89.381 acres and is legally described as the remainder tract of Amended Tract 1 of Certificate of Survey 3223, within Section 20, T1S, R26E. The property is located east of Mallowney Lane, directly south of Elysian Road, north of the Yellowstone River (south of the West Billings I-90 Interchange) and is currently zoned Public. There is a concurrent zone change application for the subject property to rezone the property to Planned Development (PD). The property was annexed into the City on April 24, 2006. The Yellowstone County Board of Planning conducted a public hearing on this application on April 25, 2006, and is forwarding a recommendation of conditional approval to the City Council.

ALTERNATIVES ANALYZED: In accordance with state law, the City Council has 60 working days to act upon this major plat; the 60 working day review period for the proposed plat ends on May 23, 2006. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 day review period, the City Council is required to:

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

FINANCIAL IMPACT: Upon development of the property, additional tax revenue for the City may be provided. It is unknown if the developed property will generate enough taxes/fees to pay for all of the required services of this subdivision.

RECOMMENDATION

The Yellowstone County Board of Planning recommends by a unanimous vote that the City Council conditionally approve the preliminary plat of Josephine Crossing Subdivision, approve the variances and adopt the Findings of Fact as presented in the staff report.

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

ATTACHMENTS

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

INTRODUCTION

On March 1, 2006, the subdivider applied for preliminary plat approval of Josephine Crossing Subdivision, which contains 143 lots for residential and commercial development. The subject property contains approximately 89.381 acres and is legally described as the remainder tract of Amended Tract 1 of Certificate of Survey 3223, within Section 20, T1S, R26E. The property is located east of Mallowney Lane, directly south of Elysian Road, north of the Yellowstone River (south of the West Billings I-90 Interchange) and is currently zoned Public. There is a concurrent zone change application for the subject property to rezone the property to Planned Development (PD). The property was annexed into the City on April 24, 2006.

PROCEDURAL HISTORY

- On March 1, 2006, a preliminary plat application for Josephine Crossing Subdivision was submitted to the Planning Department.
- On March 6, 2006, the Annexation Petition and zone change request from Public to Planned Development (PD) was submitted to the Planning Department.
- On March 30, 2006, a preliminary review of the zone change was conducted by the Planning Department.
- On April 10, 2006, the City Council acknowledged the annexation petition and set a public hearing date for April 24, 2006.
- On April 11, 2006, the Planning Board conducted the plat review of the preliminary plat.
- On April 24, 2006, the City Council conducted the public hearing and adopted a resolution annexing the subject property.
- On April 25, 2006, the Planning Board conducted the public hearing of the preliminary plat and forwarded a recommendation of conditional approval to the City Council by a unanimous vote.
- On May 2, 2006, the City Zoning Commission conducted a public hearing for the proposed zone change to Planned Development (PD) and forwarded a recommendation of approval to the City Council by a unanimous vote.
- On May 8, 2006, a public hearing for the first reading to expand Ward Boundary I was approved by the City Council.
- On May 22, 2006, the City Council will conduct the second and final reading. In addition, a public hearing for the proposed zone change will be conducted by the City Council at this meeting; the preliminary plat of Josephine Crossing Subdivision will be on the consent agenda at this meeting.
- On June 12, 2006, if the zone change is approved, the 2nd reading of the ordinance will be conducted by the City Council.

BACKGROUND

The subject property is bordered on the north by residential and commercial uses in the recently platted Riverfront Pointe Subdivision, zoned Highway Commercial; on the east by City owned property and agricultural land, zoned Public and Agricultural Open Space; on the west by agricultural land within the County zoned Agricultural Open Space; and on the south by the Yellowstone River.

| | |
|--------------------------|---|
| General location: | East of Mallowney Lane, directly south of Elysian Road, north of the Yellowstone River (south of the West Billings I-90 Interchange). |
| Legal Description: | The remainder tract of Amended Tract 1 of Certificate of Survey 3223 |
| Subdivider: | McCall Development, Inc. |
| Owner: | Same |
| Engineer and Agent: | Engineering, Inc. |
| Existing Zoning: | Public |
| Proposed Zoning: | Planned Development |
| Existing land use: | Vacant Land |
| Proposed land use: | Single-Family Residential, Duplexes, Multi-Family Residential, Commercial |
| Gross area: | 89.39 acres |
| Net area: | 73.38 acres |
| Proposed number of lots: | 145 |
| Lot size: | Max: 30.83 acres Min.: 3,122 square feet |
| Parkland requirements: | Subdivider is proposing an onsite parkland dedication. |

ALTERNATIVES ANALYSIS

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

RECOMMENDED CONDITIONS

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact:

1. To minimize effects to public health and safety, information regarding the location of the floodplain shall be provided for Lots 20 and 21, Block 5, to the Building Official for review and approval upon future filings of this subdivision or prior to construction on these lots. *(Recommended by the Building Official)*
2. To minimize effects on the natural environment, the following note shall be added to the Subdivision Improvements Agreement (SIA) under "Conditions that Run with the Land:" *(Recommended by the Planning Division)*
 - Soils in the area consist of predominately silty clays, which with the high water have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A geotechnical study may be required with building permit submittals.
3. To minimize effects on local services, Section VI. Utilities. A and B shall be revised to state the following: *(Recommended by the Public Utilities Department)*
 - Section A: The Josephine Crossing water system consists of a series of looped water mains located in each of the local access streets. The new water system will connect to the existing 16-inch water main in Sacagawea Drive via the Heritage Trail dedicated right-of-way along the southern boundary of Riverfront Pointe Subdivision and the 12-inch water main within South 12th Street West at the northeast corner of the subdivision.
 - Section B: The City may elect to extend the 24-inch sanitary sewer trunk from the Riverfront Pointe Subdivision park at the north end of Josephine Crossing Subdivision to Mullowney Lane along the proposed street right-of-way. All costs associated with construction of said 24-inch sanitary sewer would be paid for by McCall Development, Inc. at the time of construction. At such time that the City is able to budget funds into the Capital Improvements Plan (CIP), McCall Development, Inc. would be compensated for these local sewer main improvements.

4. To minimize effects on local services, the SIA shall be revised to reflect that the internal parks are to be dedicated to the public and maintained by a private Homeowner's Association with an underlying PMD for maintenance of said parks. A park maintenance district shall be created for the maintenance of all parks within the proposed subdivision. *(Recommended by the Parks and Recreation Department and the City Legal Department)*
5. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. To minimize effects on local services, the City Engineering Department has completed an analysis on clear vision triangles and would support 35-foot by 25-foot clear vision triangles from the property lines at all "T" intersections. Stop signs shall not be installed at these intersections. The revised clear vision triangles shall be clearly depicted on the final plat and shall be included as a development standard within the Planned Development Agreement for the proposed zone change. *(Recommended by the City Engineering Department and the Planning Division)*
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

The subdivision was submitted on March 1, 2006, prior to the adoption of the new City Subdivision Regulations, therefore the following variances are required:

A variance to permit 56-feet of right-of-way for the internal streets, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets. Engineering staff is supportive of this variance, as the newly adopted City Subdivision Regulations permit 56-foot right-of-ways.

A variance to permit 34-feet of back of curb to back of curb width for local residential streets, where Section 23-601(k), BMCC, requires 37-feet. Engineering, Fire, and planning staff are supportive of this variance, as the proposed width is adequate to accommodate emergency vehicles and vehicular traffic generated for this subdivision. Furthermore, the newly adopted City Subdivision Regulations permit 34-feet of back-to-back of curb width. The proposed variances will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

STAKEHOLDERS

A public hearing was conducted by the Planning Board on this subdivision on April 24, 2006. There was no public comment received and no further discussion by the Planning Board.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Yellowstone County/City of Billings Growth Policy, the 2005 Billings Urban Area Transportation Plan Update, and the Heritage Trail Plan are discussed within the Findings of Fact (Attachment D).

RECOMMENDATION

The Yellowstone County Board of Planning recommends by an unanimous vote that the City Council conditionally approve the preliminary plat of Josephine Crossing Subdivision, approve the variances and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

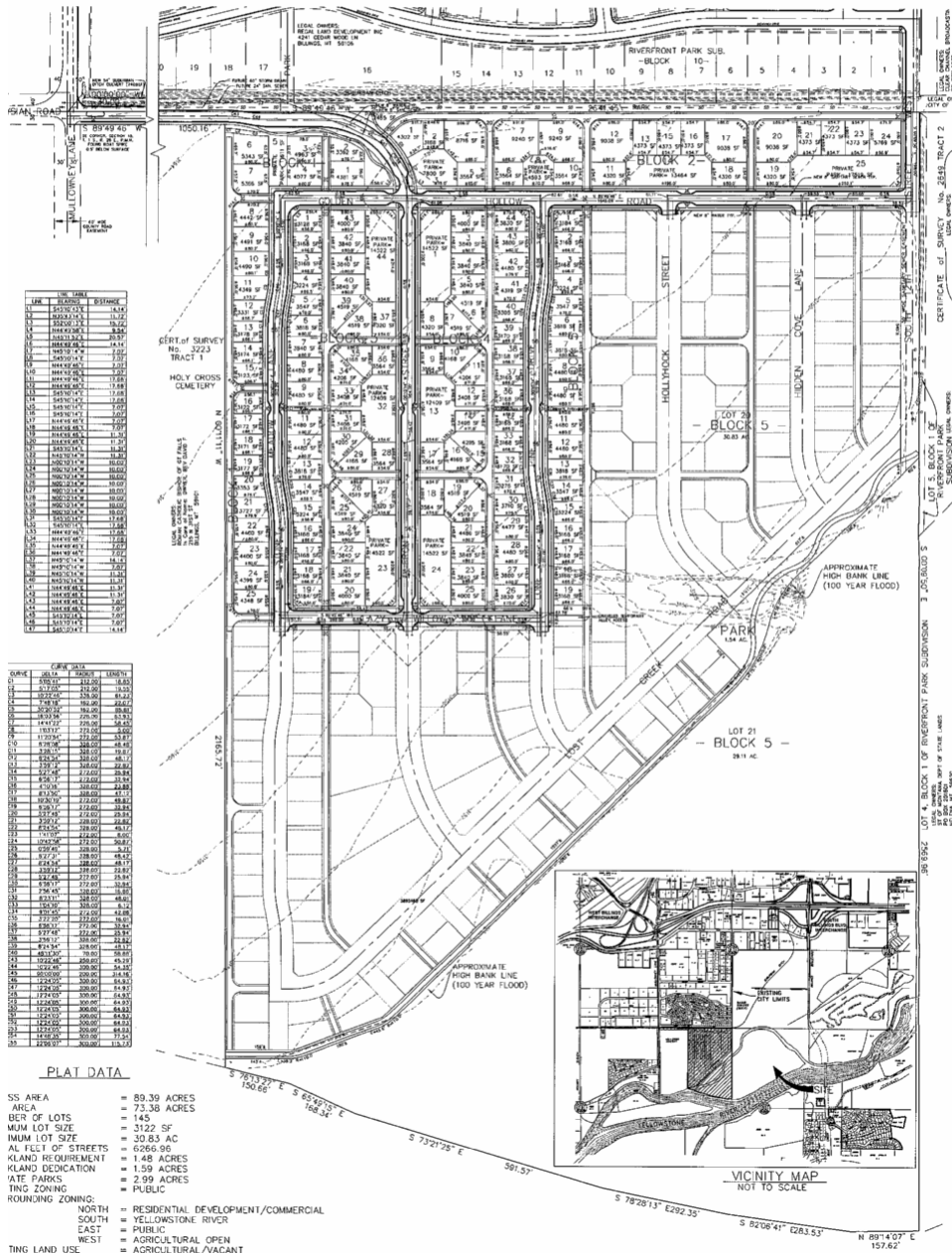
- A: Preliminary Plat
- B: Site Photographs
- C: Mayor's Approval Letter
- D: Findings of Fact

ATTACHMENT A
Preliminary Plat of Josephine Crossing Subdivision

PRELIMINARY PLAT OF
JOSEPHINE CROSSING SUBDIVISION
BEING THE UNPLATTED LANDS
SITUATED IN THE NORTHWEST 1/4, OF SECTION 20, T. 1 S., R. 26 E., P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR
PREPARED BY : ENGINEERING, INC.
SCALE : 1" = 100'

MARCH, 2006
BILLINGS, MONTANA
100 50 0 50 100



ATTACHMENT B
Site Photographs



Figure 1: View east along Elysian Road along the northern boundary of the proposed subdivision. A half-width portion of this road is currently being improved with the construction of Riverfront Pointe Subdivision to the north.



Figure 2: View southeast across the subject property.



Figure 3: View east toward portions of Riverfront Park, located southeast of the proposed subdivision.



Figure 4: View north from the Elysian Road right-of-way toward construction within Riverfront Pointe Subdivision. Hotels and restaurants located at the West Billings Interchange are pictured to the north in the photo.

ATTACHMENT C
Mayor's Approval Letter

May 22, 2006

McCall Development, Inc.
2751 Enterprise Avenue, Suite 2
Billings, Montana 59102

Dear Applicant:

On May 22, 2006, the Billings City Council approved the preliminary plat of Josephine Crossing Subdivision, subject to the following conditions of approval:

1. To minimize effects to public health and safety, information regarding the location of the floodplain shall be provided for Lots 20 and 21, Block 5, to the Building Official for review and approval upon future filings of this subdivision or prior to construction on these lots. *(Recommended by the Building Official)*
2. To minimize effects on the natural environment, the following note shall be added to the Subdivision Improvements Agreement (SIA) under "Conditions that Run with the Land:" *(Recommended by the Planning Division)*
 - Soils in the area consist of predominately silty clays, which with the high water have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A geotechnical study may be required with building permit submittals.
3. To minimize effects on local services, Section VI. Utilities. A and B shall be revised to state the following: *(Recommended by the Public Utilities Department)*
 - Section A: The Josephine Crossing water system consists of a series of looped water mains located in each of the local access streets. The new water system will connect to the existing 16-inch water main in Sacagawea Drive via the Heritage Trail dedicated right-of-way along the southern boundary of Riverfront Pointe Subdivision and the 12-inch water main within South 12th Street West at the northeast corner of the subdivision.
 - Section B: The City may elect to extend the 24-inch sanitary sewer trunk from the Riverfront Pointe Subdivision park at the north end of Josephine Crossing Subdivision to Mallowney Lane along the proposed street right-of-way. All costs associated with construction of said 24-inch sanitary sewer would be paid for by McCall Development, Inc. at the time of construction. At such time that the City is able to budget funds into the Capital Improvements Plan (CIP), McCall Development, Inc. would be compensated for these local sewer main improvements.

4. To minimize effects on local services, the SIA shall be revised to reflect that the internal parks are to be dedicated to the public and maintained by a private Homeowner's Association with an underlying PMD for maintenance of said parks. A park maintenance district shall be created for the maintenance of all parks within the proposed subdivision. *(Recommended by the Parks and Recreation Department and the City Legal Department)*
5. To minimize effects on local services, the subdivider shall provide centralized delivery boxes with a sufficient pullout to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. *(Recommended by the United States Postal Service)*
6. To minimize effects on local services, the City Engineering Department has completed an analysis on clear vision triangles and would support 35-foot by 25-foot clear vision triangles from the property lines at all "T" intersections. Stop signs shall not be installed at these intersections. The revised clear vision triangles shall be clearly depicted on the final plat and shall be included as a development standard within the Planned Development Agreement for the proposed zone change. *(Recommended by the City Engineering Department and the Planning Division)*
7. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
8. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

The Billings City Council also approved the following variances from the City Subdivision Regulations with the preliminary plat approval:

- A variance to permit 50-feet of right-of-way for the internal streets, where Section 23-601(k), BMCC, requires 60-feet of right-of-way for local residential streets.
- A variance to permit 34-feet of back of curb to back of curb width for local residential streets, where Section 23-601(k), BMCC, requires 37-feet.

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

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

Sincerely,

Ron Tussing, Mayor

pc: Tim Pirtz, Engineering, Inc.

ATTACHMENT D
Findings of Fact

Staff is forwarding the recommended Findings of Fact for Josephine Crossing Subdivision for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

There are irrigation waste ditches located on the property, which will be removed upon development. No viable ditches service this property and all perimeter ditches are for the use of adjacent property owners, as specified within the SIA.

2. Effect on local services

a. **Utilities** – Water to the subject property will be extended from the existing 16-inch water main within Sacagawea Drive via the Heritage Trail pathway in Riverfront Pointe Subdivision to the north and the existing 12-inch water main within 12th Street West at the northeast corner of the property. The SIA does not state the correct information for the location of the water mains. Condition #3 requires the SIA be revised to the corrected locations and sizes of the installed water mains.

Sanitary sewer will be connected to the existing main lines within Riverfront Pointe Subdivision to the north. The eastern portion of proposed Block 2 and future eastern development will discharge to the existing sanitary sewer system within South 12th Street West located northeast of the subdivision. In the future, the City may elect to extend the 24-inch sewer trunk south from Riverfront Pointe Subdivision. At that time, the 24-inch main will be installed at the cost of the developer with reimbursement by the City in the future. Condition #3 requires that the language within the SIA regarding the cost and location of this sewer main be revised.

b. **Stormwater** – Stormwater drainage will consist of curb and gutter surface collection and curb inlets that drain into storm drainage piping. This piping will discharge into a temporary open channel that drains into an existing irrigation ditch discharge located at the southeast corner of the subject property. As specified within the SIA, all drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

- d. **Streets** - Access to the subdivision will be via internal streets from Elysian Road located along the northern boundary of the property from Muldowney Lane to the west. Muldowney Lane at its intersection with Elysian Road west of the subdivision is a collector and will be required to be widened with this subdivision to provide a left turn lane onto Elysian Road. Improvements along Elysian Road will include a 28-foot back-to-back of curb width with the exception of the intersection with Muldowney Lane, which will be wider to provide for an entry island. Due to the narrowed pavement width along Elysian Road to its intersection with Front Street, the 28-foot width will be signed to restrict parking on both sides of the street. Furthermore, to provide for adequate pedestrian connectivity, the subdivider will either provide a 5-foot wide curbwalk along the southern boundary of Elysian Road and Front Street including the frontage along the Holy Cross Cemetery to the east or construct the proposed multi-use path located within the dedicated parkland north of the Suburban Ditch Company within Riverfront Pointe Subdivision. A secondary access to the subdivision will be provided via South 12th Street West from Riverfront Pointe Subdivision to the north. South 12th Street West remains an unimproved right-of-way north of Riverfront Pointe Subdivision; however it could potentially connect north to Holiday Avenue upon development of the vacant land to the north.

Internal roads, including South 12th Street West, will maintain 56-foot wide right-of-ways with 34-foot back-to-back of curb pavement widths. The subdivider has requested variances to permit the proposed right-of-way and pavement widths. Engineering, Fire, and planning staff are supportive of this variance, as this is the street standard within the newly adopted City Subdivision Regulations. Boulevard walks with 5-foot wide sidewalks and 5-feet of boulevard are proposed throughout the subdivision. While all of the lots will front on public streets and will front on pocket parks in most cases, the alleys will provide the main access to the residences. The subdivider is proposing 20-foot wide alleys with 12-feet of pavement width for access to rear facing garages along the alleys.

Due to the reduced sizes of lots, the subdivider had originally proposed all "T" intersections within the subdivision to be controlled with stop signs to eliminate the need for the 110-foot by 110-foot clear vision triangle required for uncontrolled intersections by Section 27-618(Figure 3) of the Unified Zoning Regulations. The Traffic Engineer reviewed this proposal and found that stop signs at every intersection would not be conducive to aiding in traffic control within this subdivision. Therefore, the Engineering Department conducted research on these clear vision triangles and have determined that they will support 35-foot by 25-foot clear vision triangles at the "T" intersections. Condition #6 specifies that stop signs shall not be installed at these intersections and that the revised clear vision triangles shall be depicted on the final plat. Additionally, since this is a deviation from the Unified Zoning Code, information regarding these clear vision areas shall be included within the Planned Development Agreement and in the SIA.

A Traffic Accessibility Study (TAS) was submitted with this application to the Engineering Department for review and approval. The TAS determined that the following improvements are necessary:

- Mullooney Lane shall be widened and the lane shall be modified to provide a southbound left turn lane. Lane configuration and widths shall be reviewed and approved by the City Engineering Department.
 - A stop sign shall be placed at the intersection of Elysian Road and Mullooney Lane.
- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 604 South 24th Street West (Station #5). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Elysian Elementary and Middle School and West High School. Elysian School stated that they have a current enrollment of 124 students with a maximum enrollment of 162 students. With Riverfront Pointe Subdivision and Josephine Crossing, the maximum number of students could potentially be reached and Elysian School will have to expand. At this time there are no estimates regarding the cost of expanding the school to accommodate students within this subdivision. West High School responded that they are currently at capacity and an increased expenditure of \$75,000 per 25 students is necessary to accommodate increased enrollment.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 1.48 acres of dedicated parkland. The subdivider is proposing to provide a total of 4.58 acres of dedicated parkland. Approximately 1.59 acres of that total will be provided via the 20-foot wide Heritage Trail easement and park located along the southern boundary of proposed Lot 20, Block 5. The remaining 2.99 acres will be provided within pocket parks interspersed throughout the subdivision; however they will not count toward the parkland dedication. In recent discussions with the Parks Department and the City Attorney, the internal pocket parks will be dedicated and a private Homeowner's Association will maintain the parks. The PMD created for the maintenance of the parkland dedication located along the southern boundary of proposed Lot 20, Block 5, shall be expanded to include the pocket parks. If the Homeowner's Association dissolves, the underlying PMD will be assessed to the owners for the maintenance of these parks. Condition #4 requires that the SIA be revised to reflect that the internal parks are to be dedicated to the public and maintained by a private Homeowner's Association with an underlying PMD for maintenance of said parks.

h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #5. The location of the mail box shall be reviewed and approved by the post office.

3. Effect on the natural environment

There should be minimal effects on the natural environment with the development of this subdivision. The subdivision is located in an area that is relatively level and has been used for crop production.

Soils – The Soil Survey of Yellowstone County indicates that the soils in this area consist of predominately silty clays, which with the high water table in this area have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A note shall be added to the SIA regarding the presence of these soils and that a geotechnical study may be required with building permit submittals, as required by Condition #2.

Floodplain - The Yellowstone River borders the subject property on the south. Therefore, portions of proposed Lots 20 and 21, Block 5, could lie within the mapped floodplain area. While these lots are not to be developed with this filing of the subdivision, information regarding potential flooding is required to be reviewed and approved by the Building Official prior to submission of subsequent filings for this subdivision or construction on these lots, as specified by Condition #1.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. As indicated within the General Conditions the Run with the Land section of the submitted SIA, future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas and a river bottom, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner.

5. Effect on the public health and safety

As indicated within the departmental review by the Building Official, there is a potential for flooding on proposed Lots 20 and 21, Block 5, the large acreage proposed for a future filing of this subdivision and possible parkland dedication. Additional information regarding potential flooding on these lots shall be provided prior to further subdivision or construction on the property, as required by Condition #1.

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

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-304 (c)(3), BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- a. **Goal: More housing and business choices within each neighborhood (Land Use Element Goal, Page 6).**

The proposed subdivision would provide for more housing choices within this portion of the City and will provide for limited commercial development for residents within the subdivision.

- b. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).**

The proposed subdivision will provide public streets improved to city standards that connect with existing streets, thus creating more efficient transportation connections and ease of traffic flow.

- c. **Goal: A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness (p. 9).**

The subdivider has proposed a Heritage Trail easement along the southern boundary of the property, which will ultimately connect to Norm's Island with the future Master Plan of Riverfront Park.

The subdivision is inconsistent with the following goal of the Growth Policy:

- a. **Goal: Contiguous development focused in and around existing population centers separated by open space (Land Use Element Goal, Page 6).**

While the subject property is adjacent to an annexed portion of the City, the property is not located within an area surrounded by an existing population center and could be considered sprawl.

- b. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (Land Use Element Goal, Page 6).**

The subject property is located outside of the urbanized portion of the city. While the subdivision is bordered on the north by property being developed within the City, the properties located to the east and west are primarily rural in nature. As the

properties to the east and west develop further, the proposed commercial and residential uses will be sensitive and compatible with surrounding neighborhood.

2. The 2005 Transportation Plan Update

The proposed subdivision adheres to the goals and objectives of the 2005 Transportation Plan Update and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. The subdivider has provided a 20-foot wide trail dedication along the southern boundary of proposed Lot 20, Block 5. The sidewalks and alleys within the subdivision will provide links to the main trail system. There is ongoing discussion with the Parks Department regarding the provision of a bridge across an existing channel of the Yellowstone River to provide connectivity to Norm's Island located on Lot 21, Block 5. Further information will be provided on the trail connectivity and future park dedication upon subsequent filings of this subdivision.

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

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

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

The subdivision will utilize City water, sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property is currently zoned Public, however a concurrent zone change to Planned Development (PD) has been submitted for review. Should this zone change be approved, all development within the proposed subdivision shall comply with the parameters set forth within the Planned Development Agreement.

G. Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-304 9 (c) (7), BMCC)

Utility easements will be provided along side lot lines and within alleys located along the rear of the lots in accordance with the reviews received from the Montana-Dakota Utilities

Company and Northwestern Energy. The City Engineering Department has reviewed the proposed utility easement locations and finds them acceptable.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-304 9 (c) (8), BMCC)

Legal and physical access to the proposed subdivision will be via local residential streets from Elysian Road along the northern boundary of the subdivision.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Josephine Crossing Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council on May 22, 2006

Ron Tussing, Mayor

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

BB

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Preliminary Plat of Lake Hills Subdivision, 13th Filing, Amended

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The preliminary major plat of Lake Hills Subdivision, 13th Filing, Amended is being presented to the City Council for approval. The proposed subdivision would create sixteen (16) residential lots on the north end of the Lake Hill golf course, on Annandale Road, between Greenbriar Road and Cherry Hills Road. The 3.64 acre subject property is zoned R-9600 and currently is platted into 11 lots that are vacant. The owner is Ron S. Hill and the agent is Engineering, Inc. The County Planning Board held a public hearing to review and take public comment on the preliminary plat on April 25, 2006. The City Council must act on the preliminary major plat within 60 working days of its submittal.

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

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

RECOMMENDATION

The Planning Board recommends that the City Council conditionally approve the preliminary plat of Lake Hills Subdivision, 13th Filing, Amended and adopt the Findings of Fact as presented in the staff report.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

A: Plat

B: Site Photographs

C: Mayor's Approval Letter

D: Findings of Fact

INTRODUCTION

On March 1, 2006, the subdivider applied for preliminary major plat approval for Lake Hills Subdivision, 13th Filing, Amended Lots 2-5, 7-10, Block 44 and Lots 3-5, Block 45, which contains 16 lots on approximately 3.64 acres of land. The subject property currently consists of 11 lots originally platted in the Lake Hills Subdivision, 13th Filing and is located on the north and south sides of Annandale Road, between Greenbriar Road and Cherry Hills Road. The property is zoned Residential-9600.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on March 1, 2006.
- The City-County Planning Board held a plat review meeting for the preliminary plat on April 11, 2006.
- The City-County Planning Board held a public hearing on the plat on April 25, 2006.
- The City Council will consider the preliminary plat application at its meeting on May 22, 2006.

BACKGROUND

| | |
|--------------------------|--|
| General location: | On Annandale Road, between Greenbriar Road and Cherry Hill Road |
| Legal Description: | Lots 2-5 and 7-10, Block 44, and Lots 3-5, Block 45, of Lake Hills Subdivision, 13 th Filing located in the NW ¼ and NW¼, Section 16, T1N, R26E |
| Subdivider/Owner: | Ron S. Hill |
| Engineer and Surveyor: | Engineering Inc. |
| Existing Zoning: | R-9600 |
| Existing land use: | Platted vacant lots |
| Proposed land use: | Single-family residential |
| Gross and Net area: | 3.64 acres |
| Proposed number of lots: | 16 |
| Lot size: | Max: 11,650 square feet Min.: 9,600 square feet |
| Parkland requirements: | Parkland dedication was previously met. |

ALTERNATIVES ANALYSIS

One of the purposes of the subdivision review process is to identify potentially negative impacts of a subdivision on adjacent properties. When negative impacts are identified, it is the subdivider's responsibility to mitigate those impacts. Various City departments, utility companies and other agencies have reviewed this application and provided input on potential impacts and mitigation. The Findings of Fact, which are presented as Attachment D, discuss the potential negative impacts that have been identified by reviewers. Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

RECOMMENDED CONDITIONS

1. To minimize the effects on local services, Section VI. of the Subdivision Improvements Agreement (SIA) shall be amended as requested by the Public Works--Distribution and Collection Division.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES

No variances requested.

STAKEHOLDERS

A public hearing was held by the Planning Board on April 25, 2006 to take public testimony on the proposed subdivision. There were no public comments on the subdivision at that meeting.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

RECOMMENDATION

The Planning Board recommends that the City Council conditionally approve the preliminary plat of Lake Hills Subdivision, 13th Filing, Amended, and adopt the Findings of Fact as presented in the staff report.

ATTACHMENTS

A: Preliminary Plat

B: Site Photographs

C: Mayor's approval letter

D: Findings of Fact

Preliminary plat of Lake Hills Subdivision, 13th Filing, Amended

LAKE HILLS SUBDIVISION, THIRTEENTH FILING

SITUATED IN THE NE 1/4 AND NW 1/4 OF SECTION 16, T. 1 N., R. 26 E., P.M.M.,
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: RON S. HILL
PREPARED BY: ENGINEERING, INC.
SCALE: 1" = 50'

PLAY DATA[illegible]

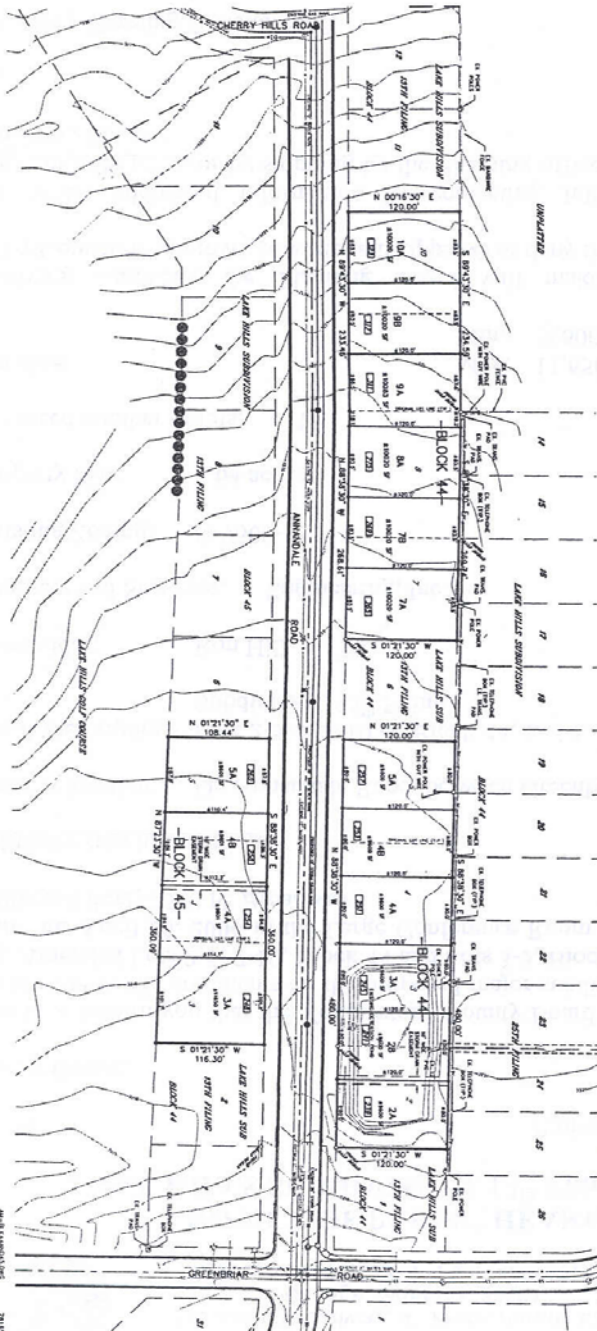
BASIS OF DECARBON

- * FOUND SURVEY MONUMENT, AS NOTED
- * SET 5/8" X 16" NAIL WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERGOING LAND SURVEYOR AND "ENGINEERING INC BELLEVILLE ILL"
- * SET INTERSECTION MONUMENT, 5/8"x16" NAIL WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERGOING LAND SURVEYOR AND "ENGINEERING INC BELLEVILLE ILL"
- * SET RELATION TO ADJACENT CAP MONUMENT BOX UNKNOWN CONDITION OF STREET IMPROVEMENTS.

1234 = TYPICAL STREET ADDRESS

FEBRUARY, 2006
BILLINGS, MONTANA

VICINITY MAP



| Alt = [0.8444045] (m/s) | 2018.5.26 | 2/202/10 |
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ATTACHMENT B



Figure 1: View west from Annandale/Greenbriar intersection.



Figure 2: Same location looking southwest at adjacent Lake Hills golf course.



Figure 3: Looking east on Annandale towards St. Andrews Drive.

ATTACHMENT C

Mayor's approval letter
Lake Hills Subdivision, 13th Filing, Amended

May 23, 2006

Ron S. Hill
P.O. Box 50636
Billings, MT 59105

Dear Mr. Hill:

On May 22, 2006, the Billings City Council approved the preliminary plat of Lake Hills Subdivision, 13th Filing, Amended, subject to the following conditions of approval:

1. To minimize the effects on local services, Section VI. of the Subdivision Improvements Agreement (SIA) shall be amended as requested by the Public Works--Distribution and Collection Division.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions regarding the conditions of approval, please contact Juliet Spalding with Planning and Community Services at 247-8684 or by email at spaldingj@ci.billings.mt.us.

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

Sincerely,

Ron Tussing, Mayor

pc: Engineering, Inc.

ATTACHMENT D
Findings of Fact
Lake Hills Subdivision, 13th Filing, Amended

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

1. Effect on agriculture and agricultural water user facilities

The subject property is located in the City limits and has been slated for residential development since it was originally platted in 1957. It should not have a negative effect on the agricultural industry.

The BBWA irrigation ditch is located north of the property. This subdivision does not contain any ditches or water shares, and therefore will not have an effect on agricultural water user facilities.

2. Effect on local services

- e. **Utilities** – Water services will be extended to each lot through a 12-inch diameter main line within Annandale Road. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. As proposed, the Heights Water District finds that the water mains are acceptable.
- f. Sanitary sewer service will be provided by installing a 10-inch sewer main in Annandale Road. As proposed, the City of Billings Public Works Collection and Distribution Division finds that the proposed sewer main is acceptable, but has recommended that some of the language in the SIA is updated and clarified. This has been recommended as a condition of approval (Condition #1).
- g. **Stormwater** – Stormwater discharge will be provided through a combination of surface drainage, curb and gutters and storm drain piping to the proposed storm drain main within Annandale Road. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- h. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

Streets – The proposed subdivision fronts Annandale Road, which is identified on the Functional Classification Map as a proposed minor arterial road. As platted, Annandale Road is an 80-foot wide dedicated right-of-way that will contain a 49-foot back-of-curb to back-of-curb paved street with standard curb, gutter and sidewalk. City Engineering has reviewed the proposal and finds it acceptable.

- i. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- j. **Schools** – The subdivision is located within School District #2. Sandstone Elementary, Castle Rock Middle School and Skyview High School will serve the children in this subdivision. A response was received from Castle Rock Middle School indicating that they have room for 15 more students and that a MET bus route could transport the students. Responses from the other schools were not received at the time this report was written.
- k. **Parks and Recreation** – Parkland dedication requirements for this subdivision were met when this subdivision was originally platted in 1957.
- h. **Mail Delivery** - The United States Postal Service has recommended individual mailboxes at each lot in this particular subdivision. Mail boxes will be installed upon lot development.

3. Effect on the natural environment

The subject property has been planned for urban development for a number of years. The replatting of these lots should have minimal effects on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. This subdivision should have a minimal effect on wildlife and wildlife habitat, as it is in an urbanized area.

5. Effect on the public health, safety and welfare

There is a statement within the “Conditions that Run with the Land” section of the SIA that recommends that lot owners complete an individual geotechnical analysis prior to home construction to ensure proper structural design.

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

The proposed subdivision is exempt from the requirement for an Environmental Assessment pursuant to Section 76-3-210, MCA.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? [BMCC 23-304(c)(3)]

1. Yellowstone County-City of Billings 2003 Growth Policy

The proposed subdivision is consistent with the following goals of the Growth Policy:

- b. **Goal: More housing and business choices within each neighborhood (p. 6).**

The proposed subdivision would provide for more housing choices within this portion of the city.

- c. **Goal: New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites (p. 6).**

The subject property is within an urbanized portion of the City and is surrounded by residential and commercial uses.

- d. **Goal: Contiguous development focused in and around existing population centers separated by open space (p. 6).**

The subject property is an infill development within the City and was a county island recently annexed for the purpose of subdividing.

- e. **Goal: Safe and efficient transportation system characterized by convenient connections and steady traffic flow (p. 10).**

The proposed subdivision will provide public streets improved to city standards that connect with existing streets. Thus, creating more efficient transportation connections and ease of traffic flow.

2. Urban Area 2000 Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2000 Transportation Plan and preserves the street network and street hierarchy specified within the plan.

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. No trail corridors are identified on the plan within this subdivision but Annandale Road is identified as a primary bikeway and should eventually be striped with a bike lane. This could be accomplished at a latter date, if the entire road is striped.

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

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

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

The subdivision will utilize Heights Water, and City sanitary sewer, and solid waste collection and disposal services. All services are approved and regulated by state and federal authorities.

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

The subject property is located within the Residential 9600 (R-9600) zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and BMCC 23-304 9 (c) (7)]

The subdivider has provided utility easements as requested by MDU on the face of the plat.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and BMCC 23-304 9 (c) (8)]

Legal and physical access is provided to all of the proposed lots from Annandale Road.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of Lake Hills Subdivision, 13th Filing Amended does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the Transportation or Heritage Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council on May 22, 2006

Ron Tussing, Mayor

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

CC

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Ironwood Estates Subdivision 4th Filing --Final Plat
DEPARTMENT: Planning and Community Services
PRESENTED BY: Nicole Cromwell, AICP, Planner II

PROBLEM/ISSUE STATEMENT: This final plat is being presented to the City Council for approval. The preliminary plat was approved by the Council on August 22, 2005. The subject property is zoned Residential 9,600, Residential 7,000 and Public and is located east of Molt Road and north of Ironwood Estates Subdivision 1st, 2nd and 3rd Filings and will create new street frontage. The subdivision will eventually create 84 lots for residential use and multiple public parks. The owner is filing this plat to show all public right of ways, utility easements, public parks and 29 lots for residential development. Several of the larger lots will have future final plats filed to provide residential building lots. All 84 lots originally approved will be filed for Ironwood 4th filing. All of the conditions for final plat approval have been met by the subdivider. The City Attorney reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

FINANCIAL IMPACT: The creation of 29 residential lots will increase the City's tax revenue on this parcel.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Ironwood Estates Subdivision 4th Filing.

Approved By: City Administrator ____ City Attorney ____

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

DD

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Final Plat of Kingston Place Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The final plat of Kingston Place Subdivision is being presented to the City Council for approval. On December 12, 2005, the City Council conditionally approved the 56-lot preliminary major plat on 20 acres for residential uses. The subject property is zoned Residential 7000 (R-7000) and is located south of the intersection of Wicks Lane and Bench Boulevard, directly north of Anchor Avenue. The owner is King Heights, LLC and the agent is Engineering, Inc. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of Kingston Place Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

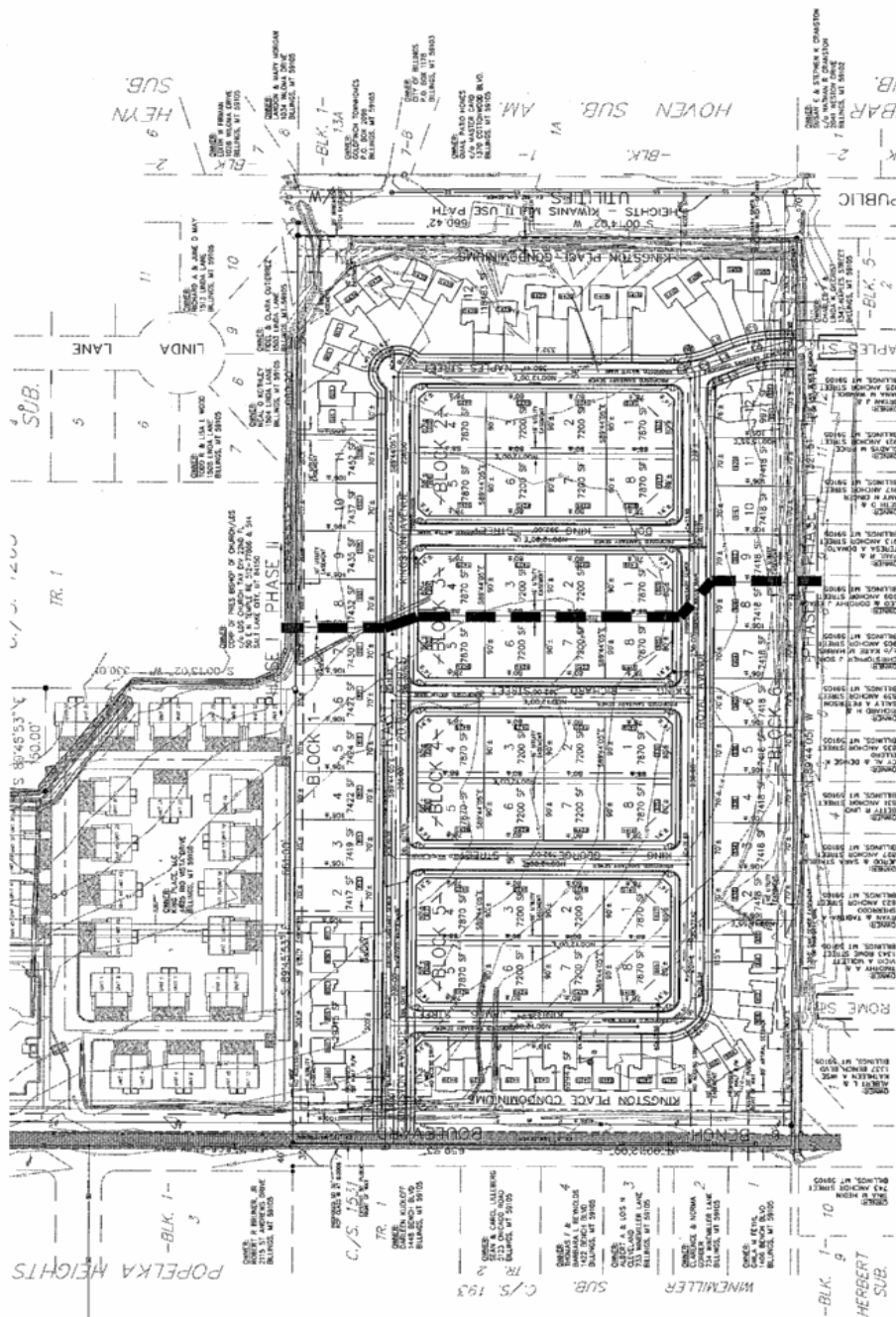
Final Plat

BEING TRACT B1-A, OF SECOND AMENDED TRACT B, CERTIFICATE OF SURVEY No. 1056 SITUATED IN THE NW 1/4 OF SEC. 23, T. 1 N., R. 26 E., P.M.M.

PREPARED FOR: KING HEIGHTS, L.L.C.

PREPARED BY : ENGINEERING, INC.

SCALE : 1" = 80'



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

EE

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

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

PROBLEM/ISSUE STATEMENT: The final plat for St. Thomas Subdivision is being presented to the City Council for approval. On August 8, 2005, the City Council conditionally approved the two (2) lot preliminary minor plat for the existing property. Lot 1 is approximately 5.2 acres in size and contains the St. Thomas Catholic church at the corner of Colton Boulevard and Woody Drive. Lot 2 is the remainder of the subject property and contains an open hay field and an athletic field and track on 26 acres. The owner is the Roman Catholic Bishop of Great Falls and HKM Engineering is the agent. The property is generally on the south side of Colton Boulevard between 21st St. West and Woody Drive. The owners have indicated no immediate plans to develop Lot 2. The City Council conditions of approval have been satisfied and the City Attorney has reviewed and approved the subdivision plat and the associated documents. Upon City Council approval, these documents are appropriate as to form for filing with the Yellowstone County Clerk and Recorder.

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

RECOMMENDATION

Staff recommends that the City Council approve the final plat of St. Thomas Subdivision.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENT

A: Final Plat

FF1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 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 \$543,546.73 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 21, 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

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

FF2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Monday, May 22, 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 \$2,390,848.72 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 28, 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

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

FF3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, May 22, 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 \$517,954.65 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 8, 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 22, 2006

TITLE: Public Hearing for Special Review #813

DEPARTMENT: Planning & Community Services

PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to operate a 50-bed private correctional facility (SIC #8744) in the South 27th Street Corridor zoning district on a 4.266 acre parcel of land, Lot 1, Vernwood Subdivision. Corner Construction Company is the owner and P. Bruce Harper is the agent (Alternatives, Inc.) The property is addressed as 1001 South 27th Street and is currently a Howard Johnson Express Inn. The Zoning Commission conducted a public hearing on May 2, 2006, and is forwarding a recommendation of approval on a 5-0 vote to the City Council.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval on a 5-0 vote to the City Council on Special Review #813.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a request for a special review by Alternatives, Inc. to operate a 50-bed Assessment and Sanction facility, a privately operated correctional facility. This property at 1001 South 27th Street is located in the South 27th Street Corridor zoning district and is the current Howard Johnson's Express Inn. The South 27th Street Corridor zoning district was developed and adopted in 1984 by the Billings City Council to encourage re-development of this primary entryway to Billings. From 1984 through the beginning of 1998, each development within the district required a special permit from the Planning Department. No specific uses were allowed or disallowed or required to obtain special review approval. Each project was required to obtain a minimum level of points under a criteria system. In 1998, the Billings City Council changed the South 27th Street Corridor to eliminate the point system for developments and added uses allowed by right and by special review. Privately and publicly operated corrections facilities require special review approval. There are three (3) zoning districts where public and private correctional facilities may be allowed by special review – Controlled Industrial, Public and the South 27th Street Corridor.

PROCEDURAL HISTORY

1. A special review application to operate a private correctional facility was received on April 3, 2006.
2. The City Zoning Commission held a public hearing on May 2, 2006, and voted 5-0 to forward a recommendation of approval for this the special review request.
3. The City Council will conduct a public hearing and consider this application on May 22, 2006.

BACKGROUND

The existing Billings Assessment and Sanction Center (BASC) is a unit within the Montana Women's Prison that evaluates women offenders committed to the Department of Corrections. These women offenders are evaluated for various needs prior to placement in an appropriate correctional program. The existing facility in the Women's Prison has space for 22 persons. The proposed location at 1001 South 27th Street, operated by Alternatives, Inc., would provide space for up to 50 persons. The BASC unit will hold these offenders for up to 45 days before transfer to an appropriate correctional program. This part of the proposed operation is a locked facility and will privatize this function of the Montana Women's Prison. The remaining space in the facility would be for a pre-release program (up to 65 spaces/beds) and a 60-day chemical dependency program (up to 60 beds/spaces). These uses are classified in the Unified Zoning Regulations and the Standard Industrial Classification Manual under Division I – Services SIC Code 8361. This code includes halfway houses for offenders and drug rehabilitation centers. These uses under this SIC Code are allowed in all of the commercial and industrial zoning districts within the City of Billings. This will be a facility only for women. Approval, conditional approval or denial of the request for the 50-bed Assessment and Sanction Center proposed for the second floor of the facility will only effect that specific operation not the other two proposed uses within the building. The remaining functions proposed for the building are uses allowed in the South 27th Street Permit Zoning District.

This property is surrounded by a mix of commercial and low-intensity industrial uses. There are eight (8) single family homes on the west side of South 27th Street and within 300 feet of the property. Single family residential uses are not allowed uses within the South 27th Street Corridor and all existing single family or two-family homes are considered legal non-conforming uses. Of the 34 properties within 300 feet of this location 16 are listed as vacant and many are located to the east of the proposed facility and are zoned for Controlled Industrial uses. South 27th Street is a principal arterial street with a raised median that acts as an obstacle between the east and west sides of the street. South 27th Street carries approximately 14,000 vehicle trips per day (2005 Traffic Count). Pedestrian crossings exist only at the intersections with traffic lights at 1st Avenue South and Belknap/State Avenues. Pedestrians do cross at other locations but there are no marked cross walks for twelve blocks between the two controlled intersections on South 27th Street. It is likely that South 27th Street can handle any traffic generated by the proposed project. The existing drive approaches to the property will not be modified.

The proposed site plan shows two small additions to the southeast corner of the building to control access to the building and to provide area for a kitchen addition. There are plans for two recreation yards on the east side of the existing building away from the street entryway. The proposal will use the existing monument sign structures for any signage on the property. The intended name of the facility is Passages by Alternatives, Inc.

The Planning Department reviewed the application and recommended denial. Before a recommendation of approval or conditional approval can be made each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2003 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. Staff determined the proposed BASC unit would not be compatible with the surrounding land uses and would frustrate the intent of the Zoning Regulations by placing another correctional facility in the South 27th Street Corridor. The South 27th Street Corridor currently supports three of the four correctional facilities within the metropolitan community. Those facilities include the Yellowstone County Detention Facility, the Montana Women's Prison, the Adult Probation and Parole Bureau and the Ted Lechner Youth Services Center. Only one, the Yellowstone County Detention Facility in a Public zoning district, is outside the South 27th Street Corridor District. There are no public or privately operated correctional facilities in any Controlled Industrial zoning district. The development pattern adopted by the City Council is to disperse these facilities throughout the three zoning districts available, not to concentrate the uses on the east side of South 27th Street.

The Zoning Commission conducted the public hearing and determined that the proposed use was compatible with the zoning district and surrounding land uses. The proposed use would not change the exterior of the building except for two minor additions and only the second floor of the building would be dedicated to the BASC unit. The Zoning Commission determined this was an appropriate location for the BASC unit and that Alternatives provides a necessary service to the community.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed use is compatible with the adjoining land uses and no conditions are necessary to ensure compatibility.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

1. Street and road capacity;
2. Ingress and egress to adjoining streets;
3. Off-street parking;
4. Fencing, screening and landscaping;
5. Building bulk and location;
6. Usable open space;
7. Signs and lighting; and/or
8. Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is forwarding a recommendation of approval on the special review request.

CONDITIONS OF APPROVAL

None recommended

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The public hearing held on May 2, 2006, before the City Zoning Commission was attended by representatives of Alternatives, Inc., Corner Construction, legal representatives for the MT Department of Corrections, the Warden of the Montana Women's Prison and members of the

public. David Armstrong, Director of Alternatives, Inc. and John Crist, attorney for Alternatives, Inc., explained the proposed use of the existing building. They explained that the existing BASC unit was located in the Montana Women's Prison because they had space available at the time the unit was established. The BASC unit is meant to divert women from entering prison and to assess where they might be placed in a community setting. Alternatives, Inc. currently manages the BASC unit. Mr. Crist explained Alternatives efforts to meet with the community by holding public meetings and discussions with the South Side Task Force. Numerous letters of support for the proposal were submitted with the application from Alternatives new neighbors and from their existing neighbors at 3109 1st Avenue North. Mr. Jerrod Schaer, owner of Smith's Funeral Chapel testified in favor of the application. Pam Bucky, Director of Probation and Parole offices on South 27th Street, Chris Blatty of Critelli Glass, Sharon Kautzman of Billings Federal Credit Union and Dave Dickburn of Pilgrim Congregational Church all testified in favor of the application. Diana Koch, Chief Legal Counsel for the MT Department of Corrections and Valerie Wilson, Land Use Attorney for the MT Department of Corrections, testified that the BASC unit should be considered in the category of a pre-release center not a private correctional facility. They testified that women sentenced to the Department of Corrections rather than the Montana Women's Prison are considered good candidates for community placement. Jo Acton, Warden of the Montana Women's Prison, testified the BASC unit is totally separate from the other units in the prison. The BASC unit is a Community Corrections program and should be out in the community. She testified that 99% of the women that come through the BASC unit are placed in pre-release programs or in drug rehabilitation programs. Mindy Brookshire, a therapist for the BASC unit, testified women in the program are not violent offenders and that the BASC unit on the second floor of the Howard Johnson's building would have no affect on the surrounding land uses. Michelle Janesik, Community Corrections Program Manager for the Department of Corrections, testified that the BASC unit is meant to divert women from prison and most go to pre-release programs after assessment. Those offenders that are not appropriate for the BASC unit or pre-release are sent directly to the Women's Prison. Jan Begger, a drug rehabilitation counselor for Alternatives, Inc., provides assessments for the existing BASC unit. She testified there are no sexual offenders in the BASC unit and most will be placed in pre-release programs. Tom Hanel, member of the Alternatives, Inc. Board of Directors, testified in favor of the proposal. The building is in a good location for the proposed use. Alternatives, Inc. looked at many other properties before offering to buy the Howard Johnson's Express Inn. Blaine Poppler and Steve Kenney of Coldwell Banker Real Estate testified in favor of the proposal. Mr. Kenney handled the proposed sale for Howard Johnson's and testified there have been no other viable purchase offers for the property in the six years it has been on the market. It is a difficult location for a motel operation and most of the market has moved to King Ave West and now Shiloh Road. Charles Brooks, member of the Board of Directors for Alternatives, Inc., testified in favor of the proposal. The South 27th Street Corridor has improved substantially in 37 years and the proposal will not change that trend. The proposal will bring a new \$4 million dollar investment in the area and create 40 new jobs. He also testified that the rumor the Billings Chamber of Commerce will move from its location 1 block north of the Howard Johnson's was false. Susan Stewart of Alternatives, Inc. presented a letter of support from Dave Hagstrom a south side resident and builder. Steve Peak and Donna Buhler, employees of Alternatives, Inc., testified in favor of the project. They said the operation of the new program would not be

substantially different from the existing program. Ms. Buhler gathered letters of support from the community and re-confirmed these letters of support before the hearing. Steve Peak is manager of the screening program for residents and testified that the women's population is a low risk population and will not cause any problems in the new location.

Jim Ronquillo, City Council member for Ward I and Vice-Chair of the South Side Task Force, testified against the proposal. He stated he lives ½ block from the Howard Johnson's property and that the South Side has enough institutional uses. He stated the letters of support for the project are from people who only work on the South Side but do not live there. He stated that residents of the South Side don't want another facility for corrections. The purchase by a non-profit, Alternatives, Inc., will take \$58,000 of the tax rolls immediately. He testified he just finished working for over one year on a new housing project at 811 South 28th Street that will bring 20 new apartments to the neighborhood. This project will have a negative impact on that development. Mary Westwood testified against the proposal. She testified that any person in the custody of the Department of Corrections should be considered a prisoner and part of a correctional facility. She testified that Alternatives, Inc. will not make a commitment to the South Side not to bring in male offenders from the 3109 1st Avenue South location. The proposed location will damage much of the good work already done to revitalize the South Side. Jake Romero testified against the proposal. He testified that adding another institution to the South Side will reinforce the bad perception most people still have of their community. He testified the location will increase safety risks for the community and will reduce tax revenues to the city. He testified that Mr. Armstrong stated he wouldn't put the facility in his own neighborhood. Marion Dozier testified against the proposal. She stated she has worked in pre-release programs and once served on the Board of Directors for Alternatives Inc. and understands the programs and the types of risk to the community. She testified the project was a zoning disaster. The BASC unit is clearly a private correctional program not a pre-release. The South 27th Street Corridor is not a good first impression of Billings because of all the institutional uses. The South Side has enough and the facility should go to another part of the community.

Dave Armstrong provided rebuttal testimony. He stated the reason his neighborhood is not appropriate for this facility is that it is completely residential and does not have the mixture of commercial and industrial uses this location offers. Alternatives, Inc. would not try to place this facility in any residential neighborhood. He testified the BASC unit as compared to the other uses in the building is a small distinction and will not be noticeable at all to the community. He testified that Alternatives, Inc. has no intention of moving any of their men's programs to this location. He stated the request is reasonable and will be a good neighbor at this new location.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.

RECOMMENDATION

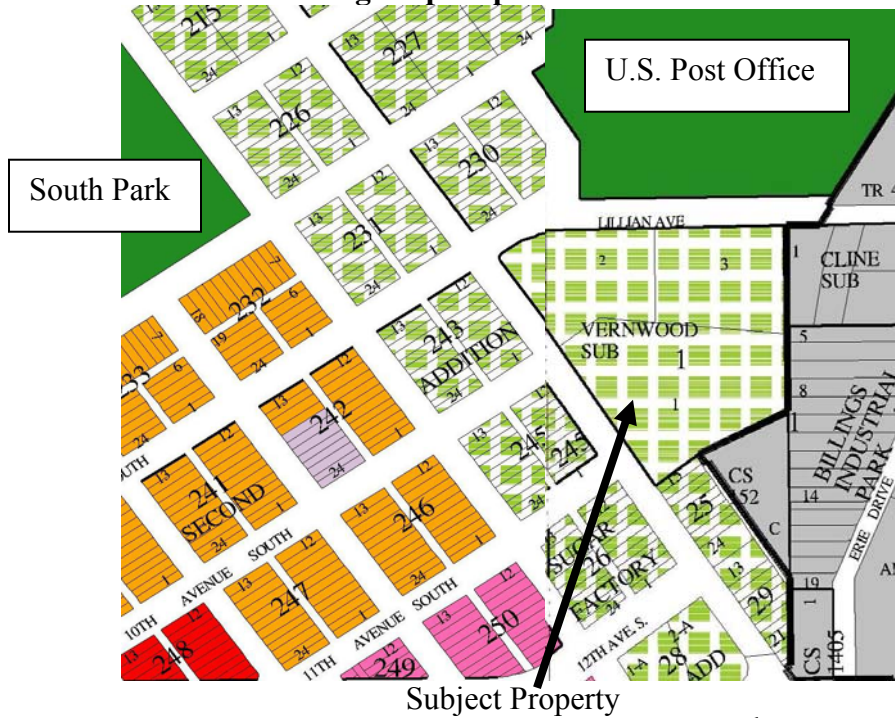
The Zoning Commission is forwarding a recommendation of approval on a 5-0 vote to the City Council on Special Review #813.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A

Zoning Map – Special Review #813



Subject Property
Howard Johnson Express Inn 1001 South 27th Street

ATTACHMENT B
Site photos –Special Review 813



Subject Property at 1001 South 27th Street

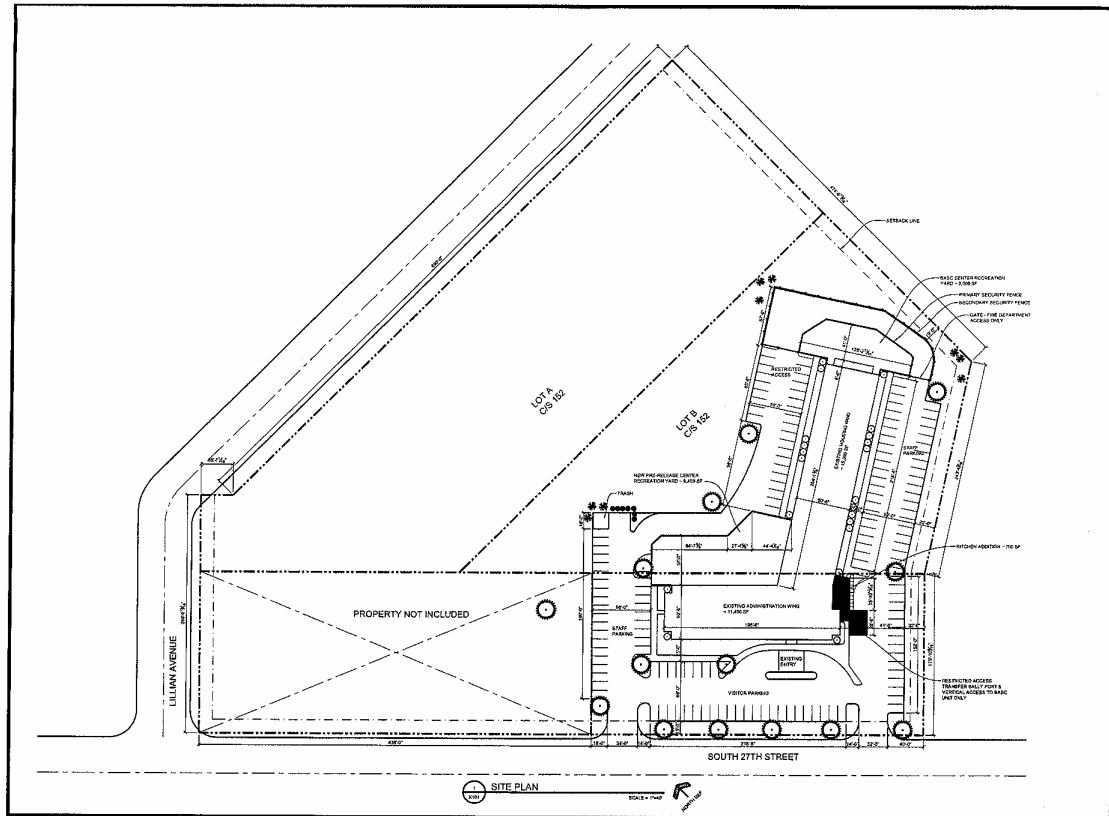


Subject site from adjacent Smith's Funeral Home parking lot (north of subject property)

ATTACHMENT B CONTINUED
Site photos –Special Review 813



ATTACHMENT C **Site Plan Special Review #813**



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| REVISIONS |
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**WOMEN'S CENTER
BILLINGS, MT**

**SPECIAL REVIEW
APPLICATION**

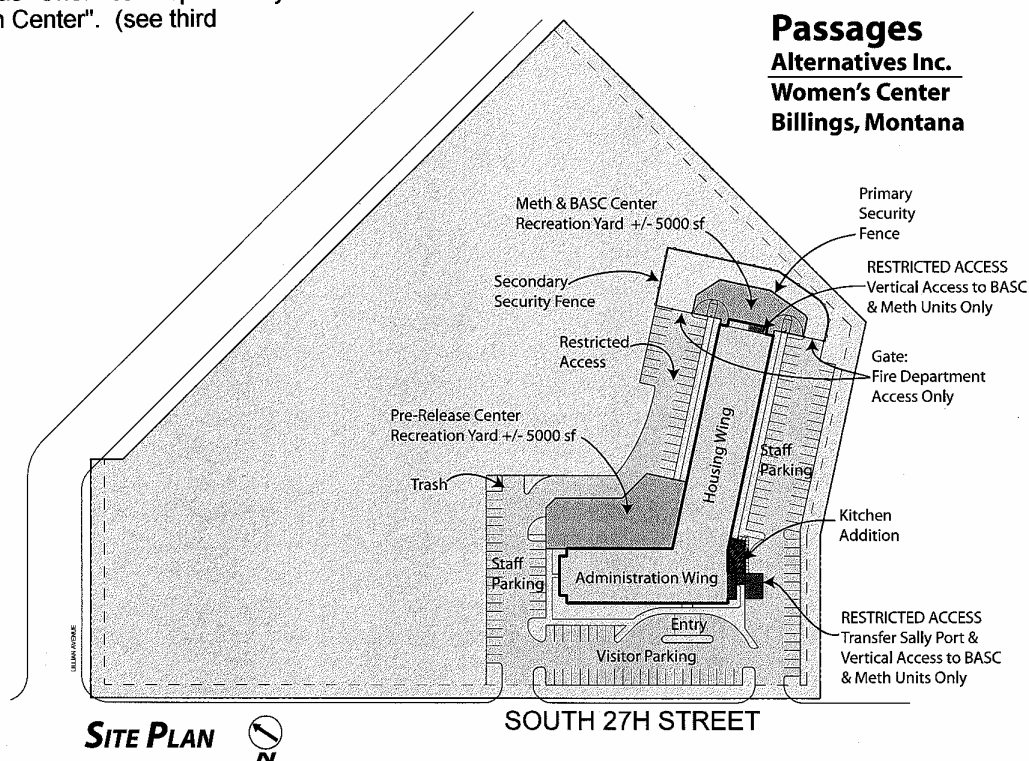
**CTA
ARCHITECTS
ENGINEERS**

**SHEET
C101**

NOT FOR CONSTRUCTION - PRELIMINARY DESIGN

ATTACHMENT C CONTINUED
Site Plan Special Review #813

Basic site plan showing exterior modifications. "Meth Unit" should now be read as "Chemical Dependency Rehabilitation Center". (see third floor plan)



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Vacation of portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S. 22nd Street and S. 23rd Street

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: ConocoPhillips has petitioned to vacate S. 22nd Street from 1st Avenue S. to 3rd Avenue S., 2nd Avenue S. from S. 23rd Street to S. 22nd Street, 3rd Ave. S. from S. 23rd Street to S. 22nd Street, and the alley between S. 23rd Street and S. 22nd Street from 1st Ave. S. to 3rd Ave. S. ConocoPhillips owns all of the property abutting the proposed right-of-way and is proposing to develop the property in the future. Currently, there is a water and storm drain line running through the proposed vacated area. ConocoPhillips will enter into an easement agreement that will allow full access to these lines and will require ConocoPhillips to relocate the water and storm drain if they ever propose to construct a structure over the lines.

ALTERNATIVES ANALYZED:

3. After holding a public hearing, approve the resolution to vacate the above-mentioned right-of-way.
4. Do not approve the resolution to vacate the above-mentioned right-of-way.

FINANCIAL IMPACT: A comparison land sales report was done by Charles H. Hamwey, which valued the right-of-way at \$2.00 per square foot. The right-of-way proposed to be vacated is 109,659 square feet. The total value of the proposed vacated property to be paid to the city from ConocoPhillips is \$219,318.00.

RECOMMENDATION

Staff recommends that Council approve the resolution to vacate portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S. 22nd Street and S. 23rd Street and accept an easement for the public utilities running through the vacated streets.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Map Depicting Area to be Vacated
- B. Letter from Charles H. Hamwey establishing value of land
- C. Resolution to Vacate
- D. Easement

RESOLUTION NO. 06-_____

**A RESOLUTION OF THE CITY OF BILLINGS,
MONTANA, DISCONTINUING AND VACATING portions of S.
22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S.
22nd Street and S. 23rd Street.**

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 **portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S. 22nd Street and S. 23rd Street** 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., **portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S. 22nd Street and S. 23rd Street** more particularly described as follows:

DESCRIPTION #1: SOUTH 22ND STREET:

A tract of land situated in the NE1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southeasterly corner of Lot 1, Block 159 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the easterly line of said Block 159, N34°36'30"W a distance of 680.00 feet to the northeasterly corner of Lot 12 of Block 145; thence crossing the right-of-way of South 22nd Street, N55°23'30"E a distance of 80.00 feet to the northwesterly corner of Lot 13, Block 146 of said Original Town of Billings; thence, along the westerly line of said Block 146, S34°36'30"E a distance of 580.95 feet to the southerly corner of Lot 20 of Block 158; thence, crossing the right-of-way of said South 22nd Street, S00°03'00"W a distance of 120.27 feet; thence, S55°23'30"W a distance of 11.78 feet to the point of beginning; said described tract having an area of 51,021 square feet.

DESCRIPTION #2: 3RD AVE SOUTH:

A tract of land situated in the NE1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southeasterly corner of Lot 1, Block 159 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, crossing the right-of-way of 3rd Ave South, S34°36'30"E a distance of 17.10 feet; thence, S00°03'00"E a distance

of 76.38 feet to the northeasterly corner of Lot 12 of Block 174; thence, along the northerly line of said Block 174, S55°23'30"W a distance of 256.68 feet to the northwesterly corner of Lot 13 of said Block 174; thence crossing the right-of-way of 3rd Ave South, N34°36'30"W a distance of 80.00 feet to the southwesterly corner of Lot 24 of said Block 159; thence along the southerly line of said Block 159, N55°23'30"E a distance of 300.00 feet to the point of beginning; said described tract having an area of 22,638 square feet.

DESCRIPTION #3: 2ND AVE SOUTH:

A tract of land situated in the NE1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the northeasterly corner of Lot 12, Block 159 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, along the northerly line of said Block 159, S55°23'30"W a distance of 300.00 feet to the southwesterly corner of Lot 13 of said Block 159; thence crossing the right-of-way of 2ND Ave South, N34°36'30"W a distance of 80.00 feet to the southwesterly corner of lot 24, Block 145 of said Original Town of Billings; thence, along the southerly line of said Block 145, N55°23'30"E a distance of 300.00 feet to the southeasterly corner of Lot 1 of said Block 145; thence, crossing the right-of-way of said 2ND Ave South, S34°36'30"E a distance of 80.00 feet to the point of beginning; said described tract having an area of 24,000 square feet.

DESCRIPTION #4: BLOCK 145 ALLEY:

A tract of land situated in the NE1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southeasterly corner of Lot 24, Block 145 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, N34°36'30"W a distance of 300.00 feet to the northeasterly corner of Lot 13 of said Block 145; thence N55°23'30"E a distance of 20.00 feet to the northwesterly corner Lot 12 of said Block 145; thence S34°36'30"E a distance of 300.00 feet to the southwesterly corner of Lot 1 of said Block 145; thence S55°23'30"W a distance of 20.00 feet to the point of beginning; said described tract having an area of 6,000 square feet.

DESCRIPTION #5: BLOCK 159 ALLEY:

A tract of land situated in the NE1/4 of Section 3, T. 1 S., R. 26 E., P.M.M., Yellowstone County, Montana; more particularly described as follows, to-wit:

Beginning at a point which is the southeasterly corner of Lot 24, Block 159 of the Original Town (now City) of Billings, Montana; thence, from said point of beginning, N34°36'30"W a distance of 300.00 feet to the northeasterly corner of Lot 13 of said Block 159; thence N55°23'30"E a distance of 20.00 feet to the northwesterly corner Lot 12 of said Block 159; thence S34°36'30"E a distance of 300.00 feet to the southwesterly corner of Lot 1 of said Block 159; thence S55°23'30"W a distance of 20.00 feet to the point of beginning; said described tract having an area of 6,000 square feet.

Is hereby discontinued, abandoned and vacated.

2. PUBLIC INTEREST. The discontinuance, vacation and abandonment of the above described **portions of S. 22nd Street, 2nd Ave. S., 3rd Ave. S., and the Alley between S. 22nd Street and S. 23rd Street** is in the best interest of the public and can be done without any public detriment.

PASSED by the City Council and APPROVED this 22nd 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 22, 2006

TITLE: Zone Change #776 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change application from Public to Planned Development. The property is located east of Mullowney Lane and will be known as Josephine Crossing. There will be two major sections of the development one primarily for residential uses and one for mixed residential and commercial uses. The owner is McCall Development, Inc. and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on May 2, 2006, and voted unanimously to recommend approval to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change could potentially increase the City's tax base upon development of the property.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #776 and adopt the determinations of the 12 criteria, as discussed within this report.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance
- D: Planned Development Agreement #8

INTRODUCTION

This is a zone change request from Public to Planned Development for the proposed Josephine Crossing Subdivision. McCall Development intends to pursue a Traditional Neighborhood Design (TND) that de-emphasizes vehicle transportation, provides a variety of uses to support a neighborhood and uses a subdivision design similar to Billings First Addition subdivision and other older neighborhoods. The subject property is located east of Mullowney Lane and is currently vacant land. The total area for the zone change is 60.27 acres. The owner of this property is McCall Development and the agent is Engineering, Inc. The City Council approved the annexation of the property on April 25, 2006, and will consider the final plat on May 22, 2006.

PROCEDURAL HISTORY

- On March 6, 2006, the Planning Department received an application for a zone change on the subject property.
- On March 30, 2006, a preliminary meeting was held with City of Billings agencies and surrounding property owners.
- The Zoning Commission conducted a public hearing on May 2, 2006, and recommended approval to the City Council by a unanimous vote.
- The City Council will conduct a public hearing and first reading on May 22, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on June 12, 2006.

APPLICABLE ZONING, ANNEXATION AND SUBDIVISION HISTORY

- On March 1, 2006, a preliminary plat application for Josephine Crossing Subdivision was submitted to the Planning Department.
- On March 6, 2006, the Annexation Petition and zone change request from Public to Planned Development (PD) was submitted to the Planning Department.
- On March 30, 2006, a preliminary review of the zone change was conducted by the Planning Department.
- On April 10, 2006, the City Council acknowledged the annexation petition and set a public hearing date for April 24, 2006.
- On April 11, 2006, the Planning Board conducted the plat review of the preliminary plat.
- On April 24, 2006, the City Council conducted the public hearing and adopted a resolution annexing the subject property.
- On April 25, 2006, the Planning Board conducted the public hearing of the preliminary plat and forwarded a recommendation of conditional approval to the City Council by a unanimous.
- On May 2, 2006, the City Zoning Commission conducted a public hearing for the proposed zone change to Planned Development (PD) and forwarded a recommendation of approval to the City Council by a unanimous vote.
- On May 8, 2006, a public hearing for the first reading to expand Ward Boundary I was approved by the City Council.

- On May 22, 2006, the City Council will conduct the second and final reading to expand Ward Boundary I. In addition, a public hearing and first reading for the proposed zone change will be conducted by the City Council at this meeting; the preliminary plat of Josephine Crossing Subdivision will be on the consent agenda at this meeting.
- On June 12, 2006, if the zone change is approved, the 2nd reading of the ordinance will be conducted by the City Council.

BACKGROUND

The owner is proposing to construct Josephine Crossing Subdivision that will have two major elements – an area primarily for single and multi-family dwellings and neighborhood services and Heritage Corner that will be primarily for more intense commercial uses combined with some higher density residential uses. The draft Planned Development Agreement was reviewed on March 30, 2006 by city departments, the applicant and their agent. Surrounding property owners were invited and a representative of the Montana Department of Natural Resources and Conservation attended the meeting. Changes were made to clarify the draft agreement after the meeting.

The Planning Department reviewed the application and recommended approval based on the attached twelve (12) criteria for zone changes. The City Zoning Commission conducted a public hearing on May 2, 2006, and voted unanimously to forward a recommendation of approval. The property is adjacent to Highway Commercial zoning that will develop as a mixed density residential subdivision and has access to Riverfront Park and will provide a traditional neighborhood design. The proposed location has adequate access for public safety and will provide the opportunity for neighborhood services such as small grocery stores, doctor's offices, day care, schools, a variety of home occupations as well as more intense commercial uses with the Heritage Corner section of the neighborhood. This will be the first planned development in the Billings area that takes advantage of the tools available for "smart growth" and "new urbanism".

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will address urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. The 2001 West Billings Neighborhood Plan encourages in-fill development where existing city services are available.
2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning is not a vehicle oriented subdivision design. The proposed Planned Development Agreement requires all parking to be in the rear yard and all primary access for garages will be from alleys. Congestion from this subdivision should be less than

conventional subdivision because of the provision for local neighborhood services within walking distance of most residential dwellings.

3. Will the new zoning secure safety from fire, panic and other dangers?

No public health or safety issues have been raised with this application. Issues concerning the design of streets and access for police and fire have been discussed at the subdivision review. Two streets, S 12th Street West and Elysian Road will provide primary access to the property.

4. Will the new zoning promote health and general welfare?

The new zoning will promote a mixture of services and access to park land. Residents should be able to obtain local services within walking distance. Setbacks and uses are modified to accommodate this traditional neighborhood design.

5. Will the new zoning provide adequate light and air?

The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The development agreement allows up six (6) residential units per gross acre in the residential area (transect 4 or T4) and up to ten (10) residential units per gross acre in the Heritage Corner area (transect 5 or T5). This density is comparable to the R-7,000 to R-6,000 districts.

7. Will the new zoning avoid undue concentration of population?

The new zoning should not create an undue concentration of population. Approximately 48 acres will be developed at six residential units per acre (~288 units) and the Heritage Corner at approximately 12 acres will develop at 10 units per acre (~120 units).

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

- *Transportation:* The new zoning could have an effect on the adjacent streets or traffic patterns. Mullooney Lane will have increased traffic and the developer will be responsible for improvements through the proposed subdivision including widening and the provision of a southbound left turn lane. A stop sign will be provided at Elysian Road and Mullooney Lane. Lane configuration and widths shall be reviewed and approved by the City Engineering Department.
- *Water and Sewerage:* The City will provide water and sewer service to the property and has adequate facilities to serve this property.
- *Schools and Parks:* There should be no effect on parks. The development will likely have an effect on the capacity at elementary and high schools from this rezoning.

- *Fire and Police:* The property is served by existing services and there should be no effect on these services from the new zoning.

9. Does the new zoning give reasonable consideration to the character of the district?

The primary zoning in this area is Highway Commercial, Public, and Agriculture Open Space. The commercial zone directly north of this property will be developed at a range of densities. The proposed planned development zone will provide for a full service neighborhood that will include parks and other public services as well as retail services and commercial outlets. The new zoning should not impact the character of the neighborhood.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district.

11. Was the new zoning adopted with a view to conserving the value of buildings?

The new zoning is not expected to appreciably alter the value of buildings in the area. There are no existing structures on the property and values of adjacent property should benefit from the new zoning.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 2, 2006, and forwarded a positive recommendation to the City Council by a unanimous vote. Greg McCall of McCall Development attended the hearing and explained the proposed zone change and development. There were no surrounding property owners who attended the hearing.

RECOMMENDATION

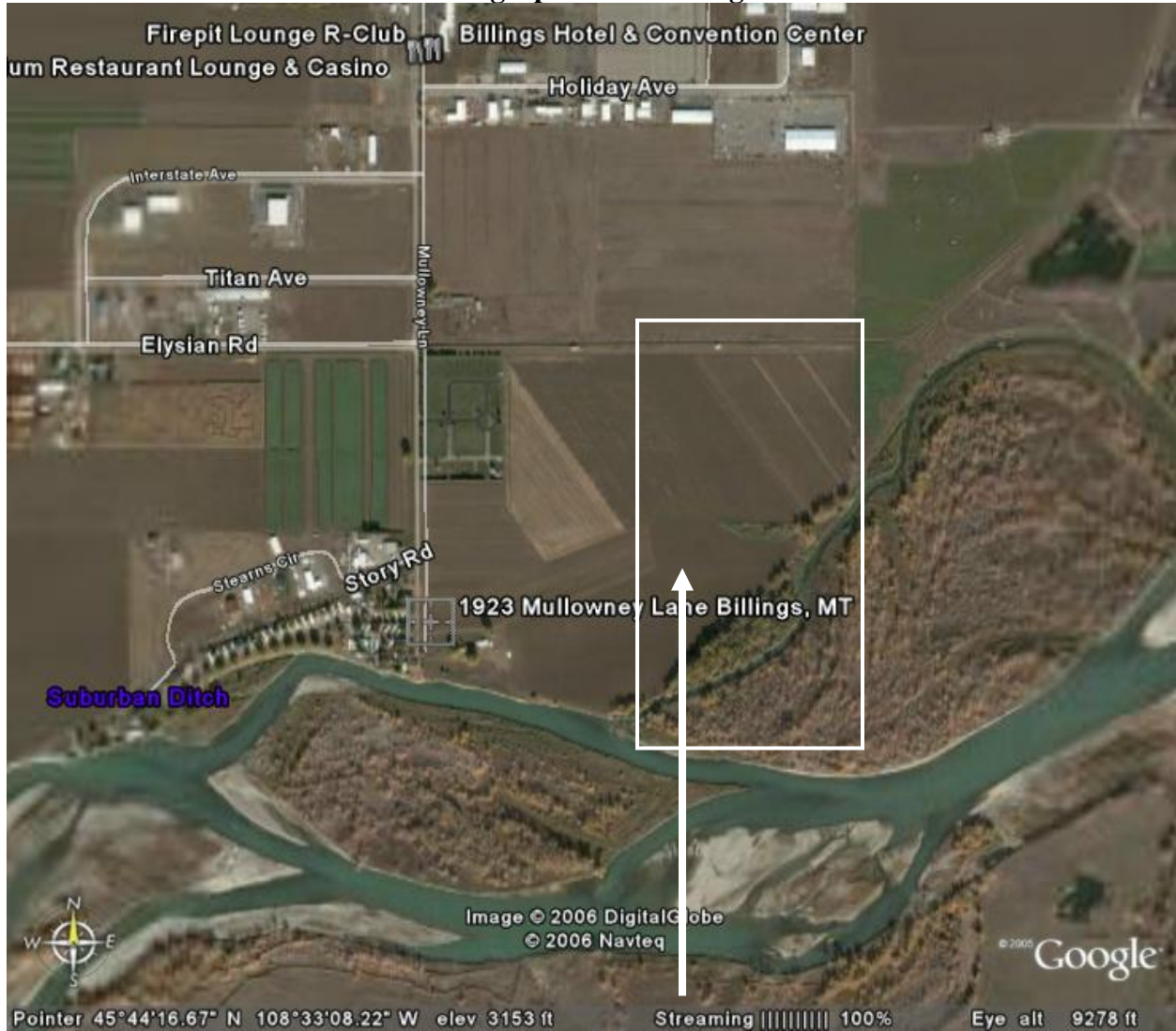
The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #776 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance
- D: Planned Development Agreement #8

ATTACHMENT A

Site Photographs Zone Change #776



Subject Property

ATTACHMENT A, continued

Site Photographs Zone Change #776



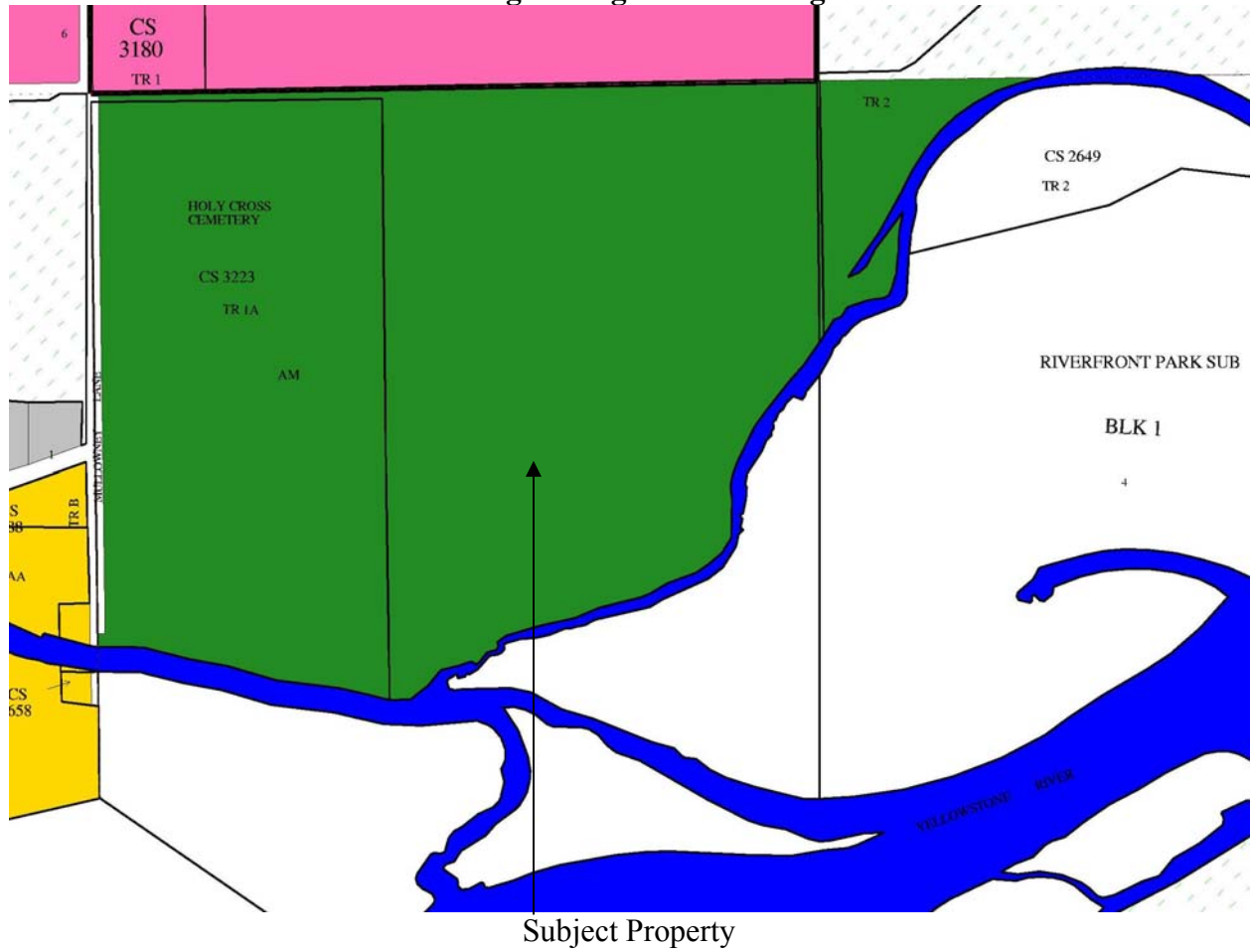
Subject Property view west along Elysian Road to Muldowney Lane



Subject Property view south towards Yellowstone River

ATTACHMENT B

Surrounding Zoning – Zone Change #776



ATTACHMENT C

Zone Change #776

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR NENWNW1/4, S1/2NWNW4 & LOT 3-4 LESS COS 3223 in Section 20, Township 1S, Range 26 East, containing approximately 60.27 acres

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

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

2. DESCRIPTION. A tract of land known as the NENWNW1/4, S1/2NWNW4 & LOT 3-4 LESS COS 3223 in Section 20, Township 1S, Range 26 East, containing approximately 60.27 acres and is presently zoned Public and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Planned Development #8** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Planned Development #8** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading May 22, 2006.

PASSED, ADOPTED AND APPROVED on second reading June 12, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk

ZC#776

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

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: Zone Change #777 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from R-6,000 to Residential Multi-family on Lots 1-10, Block 1 of Green Acres Subdivision and Lot 1, Block 14 of Suncrest Acres Subdivision 3rd Filing. The property is located in the 800 block of Avenue E. The applicant is Azalea Company and Matt Brosovich is the agent. The Zoning Commission conducted a public hearing on May 2, 2006, and voted unanimously to recommend approval to the City Council.

ALTERNATIVES ANALYZED: State law at MCA 76-2-304 requires that all zone changes be reviewed in accordance with 12 criteria. Using the 12 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT: The proposed zone change could potentially increase the City's tax base upon development of the property.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #777 and adopt the determinations of the 12 criteria, as discussed within this report.

Approved by: _____ City Administrator _____ City Attorney

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

INTRODUCTION

This is a zone change request from Residential-6,000 to Residential Multi-family on Lots 1-10, Block 1 of Green Acres Subdivision and Lot 1, Block 14 of Suncrest Acres Subdivision 3rd Filing. The subject property is located in the 800 block of Avenue E, directly north of the Housing Authority apartment complex and is currently vacant land. The total area for the zone change is .92 acres or 40,320 square feet. The owner of this property is Azalea Company represented by Matt Brosovich. The developer is proposing to construct a series of attached single family homes similar in architectural style to town homes under development in the lots on the north side of Avenue E. The attached single family units will feature traditional craftsman style bungalow architecture with tuck-under garages and front porches to encourage neighborhood interaction. The lots were platted in 1949 at 60 feet in width by ~66 feet in depth. The thought was the adjacent land owner to the south would plat the other half of the depth of the lots. This did not occur.

PROCEDURAL HISTORY

- On April 3, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on May 2, 2006, and recommended approval to the City Council by a unanimous vote.
- The City Council will conduct a public hearing and first reading on May 22, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on June 12, 2006.

BACKGROUND

The subject property is located in the 800 block of Avenue E, directly north of the Housing Authority apartment complex and is currently vacant land. The total area for the zone change is .92 acres or 40,320 square feet. The owner of this property is Azalea Company represented by Matt Brosovich. The developer is proposing to construct a series of attached single family homes similar in architectural style to town homes under development in the lots on the north side of Avenue E.

The lots to the north in Green Acres Subdivision were first used by the Bureau of Land Reclamation for “temporary housing” cabins and became an eyesore of vacant structures and overgrown property until Azalea Company began redevelopment in 2004. The lots are suitable for attached single family housing. The developer intends to seek setback variances in the future to accommodate the proposed residential structures. The Housing Authority apartments to the south have used the vacant land in the past as over-flow parking although Azalea Company owns the land.

The Planning Department reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to Residential Multi-family zoning to the south and Residential Multi-family Restricted to the east. The new development will have to comply with all applicable zoning unless a setback variance is granted

and site development requirements. The City Zoning Commission conducted a public hearing on May 2, 2006, and voted unanimously to forward a recommendation of approval.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. The 12 criteria and the Zoning Commission's determinations are listed below.

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will address urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. This is an appropriate in-fill development of vacant land in one of the older neighborhoods of Billings.
2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning could allow up to 68 units on a 40,320 square foot property. This density could not be physically achieved given the lot configuration. The developer proposes no more than 19 attached single family units with single-car attached garages. This density will not appreciably alter the traffic patterns in the area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This lot has public street frontage on Avenue E and is served by the City Fire Department and Police Departments. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air. The developer will seek a setback variance in the future.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential Multi-family zone allows for maximum lot coverage of 55 percent, or 22,176 square feet on a 40,320 square foot lot. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
The new zoning of Residential Multi-family allows single family, two-family and multi-family attached dwellings. With the minimum lot requirement of 16,000 square feet for an 8-unit building, the lot could support two 8-unit buildings and one two-family unit. The

developer is proposing a maximum of 19 attached single family units. The new zoning should not create an undue concentration of population.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
Transportation: The new zoning should have a minimal effect on the adjacent streets or traffic patterns.
Water and Sewerage: The City will provide water and sewer service to the property and has adequate facilities to serve this property.
Schools and Parks: There should be no effect on parks or schools from this rezoning.
Fire and Police: The property is served by existing services and there should be no effect on these services from the new zoning.
9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is Residential-6,000 to the north, Residential Multi-family to the south, Residential-7,000 to the west and Residential Multi-family Restricted to the east. The existing neighborhood consists of a mixture of apartment buildings, single family residential and two-family dwellings. The proposed attached single-family dwellings should blend in with the new town home development to the north and the existing apartment buildings to the south and east. The new zoning should not impact the character of the neighborhood.
10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.
11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area.
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the 2003 Growth Policy Plan is discussed in the Alternatives Analysis section of this report.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 2, 2006, and forwarded a positive recommendation to the City Council by a unanimous vote. Matt Brosovich of Azalea Company attended the hearing and explained the proposed zone change and development. There were no surrounding property owners who attended the hearing.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council approve Zone Change #777 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Ordinance

ATTACHMENT A

Site photographs – Zone Change #777



Subject site view south from Avenue E



View west along Avenue E

ATTACHMENT A, continued

Site Photographs – Zone Change #777



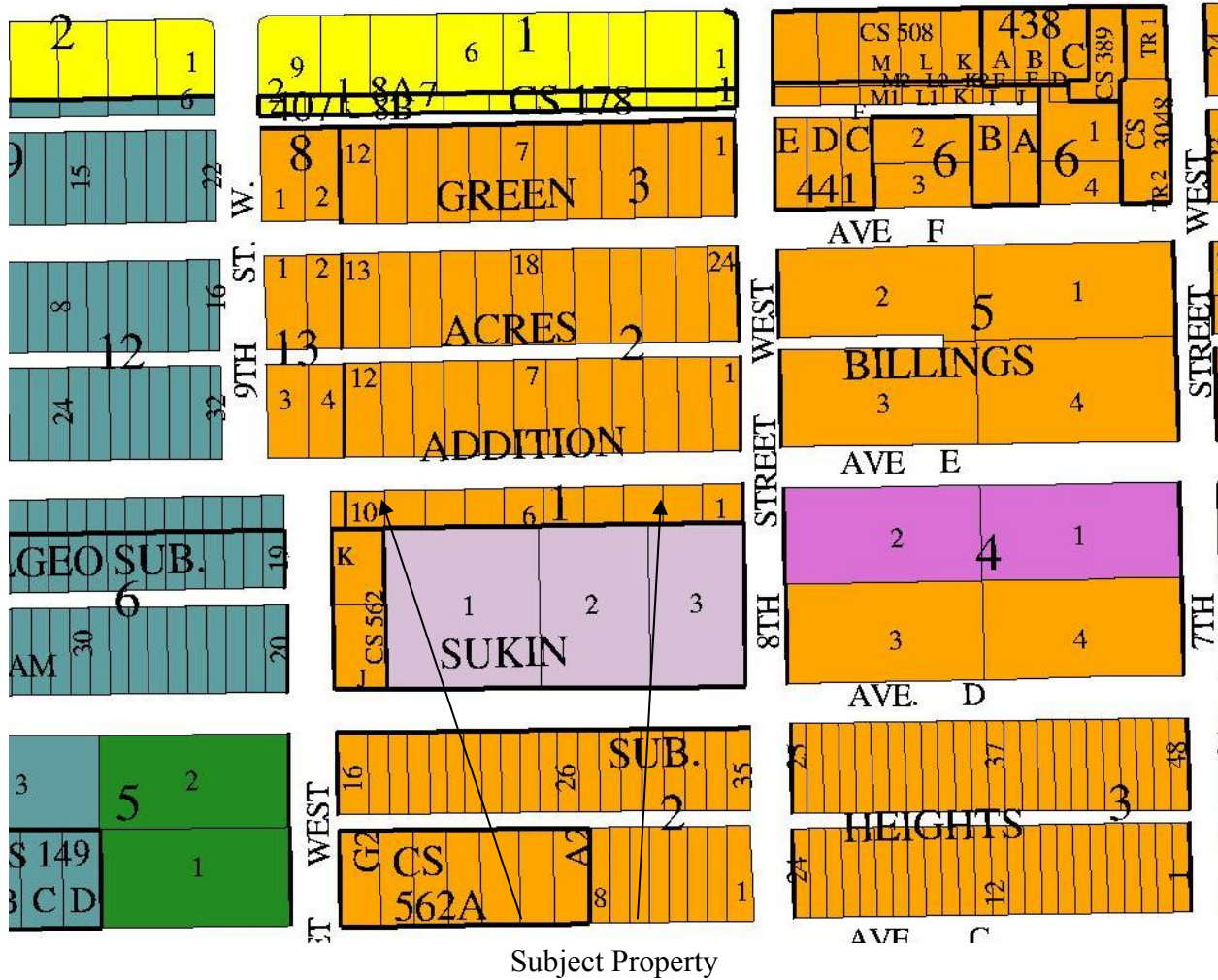
View east along Avenue E



View north east across Avenue E to Green Acres Town Home development

ATTACHMENT B

Surrounding Zoning – Zone Change #777



ATTACHMENT C

Zone Change #777

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Lots 1-10, Block 1 of Green Acres Subdivision and Lot 1, Block 14 of Suncrest Acres Subdivision 3rd Filing, containing approximately .92 acres

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

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

2. DESCRIPTION. A tract of land known as Lots 1-10, Block 1 of Green Acres Subdivision and Lot 1, Block 14 of Suncrest Acres Subdivision 3rd Filing, containing approximately .92 acres and is presently zoned Residential-6,000 and is shown on the official zoning maps within this zone.

3. ZONE AMENDMENT. The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential-6,000** to **Residential Multi-family** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential Multi-family** as set out in the Billings, Montana City Code.

4. REPEALER. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading May 22, 2006.

PASSED, ADOPTED AND APPROVED on second reading June 12, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk

ZC#777

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MAY 22, 2006

TITLE: Public Hearing for Special Review #810
 DEPARTMENT: Planning & Community Services
 PRESENTED BY: Lora Mattox, Neighborhood Planner, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review request to allow an all-beverage liquor license with gaming in a Controlled Industrial zone located at 3429 Transtech Way. The property is legally described at Unit 12, Block 1 of Transtech Center Subdivision. Owner and agent is Bottrell Family Investment, L.P. The Zoning Commission conducted a public hearing on May 2, 2006 and is forwarding a recommendation of conditional approval to the City Council on a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission on a 5-0 vote is recommending that the City Council conditionally approve Special Review #810.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

The applicant is requesting a Special Review to permit on an all-beverage liquor license with gaming in a Controlled Industrial zone located at 3429 Transtech Way. The subject property is currently vacant with development plans of a restaurant. The Zoning Commission voted 5-0 to recommend conditional approval of the special review request.

PROCEDURAL HISTORY

4. A special review application to allow an all-beverage liquor license with gaming was received on March 30, 2006.
5. The City Zoning Commission voted 5-0 at its public hearing on May 22, 2006, to recommend conditional approval of the special review.
6. The City Council will conduct a public hearing and consider this application on May 22, 2006.

BACKGROUND

This is a special review to locate a restaurant with an all beverage license with gaming to serve employees and residents of this developing subdivision and West Billings. The property is located in a Controlled Industrial zone on Unit 12, Block 1 of Transtech Center Subdivision and is known as 3429 Transtech Way, Bottrell Family Investments, L.P., owners. The Transtech Center is being designed as a lifestyle development to accommodate business, housing, and retail activities all in a quality neighborhood setting. Located within this subdivision are bike and walking trails, water features, fishing ponds, and extensive landscaping. The owners intend on building a new, high-end restaurant, complete with a bar and video gaming. There are no uses within 600 feet that require a waiver of the separation requirement.

This property was approved for an all beverage liquor license with gaming through the special review process in November of 2004. Conditions of approval included Section 27-613(a) concerning the requirement of another special review if the number of potential occupants of the structure is increased by more than ten (10) percent. Also, Section 27-613(a) states that if the number of new parking stalls increase by more than ten (10) percent, a special review is required. The applicant intends to increase the size of the structure and add additional parking. Both expansions are greater than ten (10) percent and require a special review.

The Planning staff considered the application and recommended conditional approval to the Zoning Commission. The City Zoning Commission has considered the application and is recommending conditional approval of the special review request based on its concurrence with the Planning staff recommendation.

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed use is compatible with the adjoining land uses and conditions are being recommended that will ensure compatibility.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

- Street and road capacity;
- Ingress and egress to adjoining streets;
- Off-street parking;
- Fencing, screening and landscaping;
- Building bulk and location;
- Usable open space;
- Signs and lighting; and/or
- Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending conditional approval of the special review request.

CONDITIONS OF APPROVAL

The applicant shall comply with the following conditions of approval:

1. The special review approval shall be limited to Unit 12, Block 1 of the Transtech Center Subdivision as shown on the site plans submitted with this application.
2. The site shall be landscaped according to the Transtech Center Building Restrictions and Covenants provided with the Special Review application.
3. The patio area shall be located as shown on the site plan. The patio area shall remain 'open air' and shall not be enclosed. Additionally, the approval of this patio is for a sidewalk level outdoor patio only.
4. Operation of the patio shall be allowed only during normal business hours.
5. There shall be no amplified music on the proposed outdoor patio. Background music from stereo speaker shall be allowed.

6. Trash enclosures shall be constructed of wood, vinyl, brick, stone or concrete block or other building materials and provide a closing gate on one side. No chain link or wire material is allowed for this enclosure.
7. Any expansion of the buildings, parking area or number of living units greater than 10 percent will require an additional special review approval as per BMCC 27-613©.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

The public hearing held on May 2, 2006 before the City Zoning Commission. The agent spoke in support of the Zoning Commission granting conditional approval of the application. There were no other comments.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application does conform to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

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

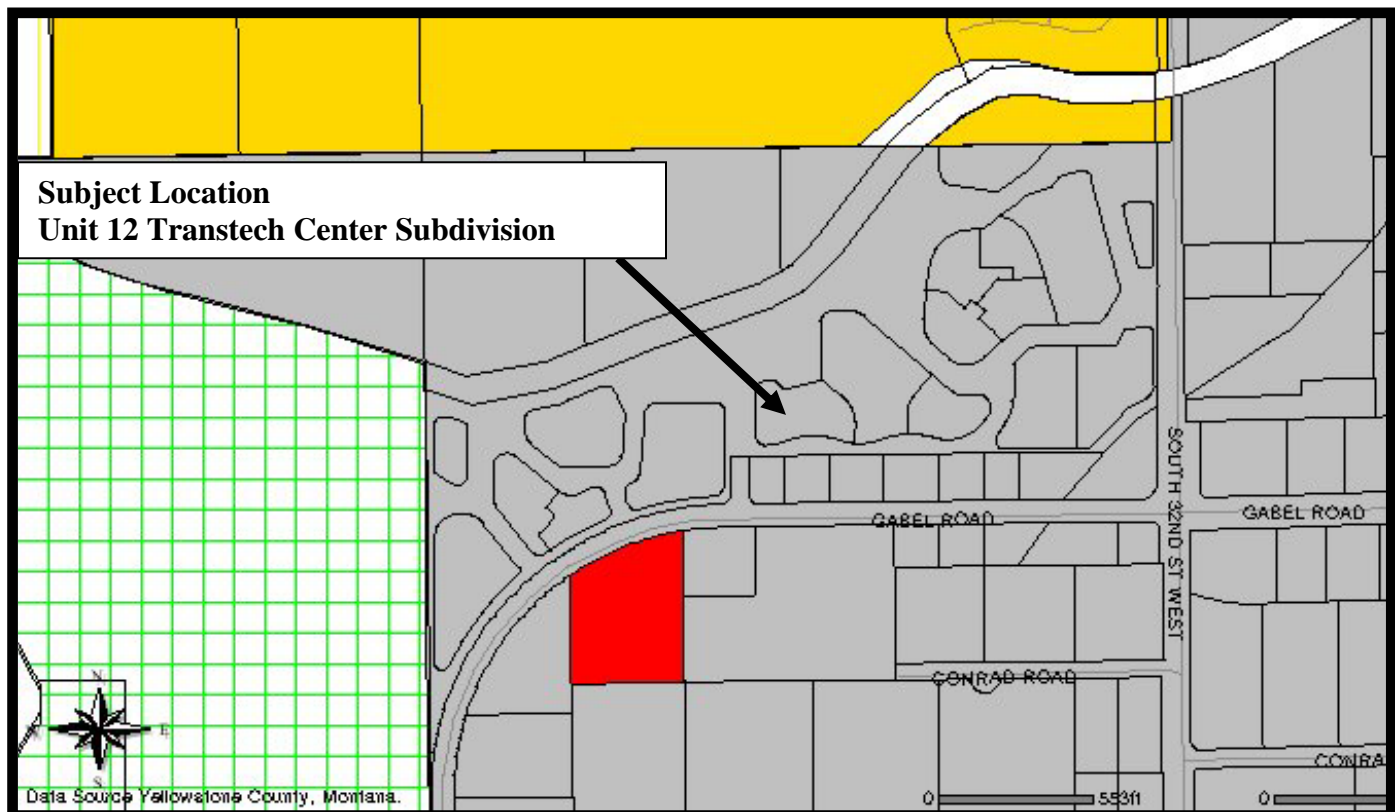
RECOMMENDATION

The Zoning Commission is recommending that the City Council conditionally approve Special Review #810.

ATTACHMENTS

- D. Zoning Map
- E. Site Photographs
- F. Site Plan

Zoning Map – Special Review #810



ATTACHMENT B

Site Photographs for Special Review #810



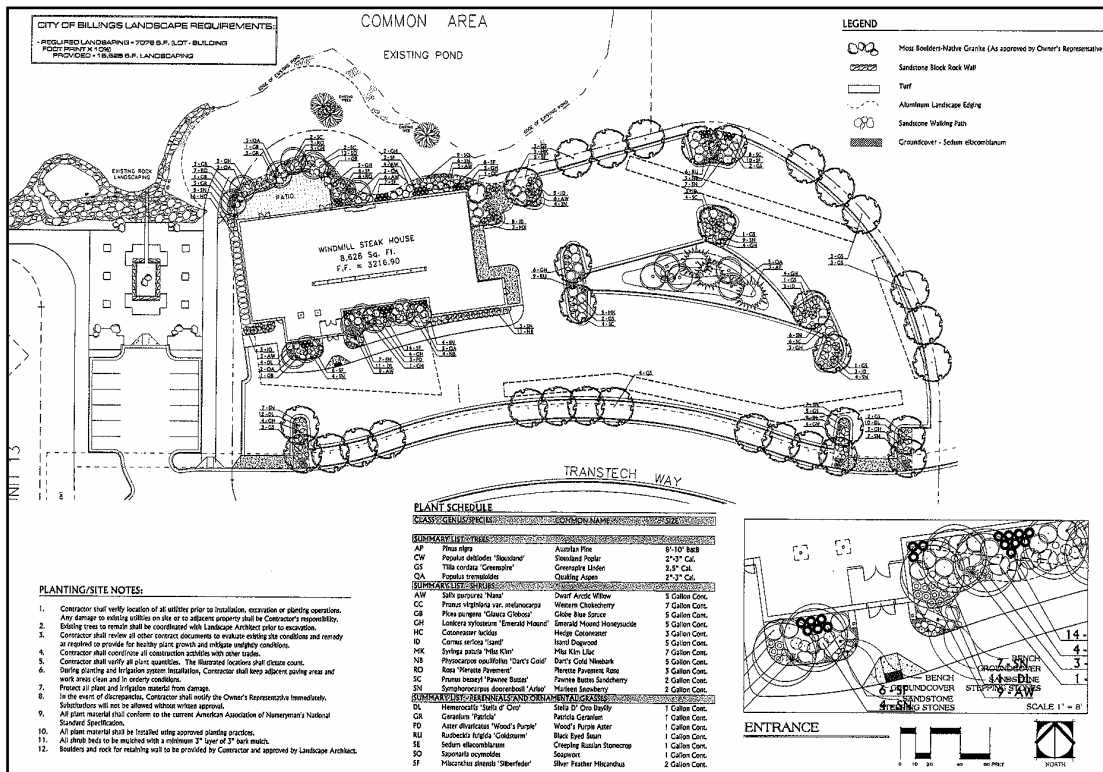
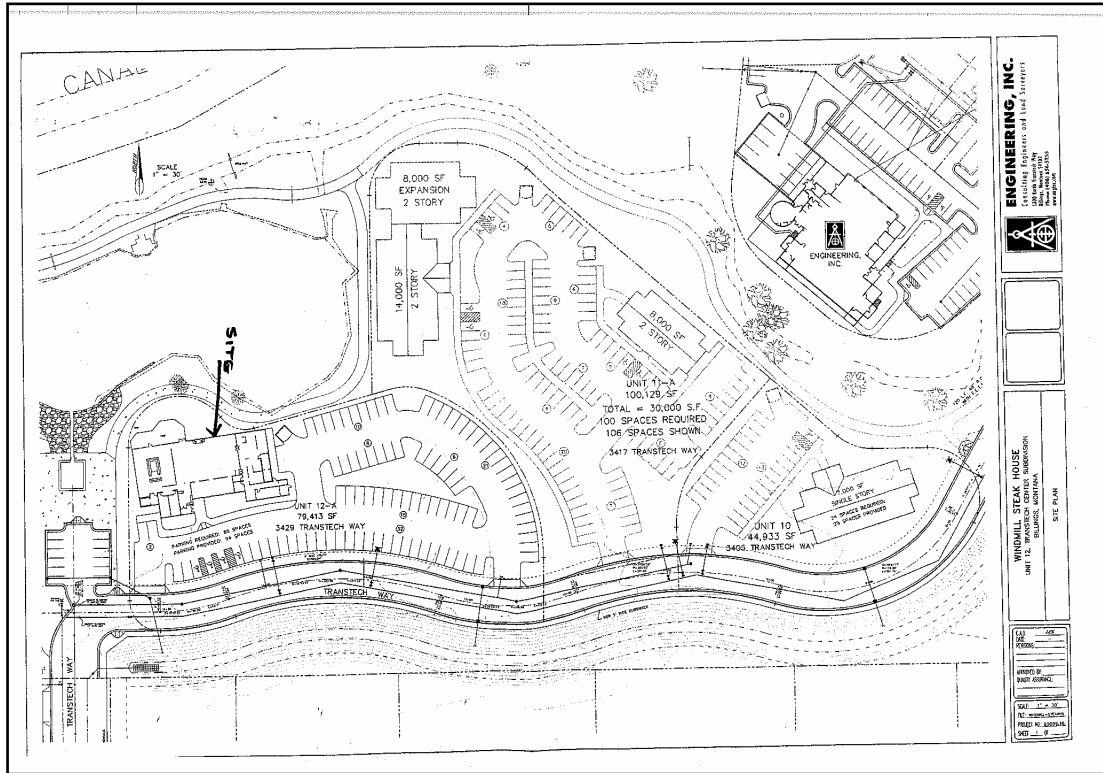
Subject Property Looking Northeast



View South across Gabel Road

ATTACHMENT C

Site Plan – Special Review #810



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MAY 22, 2006

TITLE: Public Hearing for Special Review #811

DEPARTMENT: Planning & Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a special review to permit a church on a property legally described as Lot 2A, Block 1, Missions United Subdivision and located at 2425 Shiloh Road. The subject property is zoned Residential 9600 (R-96) and contains approximately 5.595 acres. The owner is St. John's Lutheran Ministries and CTA Architects is the representing agent. The Zoning Commission conducted a public hearing on May 2, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, should have little financial impact to the City.

RECOMMENDATION

The Zoning Commission recommends by a 5-0 vote that the City Council conditionally approve Special Review #811.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

The applicant is requesting a special review to permit a church on a property legally described as Lot 2A, Block 1, Missions United Subdivision and located at 2425 Shiloh Road. The subject property is zoned Residential 9600 (R-96) and contains approximately 5.595 acres. The owner is St. John's Lutheran Ministries and CTA Architects is the representing agent. The Zoning Commission conducted a public hearing on May 2, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 5-0 vote. There is a concurrent special review for the property directly adjacent to the north to locate five (5) community residential facilities for more than eight (8) persons (assisted living facilities) in a Residential-9,600 zone on 4.7 acre parcel of land.

PROCEDURAL HISTORY

- The subject property was annexed into the City on October 18, 1985.
- 7. On April 3, 2006, the special review application to permit a church within a Residential 9600 (R-9600) zoning district was received.
- 8. On May 2, 2006, the City Zoning Commission unanimously voted to recommend conditional approval to the City Council for the special review.
- 9. On May 22, 2006, the City Council will conduct a public hearing on the special review.

BACKGROUND

The applicant is requesting a special review to permit a church on a property legally described as Lot 2A, Block 1, Missions United Subdivision and located at 2425 Shiloh Road. The subject property is zoned Residential 9600 (R-96) and contains approximately 5.595 acres.

As stated within the application submittal, the proposed church will contain approximately 13,400 square feet with a seating capacity of approximately 160 people. The church will provide educational and religious opportunities for the entire community, however will service mainly the elderly population and those living within the assisted living facilities proposed within the master plan for the entire property.

The Planning Department has reviewed this application and is recommending conditional approval. Staff finds that the proposed church is compatible with the single-family residences to the west and the proposed medical and assisted living facilities to be located to the north and south of the subject property. The master plan for this property was submitted with previously approved Zone Change #762 and includes two (2) points of access from Shiloh Road and an internal road system that should provide adequate traffic circulation through the site; adequate parking has also been provided for the proposed church. The Engineering Department, as well as the Planning Department, will further review the site plan for compliance with the unified zoning regulations and the Billings Municipal City Code upon submission (required by Condition #2).

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use is compatible with the surrounding residential uses and the proposed medical campus and assisted living facility to be located on the property.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

- Street and road capacity;
- Ingress and egress to adjoining streets;
- Off-street parking;
- Fencing, screening and landscaping;
- Building bulk and location;
- Usable open space;
- Signs and lighting; and/or
- Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to Lot 2A, Block 1, Missions United Subdivision, 2425 Shiloh Road.
2. The church shall be constructed in accordance with the submitted site plan and shall comply with standards set forth by the Unified Zoning Regulations, including the Shiloh Road Corridor Overlay District landscaping standards. A site plan review is required for the proposed site layout in addition to building permits for all structures on the site.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

A public hearing was conducted by the Zoning Commission on May 2, 2006; the applicant and applicant's representative were present to answer questions. There was no discussion by the Zoning Commission and no public comment received.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

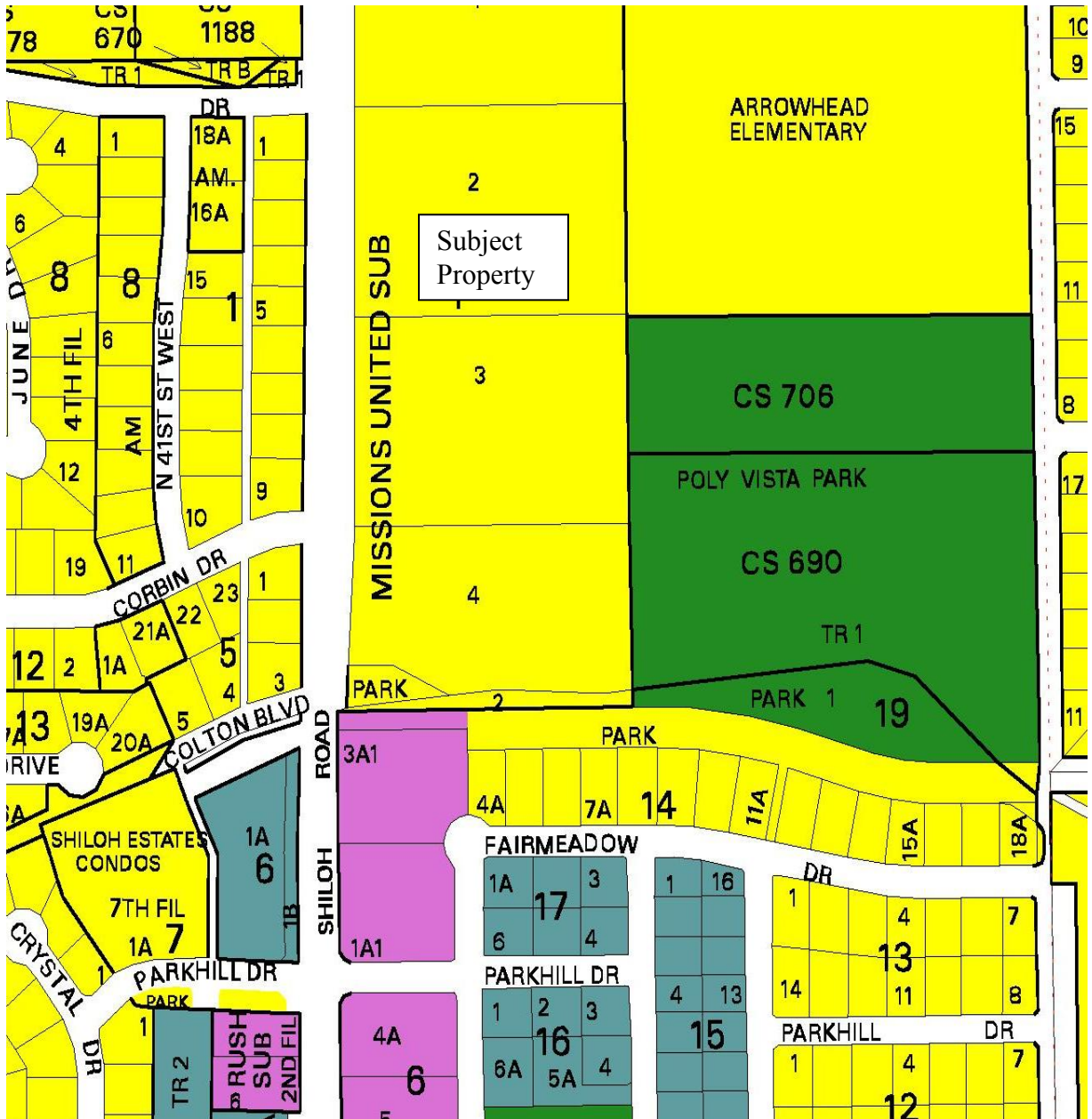
The Zoning Commission is recommending that the City Council conditionally approve special review #811.

ATTACHMENTS

- G. Zoning Map
- H. Site Photographs
- I. Site Plan

ATTACHMENT A

Zoning Map



ATTACHMENT B

Site Photographs for Special Review #811



Figure 1: View northeast across the subject property.



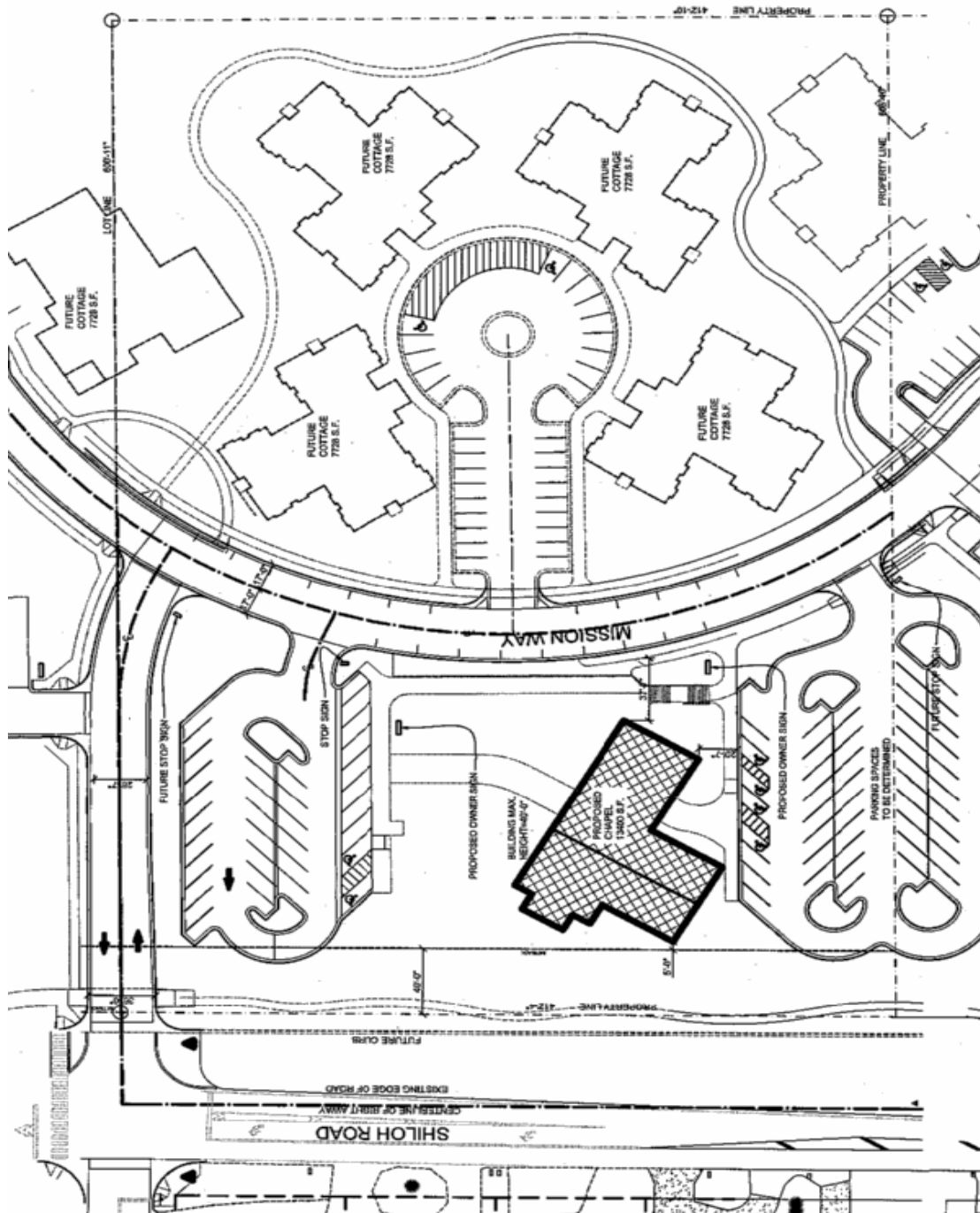
Figure 2: View west toward single-family residences across Shiloh Road from the subject property.



Figure 3: View south along the western boundary of the subject property (Shiloh Road is pictured).

ATTACHMENT C

Site Plan



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, MAY 22, 2006

TITLE: Public Hearing for Special Review #812
 DEPARTMENT: Planning & Community Services Department
 PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a special review to permit five 12-bed skilled nursing care homes on a property legally described as Lot 1, Block 1, Missions United Subdivision and located at 2511 Shiloh Road. The subject property is zoned Residential 9600 (R-96) and contains approximately 4.76 acres. The owner is St. John's Lutheran Ministries and CTA Architects is the representing agent. The Zoning Commission conducted a public hearing on May 2, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 5-0 vote.

ALTERNATIVES ANALYZED: Before taking any action on an application for a Special Review use, the City Council shall first consider the findings and recommendations of the City Zoning Commission. In no case shall the City Council approve a special review use other than the one advertised. The Council shall take one of the following actions:

- Approve the application;
- Conditionally approve the application;
- Deny the application;
- Allow withdrawal of the application; or
- Delay the application for a period not to exceed thirty (30) days.

FINANCIAL IMPACT: The special review, if approved, would allow development of the vacant lot, which would increase the City's tax revenue on the property.

RECOMMENDATION

The City Zoning Commission recommends on a 5-0 vote that the City Council conditionally approve Special Review #812.

Approved By: City Administrator ____ City Attorney ____

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

INTRODUCTION

This is a Special Review to allow five 12-bed skilled nursing care homes on land zoned Residential-9600 and described as a Lot 1, Block 1 Missions United Subdivision. The subject property is generally located on the east side of Shiloh Road, just north of Poly Drive, and south of the Hi-Line Ditch. It is immediately south of the existing St. John's Nursing Home and two similar cottage-style facilities that were constructed in 2005. The proposed five new homes are a part of the master planned expansion of these facilities. The entire Lot 1 of Missions United Subdivision is 4.76 acres in size but the site in question is about 4 acres in size.

The Zoning Commission conducted a public hearing on May 2, 2006, and is forwarding a recommendation of conditional approval to the City Council by a 5-0 vote. There is a concurrent special review by the same applicant for the property directly adjacent to the south to locate a church in a Residential-9,600 zone on a portion of a 5.5 acre parcel of land.

PROCEDURAL HISTORY

- The subject property was annexed into the City on October 18, 1985.
- On April 3, 2006, the special review application was received.
- On May 2, 2006, the City Zoning Commission unanimously voted to recommend conditional approval to the City Council for the special review.
- On May 22, 2006, the City Council will conduct a public hearing on the special review.

BACKGROUND

According to the applicant letter, St. John's Lutheran Ministries is proposing the replacement of a portion of their existing skilled nursing facilities, Wings 5, 6, & 7, which were built in the 1970's and are semi-private and private rooms with an outdated "institutional" feel. The five additional 12-bed homes, along with the 2 constructed last year and 9 others in the future, would accomplish this replacement of Wings 5, 6, & 7. The new homes that are the subject of this special review are modeled after others built in Mississippi, and are Craftsman cottage-style, featuring private rooms with a more residential feel, and significant outdoor green space. They are proposed to be 7,728 square feet in size and 20'6" in height. Access to the new structures would be gained from a new approach off of Shiloh Road across from Poly Drive, and also from an internal access road connected to the facilities to the north.

The Planning Department has reviewed this application and is recommending conditional approval. Staff finds that the proposed homes are compatible with the single-family residences to the west and the other assisted living facilities to be located to the north of the subject property. The Engineering Department, as well as the Planning Department, will further review the site plan for compliance with the unified zoning regulations and the Billings Municipal City Code upon submission (required by Condition #2).

ALTERNATIVES ANALYSIS

Section 27-1503(D) specifies that all Special Reviews shall comply with the following three (3) criteria:

1. Complies with all requirements of this Article (27-1500).

This application complies with the requirements of the zoning regulations.

2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.

This application is generally consistent with the purposes of Chapter 27 with the recommended conditions of approval.

3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use is compatible with the surrounding residential uses and the other existing assisted living facilities to be located on the property.

Further, the City Council shall consider and may impose modifications or conditions concerning, but not limited to the following:

- Street and road capacity;
- Ingress and egress to adjoining streets;
- Off-street parking;
- Fencing, screening and landscaping;
- Building bulk and location;
- Usable open space;
- Signs and lighting; and/or
- Noise, vibration, air pollution and similar environmental influences.

Based on the above criteria, the Zoning Commission is recommending approval with the following conditions:

1. The special review approval shall be limited to Lot 1, Block 1, Missions United Subdivision, 2511 Shiloh Road.
2. The five skilled nursing care homes shall be constructed in accordance with the submitted site plan and shall comply with standards set forth by the Unified Zoning Regulations, including the Shiloh Road Corridor Overlay District landscaping standards. A site plan review is required for the proposed site layout in addition to building permits for all structures on the site.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, sign permit or fence permit. Compliance with all applicable local codes will be reviewed at the building permit level. This application is for a Special Review as noted above and no other request is being considered with this application. The Planning Department points out that the use and development of the property must be in accordance with the submitted site plan.

STAKEHOLDERS

A public hearing was conducted by the Zoning Commission on May 2, 2006; the applicant and applicant's representative were present to answer questions. There was no discussion by the Zoning Commission and no public comment received.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

In addition to the above discussion in the Alternatives Analysis section, this application conforms to the goals of the 2003 City of Billings/Yellowstone County Growth Policy, specifically:

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

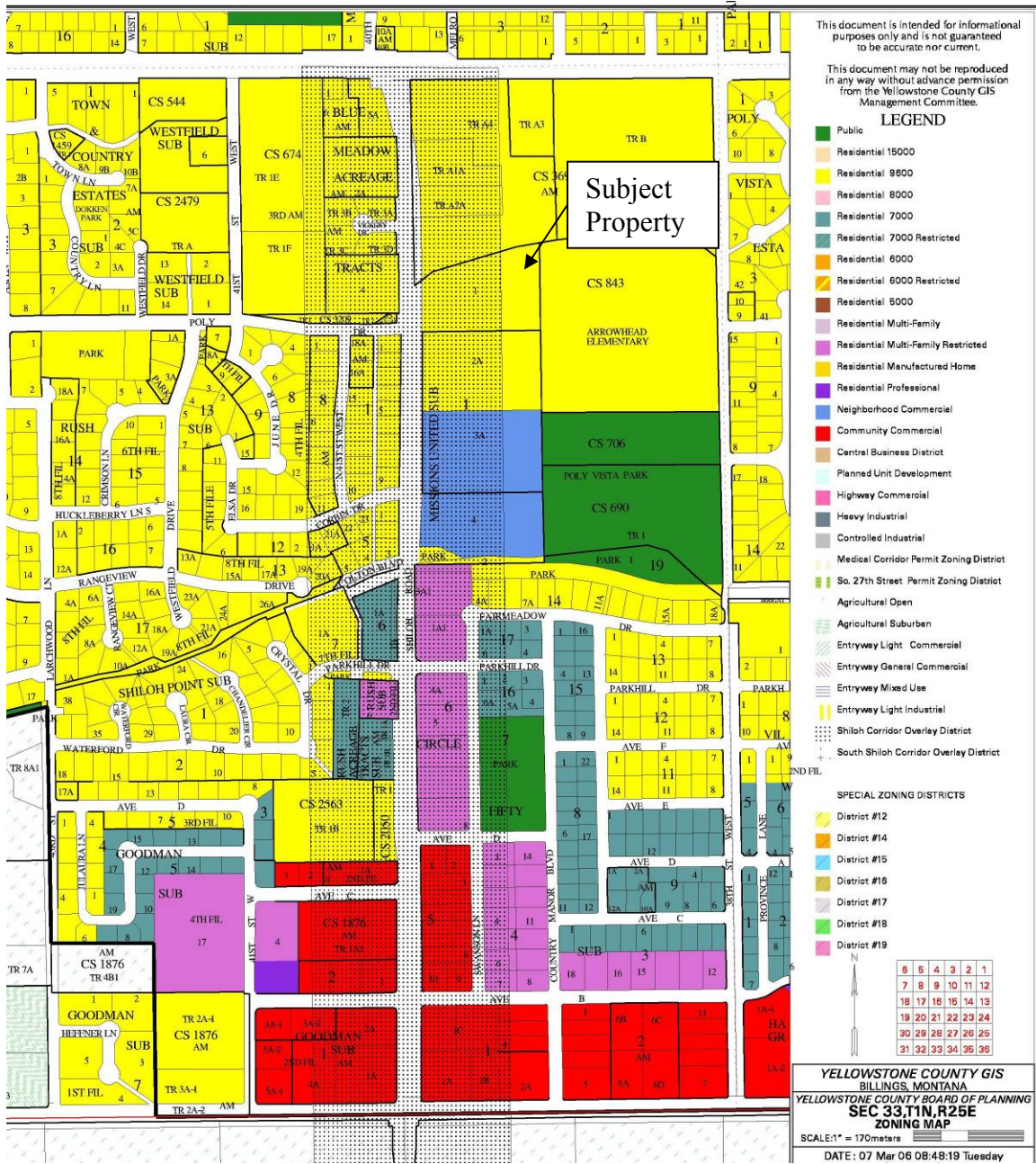
The City Zoning Commission recommends on a 5-0 vote that the City Council conditionally approve special review #812.

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan

ATTACHMENT A

Zoning Map



ATTACHMENT B

Site Photos



Figure 1: Looking south down Shiloh Rd. at location of new access road to site (on left).



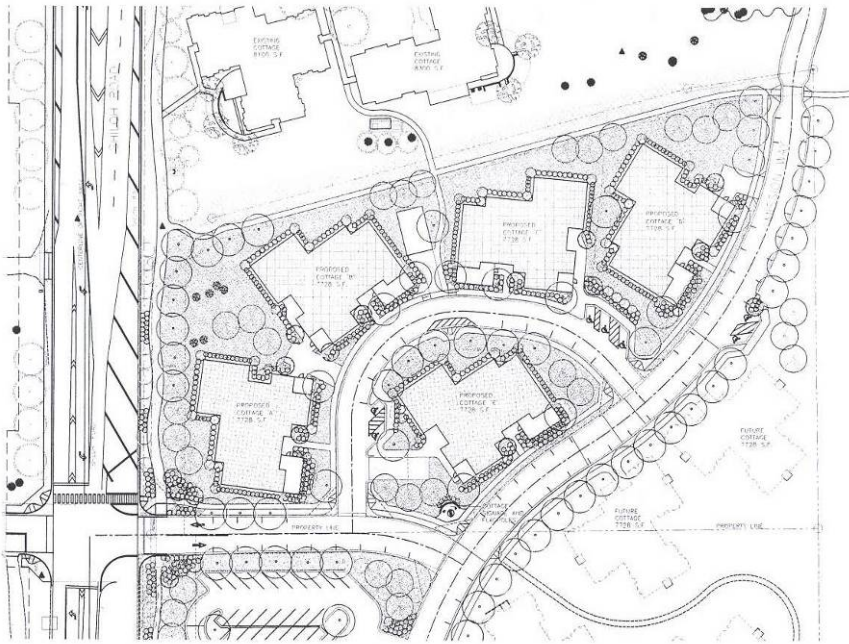
Figure 2: Looking south across Hi-Line Ditch at subject property. Building shown is St. V's Center for Healthy Aging, located south of subject property.



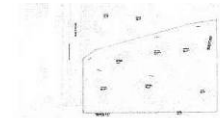
Figure 3: View of similar 12-bed cottage-style unit constructed in 2005.

ATTACHMENT C

Site Plan



PLANTING PLAN
SCALE = 1"=40'-0"
NORTH



| CAMPUS SITE PLAN | |
|---|---|
| SCALE = 1"=100'-0" | |
| MASTER PLANT LEGEND | |
| SYM | TYPICAL PLANT NOTES |
| EXISTING TREES VARIOUS VARIETIES & SIZES | |
| TREES | |
| 1 | LARGE DECIDUOUS TREE 40'-60' OPTIONS: GREEN OR WHITE ASH WINTER OLEST BURNING BUSH MAHOGANY |
| 2 | DECIDUOUS TREE 20'-40' OPTIONS: HERITAGE REDBARK CRAWFORD ASPEN FRANCOISIA OR NATURAL MAPLE |
| 3 | ORNAMENTAL DECIDUOUS TREE 10'-20' OPTIONS: AMERICAN CHERRY SPRING BLOSSOM CHERRY NAVY BLUE |
| 4 | EVERGREEN TREE 30'-40' OPTIONS: COLORADO SPRUCE TOWHEE PINE |
| 5 | LARGE EVERGREEN SHRUB 10'-20' OPTIONS: RED TIDY ARCADE HOLLY HEDGE |
| 6 | LARGE DECIDUOUS SHRUB 5'-10' OPTIONS: BURNING BUSH MORNING GLORY |
| 7 | SMALL EVERGREEN SHRUB 4'-6' OPTIONS: YOUNGSTOWN ANDORRA JUNE DWARF BURNING BUSH JAPANESE YEW |
| 8 | DECIDUOUS SHRUB 4'-6' OPTIONS: ARBOREUS POTENTILLA BLUE ARCTIC WILLOW GRANITE BURNING BUSH |
| 9 | ORNAMENTAL GRASS OPTIONS: FEATHER BIRD GRASS BLUE GRASS BIG BLUE GRASS |
| 10 | POTENTIALS AND GROUNDCOVERS 10'-12' OPTIONS: SUMMIT PASTEL VARIETY PERENNIAL RUSSIAN BARK |
| 11 | CLIMBER VINE OPTIONS: AMERICAN BITTERWEED VIRGINIA CREEPER MOSSY SANDSTONE / GRANITE |
| 12 | ROCKERY |
| 13 | LAWN AREA BLUEGRASS / FESCUE / RYEGRASS MIX SPRINKLED AND CUT TO 2.5" HEIGHT |
| 14 | MEADOW GRASS FESCUE / RYEGRASS MIX CUT TO 4" HEIGHT |

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

TITLE: Public Hearing & Site Development Ordinance Variance #CC06-01

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Susan J. Zurbuchen, owner of Lot 1, Block 1, of Bitterroot Subdivision is seeking a variance from the Site Development Ordinance Section 6-1206. Section 6-1206 Curbs, Gutters, and Sidewalks in all zones reads as follows:

In all zoning districts Portland cement concrete sidewalks, Portland cement concrete driveways at all access locations and Portland cement concrete integral curb and gutter shall be constructed in conformance with section 6-1203(u) and with current city standards. The city engineer is authorized to waive the time requirements of section 6-1203(u) for installation of the curb, gutter and sidewalk, upon receipt of a proper application accompanied by a waiver for the right to protest creation of a special improvement district in the future to install these improvements. The waiver must be executed by the property owner and must run with the land.

ALTERNATIVES ANALYZED:

- Approve the Variance that does not require the property owner to install the required improvements or sign a Waiver of Right to Protest.
- Do not approve the Variance and require the property owner to install the required improvements or require the property owner to sign a Waiver of Right to Protest.

FINANCIAL IMPACT: If the Variance is approved, there is a possibility that the City will have to pay for some amount of improvements at a future date.

RECOMMENDATION

Staff recommends that Council does not approve the variance and requires the property owner to sign the Waiver of Right to Protest the Creation of a Special Improvement District before the issuance of a building permit.

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

ATTACHMENT

A. Variance Application (3 pages)

INTRODUCTION:

Susan J. Zurbuchen, owner of Lot 1, Block 1, of Bitterroot Subdivision is seeking a variance from the Site Development Ordinance Section 6-1206. This lot is located at 1747 Wicks Lane. The lot is located on the corner of Wicks Lane and Duran Drive. Duran Drive is currently an unimproved street. The portion of Wicks Lane fronting the property has been improved across the street (the south side of Wicks Lane) with curb, gutter, sidewalk, and 30-feet of asphalt surfacing. The north side of Wicks Lane fronting the property is currently a gravel-surfaced road with no curb, gutter and sidewalk. An irrigation ditch also runs along the front of the property along Wicks Lane. The owners are proposing to build a garage off of Duran Drive. In lieu of placing curb, gutter and sidewalk and doing street improvements, the City Engineer's Office has agreed to accept a Waiver of Right to Protest the Creation of a Special Improvement District per Section 6-1206 of the Site Development Ordinance. The property owner does not want to do any street improvements and does not want to sign the Waiver of Right to Protest.

BACKGROUND

When a building permit is issued, property owners are required to bring their property into conformance with City Code. The Site Development Ordinance requires that curb, gutter and sidewalk be placed along property frontages. In addition, asphalt surfacing is required. When a single lot comes in for a building permit, the property owner is required to install the necessary improvements. The Site Development Ordinance allows the City Engineer's office to delay installation of these improvements by allowing the property owner to sign a Waiver of Right to Protest. This will allow for full improvements to be installed at a later date with a Special Improvement District. The City Engineer's Office will allow the Waiver of Right to Protest the Creation of a Special Improvements District since constructing street improvements now would not accomplish much for the overall improvements that are required for the entire area. The Waiver of Right to Protest the Creation of a Special Improvement District could be valuable when a Special Improvement District is created for the entire area to install street improvements.

ALTERNATIVES ANALYSIS

If the Variance is approved, the property owner will not be required to install the required improvements, and the property owner will have the right to protest the creation of a Special Improvement District.

If the Variance is not approved, the property owner will be required to construct the improvements or sign a Waiver of Right to Protest the creation of a Special Improvement District. The City Engineer's Office has agreed to allow the property owner to sign the Waiver of Right to Protest the creation of a Special Improvement District in lieu of constructing the required improvements.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

If street improvements are not done, signing a Waiver of Right to Protest the creation of a Special Improvement District is consistent with policy and is required by the Site Development Ordinance.

RECOMMENDATION

Staff recommends that Council does not approve the variance and requires the property owner to sign the Waiver of Right to Protest the Creation of a Special Improvement District before the issuance of a building permit.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, May 22, 2006**

TITLE: Naval Reserve Center Disposition
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Naval Reserve Center in North Park is being abandoned by the Navy and the City of Billings has been negotiating terms of the turnover as it will own the facility by virtue of being the underlying land owner. The buildings have structural, mechanical and environmental contamination issues and the Navy has agreed to remedy some, but not all, of them. The City must decide how to respond to the Navy's offer and what will be the buildings' final disposition. The Council will direct staff according to one of the options described below.

ALTERNATIVES ANALYZED: The City Council can consider the following alternatives:

- Accept the Navy's offer to repair the damaged areas and abate the environmental hazards that are identified in its April 25, 2006 letter and report and
 - Defer a decision about the building's future use
 - Direct staff to find tenants for the building under any conditions imposed by the Council
- Reject the Navy's offer to repair the building and
 - Request that the Navy take more aggressive action to remediate the environmental hazards
 - Request that the building be demolished by the Navy and the land returned to park use

FINANCIAL IMPACT: Making the buildings habitable is estimated to cost between \$800,000 and \$1.2 million, after the Navy completes its repairs and a full environmental remediation. The project is not planned in the CIP and the funds are not budgeted. No City departments are able to occupy the buildings and make them work for their operations.

RECOMMENDATION

Staff recommends that Council reject the Navy's offer to repair the buildings and abate the environmental hazards identified in its April 25, 2006 letter and report, and instead request that the Navy remove all environmentally hazardous material and an outbuilding from the premises and then repair the damaged areas.

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

INTRODUCTION

The Naval Reserve Center in North Park has been abandoned by the Navy and the City of Billings owns it by virtue of being the underlying land owner. The buildings have structural, mechanical and environmental contamination issues and the Navy has agreed to remedy some, but not all, of them. The City must decide how to respond to the Navy's proposal and what will be the buildings' disposition. Staff recommends that the Council reject the offer and request more aggressive treatment for the environmental hazards and then repair apparent damage.

BACKGROUND

In 1946 the City of Billings leased a small part of North Park to the US Navy. Over many years of occupancy the Navy built at least six structures on the property and connected four of them to form the complex known as the Naval Reserve Center. In 2005 the Navy built a new Reserve Center on the west end of Billings and abandoned the North Park buildings late in the year. Before the Navy left the buildings, City staff was allowed to review historic documents about the buildings' construction and to inspect them. Staff discovered that there were a number of building deficiencies and that an environmental assessment and partial remediation were completed in the early 1990s. After discovering those deficiencies the staff corresponded with the Navy and asked that all of the environmental hazards be remediated before the City took possession. The Navy initially refused to take any responsibility for the hazards but reconsidered early this year. In addition, a heating boiler malfunction in December caused some of the heating and other piping to freeze and burst. Those plumbing problems have been corrected but the damage from entering walls and ceilings to make the repairs have not. The Navy continues to maintain the heating system and to pay the utility bills for the property.

In early March the Navy sent an industrial hygienist to Billings to examine the building. The Navy submitted the report to the City on April 25, 2006. The report details many instances of damaged walls and ceilings, some water leaks and resulting mold and that friable asbestos remains in the building, primarily in the form of thermal pipe insulation. Asbestos was a common insulating material until the 1970s, so it is not unusual to find the material in older buildings. It appears that fiberglass insulation covers all recently repaired piping and additions. The hygienist recommends repairing all of the damaged walls and ceilings, correcting the water problems and treating the mold and removing all visibly damaged or easily disturbed asbestos thermal pipe insulation. The Navy has verbally committed to making the repairs recommended by the report.

The industrial hygienist does not recommend that all asbestos be removed but staff believes, based on multiple inspections, that nearly all of the thermal piping and some additional building materials contain asbestos. Those additional areas include wall board in the boiler room and it is possible that some of the old asbestos exterior siding was not removed when vinyl siding was applied. One of the outbuildings has visible structural damage on two corners which has allowed water penetration and mold is growing in those locations. It is a long, narrow building without a lot of utility. If it is demolished, additional parking space would be available for building occupants.

The Council asked staff to investigate the possibility of City departments moving into the structure. All of the contacted departments indicated that the building does not meet their needs and that moving some of their functions would cause operational problems. The only exception is that the Fire Department indicated it could use the land for locating a new emergency communications center (911) but the present buildings cannot be used for that purpose. A number of non-profit agencies contacted the City, saying they would like to lease portions of the complex.

Staff reviewed the report and as mentioned, conducted its own inspections. If the City accepts the complex after the Navy completes the promised work, it will ultimately have to remove the asbestos either before the complex is leased or when the buildings are eventually demolished. The reason for removing the asbestos before it is leased is that it is only a matter of time before a portion of the asbestos wrapped piping leaks or it will be in the way of other repairs. When that occurs, the tenants in the affected area will have to be vacated and the asbestos will have to be isolated and removed before repairs occur. Delaying repairs could negatively affect other parts of the complex since many of the systems interconnect throughout the complex.

ALTERNATIVES ANALYSIS

The City can accept the Navy's report or reject it. If it accepts the report and the offered repairs, the buildings could be winterized and closed pending future decisions on their final disposition. Alternatively, the staff could solicit offers from profit and nonprofit entities to lease the buildings. If that alternative is chosen, staff recommends that a condition of any lease be that the tenant remove all asbestos containing material in the buildings or that the City accomplish that and amortize the cost over the lease term.

If the City Council rejects the Navy's report and repair offer, staff can attempt to negotiate with the Navy for a more aggressive asbestos and other hazardous material removal program. That is the resolution that staff requested last fall and it was rejected by the Navy. If the Navy maintains that stance, the City could contact its Congressional delegation for assistance. If the Navy continues to refuse to abate the problems and make the needed repairs, it could refuse to remove any material or make repairs, or it could carry out the plan that is offered at this time. If the Navy agrees to remove all hazardous materials, demolish the small outbuilding and makes the necessary interior repairs, the City could choose either of the options discussed in the first paragraph of this section. If the City chooses to demolish the building, all of the asbestos or suspected asbestos containing materials would have to be removed from the building before demolition.

STAKEHOLDERS

Several nonprofit agencies have expressed an interest in leasing some or all of the buildings, including Young Families/Early Headstart, the Women, Infants and Children (WIC) program, Yellowstone County Council on Aging, the Montana Bureau of Mines Billings office, and a boxing club. Some or all of them may urge the Council to make the buildings available to them, with or without the recommended total asbestos removal. Park users or recreation groups may

be interested in demolishing the buildings and reestablishing park use on the property, although none of those interests have been expressed to date.

RECOMMENDATION

Staff recommends that Council reject the Navy's offer to repair the buildings and abate the environmental hazards identified in its April 25, 2006 letter and report, and instead request that the Navy remove all environmentally hazardous material and an outbuilding from the premises and then repair the damaged areas.

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, May 22, 2006

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

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The City Council approved the allocation of the City of Billings FY2006-2007 CDBG and HOME funding on May 8, 2006. The motion was made to the budget allocation but did not include the second year Consolidated Plan - Annual Action Plan for FY2006-2007. The Consolidated Plan is a U.S. Housing and Urban Development (HUD) requirement and must be approved at the City Council level in order for the City to receive federal funding.

ALTERNATIVES ANALYZED: No additional alternatives have been analyzed.

FINANCIAL IMPACT: Approval of the Consolidated Plan will not result in financial impact.

RECOMMENDATION

Staff recommends that the City Council approve the FY2006-2007 Annual Action Plan as the second year of the Consolidated Plan for FY2005-2009.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM**

CITY OF BILLINGS, MONTANA

Monday, May 22, 2006

TITLE: City Administrator Salary
DEPARTMENT: Administration
PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council initiated the Billings City Administrator recruiting process earlier this year. A job description and a recruiting brochure were prepared and advertising is nearly ready to begin. One of the issues that the Council has not decided is the salary that it will offer. A citizen advisory committee recommended \$125,000 annual salary and the Mercer Group recommended a similar amount. Before it interviews candidates or makes a job offer the Council must decide on the salary and any other benefits.

FINANCIAL IMPACT: The FY 07 budget proposal contains salary and benefit costs similar to previous years. The most recent salary for the position was approximately \$100,000 per year.

RECOMMENDATION

Staff recommends that Council direct staff to set a salary for the City Administrator recruitment.

Approved By: City Administrator ____ City Attorney ____

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