

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

July 10, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing
PLEDGE OF ALLEGIANCE – Mayor Tussing
INVOCATION – Mayor Tussing
ROLL CALL
MINUTES
COURTESIES
PROCLAMATIONS
ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, and #8

ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

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

CONSENT AGENDA:

1. A. **Mayor's Appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1.		Yellowstone Soil Conservation District	07/01/06	06/30/08

(Corresponding Staff Memo A)

B. Bid Awards:

(1) W.O. 05-10: Stewart Park Trail – Billings, Federal Aid No. STPE 1099(40), MDT CN5290. (Opened 6/27/06). Recommend base bid, alternate #1 and alternate #2 to CMG Construction, Inc., \$179,436.00 and 45 calendar days, contingent on CTEP concurrence.

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

(2) Truck Cabs and Chassis for the Solid Waste Division. (Opened 6/27/06). Recommend Schedule I: Tri-State Truck & Equipment, \$113,708.00; Schedule II: Northwest Truck & Trailer, \$190,196.00; Schedule III: Northwest Truck & Trailer, \$285,294.00.

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

(3) Refuse Compactor Bodies for the Solid Waste Division. (Opened 6/27/06). Recommend Schedule I: Kois Brothers Equipment, \$92,989.00; Schedule II: Kois Brothers Equipment, \$62,946.00; Schedule III: Kois Brothers Equipment, \$182,011.00.

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

C. Change Order #5 (Final, Balancing), SID 1370: Interlachen Drive, Phase 1, H.L. Ostermiller Construction, Inc, \$27,117.26.

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

D. Amendment #11, Passenger Facility Charge (PFC) Project – Airfield Lighting Vault, engineering services, Morrison-Maierle, Inc., \$35,409.00.

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

E. Agreement approving the hourly rate for the second year of a three-year agreement with Guardian Security for security guard services at the Library.

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

F. Renewal of Commercial Aviation Ground Lease with Edwards Jet Center for use of Commercial Lot 2, term: 1 year, \$11,422.00.

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

G. Renewal of Lease for Edwards Jet Center's West End Fuel Farm, term: 5 years, \$3,637.00 for first year, adjusted annually by the CPI-U.

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

H. Easement with NorthWestern Energy for a strip of land in City Park, running from the east side of Blonco Circle to the west side of Gold Dust Circle, to provide electric service to Blonco Circle, \$0.00.

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

I. Acceptance of additional American Dream Downpayment Initiative Grant funding from the Montana Dept. of Commerce, \$11,516.00.

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

J. Acknowledging receipt of petition to annex #06-10: a 288-acre parcel described as: N2 of Section 20, T1N-R26E and C/S 1904, State of Montana Dept. of Natural Resources and Conservation (DNRC), petitioner, and setting a public hearing for 7/24/06.

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

K. Street Closures:

(1) Lewis and Clark Bicentennial Commission's *Clark on the Yellowstone* Bicentennial Signature Event, 2nd Ave. N between alley west of 27th St. N. and 29th St. N and N. Broadway between 1st Ave. N and 3rd Ave. N on July 21, 2006.

[\(Corresponding Staff Memo K1\)](#)

(2) Skyview High School's *Homecoming Parade*, Wicks Lane from Skyview Parking Lot to St. Bernard's Church, on September 8, 2006.

[\(Corresponding Staff Memo K2\)](#)

L. Second/final reading ordinance for Zone Change #779: A zone change from Residential Professional to Neighborhood Commercial on a 1.26-acre parcel described as: Lots 2B and 2C, Block 1 of Hancock Grand Subdivision, and located at: 3737 Grand Avenue. Darrell Kreitzberg, applicant. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

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

M. Second/final reading ordinance for Zone Change #781: A zone change from Community Commercial to Public on a 6.14-acre parcel described as: Tract 1-B-2 of C/S 2277 Amended, and located at: 3803 Central Avenue. Board of Regents of Higher Education, owner; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

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

N. Second/final reading ordinance for Zone Change #782: A zone change from Agriculture Open-Space to Community Commercial on a 3.96-acre parcel described as: Tract B of C/S 1011 Amended, and located on the northeast corner of the intersection of Zimmerman Trail and Grand Ave. Rocky Mountain Community Church, applicant; Engineering, Inc., agent. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria.

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

O. Final plat of Gunn Estates Subdivision.

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

P. Bills and payroll.

(1) June 9, 2006

[\(Corresponding Staff Memo P1\)](#)

(2) June 16, 2006

[\(Corresponding Staff Memo P2\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION FOR ANNEX #06-07:** annexing 57 acres in T1N-R26E-S23: N2NE4 Less C/S 515 and C/S 1335, but including C/S 999, generally located south of Wicks Lane between Hawthorne Lane and Bitterroot Drive, Felton Associates LLC, owner and petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND RESOLUTION FOR ANNEX #06-09:** annexing 2.1371 acres in T1S-R25E-S23: NE4 described as C/S 2771, Tract 2, generally located on the south side of Hesper Road west of S. 32nd St. W, Rice Wagon, LLC, petitioner, Brady Wagner and Carrie Orr-Wagner, owners. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND FIRST READING ORDINANCE amending** the BMCC by revising Sections 23-304, 23-308 and 23-410, providing a procedure for review of subsequent minor subdivisions and providing updates to regulations on provisions of utility easements for subdivisions. Planning Board recommends approval of the amendments to Sections 23-304 and 23-308 and postponing amendments to Section 23-410 to an unspecified date. **(Action:** approval or disapproval of Planning Board recommendation.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-06, described as 5.651 acres in C/S 1011, Tr. B Amended, and adjoining rights-of-way in Grand Ave. and Zimmerman Trail, generally located east of 34th St. W and north of Grand Ave., Rocky Mountain Community Church, petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed properties in Annex #06-08, described as two portions of C/S 1834, Tract 3-C-1, generally located north of Rimrock Rd. at 50th St. W, Aviara, Inc., petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **RESOLUTION** temporarily suspending BMCC Section 24-411 to allow camping in the Shrine Auditorium parking lot for the *2006 Big Sky Polka Festival* from August 31 through September 4, 2006. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 7\)](#)

8. **4TH AND BROADWAY REDEVELOPMENT – 2005 Update.** (Delayed from 4/10/06). Ad Hoc Committee will report the status of negotiations and requests additional guidance from the City Council regarding development incentives and a time extension. (**Action:** direction to Ad Hoc Committee and Staff.)
(Corresponding Staff Memo 8)
9. **WASTEWATER SERVICE AGREEMENT** with Lockwood Water and Sewer District, initial term: 15 years. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
(Corresponding Staff Memo 9)
10. **MPEA/Police Union 2006 – 2009 contract.** Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)
(Corresponding Staff Memo 10)
11. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.**
(Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

Council Initiatives

ADJOURN

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

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

CALENDAR

(Council AND Boards & Commissions)

JULY:

7/03/2006	Council WORK SESSION	CANCELLED	
7/04/2006	INDEPENDENCE DAY – CITY OFFICES CLOSED		
7/05/2006	Policy Coordinating Committee Zoning Commission Aviation & Transit Commission Board of Adjustment	8:00 a.m. 4:30 p.m. CANCELLED 6:00 p.m.	4 th Floor Library Council Chambers Council Chambers
7/06/2006	EMS Commission Human Relations Commission	7:30 a.m. 12:15 p.m.	Main Fire Station Conf. Rm 2300 9 th Ave. N. CH Conference Room
7/10/2006	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
7/11/2006	Planning Board Community Development Board	6:00 p.m. 3:00 p.m.	4 th Floor Library 4 th Floor Library
7/12/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
7/13/2006	Library Board	11:30 a.m.	Library
7/17/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
7/18/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
7/24/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
7/25/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 th Floor Library 4 th Floor Library
7/26/2006	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 st Avenue North CH Conference Room
7/27/2006	Yellowstone County Board of Health	CANCELLED	
7/31/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St

AUGUST:

8/01/2006	Community Development Board Zoning Commission Aviation & Transit Commission Board of Adjustment	3:00 p.m. 4:30 p.m. 5:30 p.m. 6:00 p.m.	4 th Floor Library Council Chambers Airport Terminal Council Chambers
8/02/2006	Policy Coordinating Committee	8:00 a.m.	4 th Floor Library
8/03/2006	Human Relations Commission	12:15 p.m.	CH Conference Room
8/07/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
8/08/2006	Planning Board	6:00 p.m.	4 th Floor Library
8/09/2006	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
8/10/2006	Library Board	NOON	Library
8/14/2006	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
8/15/2006	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
8/17/2006	Public Utilities Board	6:30 p.m.	Public Works-Belknap 2251 Belknap Ave
8/21/2006	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
8/22/2006	Planning Board Traffic Control Board	6:00 p.m. NOON	4 th Floor Library 4 th Floor Library
8/23/2006	Development Process Advisory Review Board (DPARB)	1:00 p.m.	CH Conference Room
8/24/2006	Yellowstone County Board of Health	7:00 a.m.	Community Health Center 123 So. 27 th Street
8/28/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
8/30/2006	Housing Authority	NOON	2415 1 st Avenue North

A



**CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 10, 2006**

TITLE: Yellowstone Soil Conservation District Re-Appointment
DEPARTMENT: City Administrator's Office
PRESENTED BY: wynnette Maddox, Administration

PROBLEM/ISSUE STATEMENT: Confirmation of re-appointment for the Yellowstone Soil Conservation District.

FINANCIAL IMPACT: No financial impact involved.

RECOMMENDATION

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.		Yellowstone Soil Conservation District	07/01/06	06/30/08

Approved By: City Administrator ____ City Attorney ____

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B1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: W.O. 05-10 – Stewart Park Path, Federal Aid No. STPE 1099(40),
Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project will construct a multi-use trail through Stewart Park (from Central Avenue to Monad Road) in accordance with the approved Stewart Park master plan (see the attached area map). The bid is structured as follows: The Base Bid is for approximately 29,000 square feet of trail and related work, Bid Alternate No. 1 is for tree planting, and Bid Alternate No. 2 is for trailhead signage. The estimated cost of extending the multi-use facility along Monad Road in conjunction with the portion of trail through the park, as scoped during preliminary design, exceeded the available project budget. The multi-use facility along Monad Road has been designed, and it is expected that Staff will bring a future proposal to Council to bid and construct that section in conjunction with the Lampman Park Strip trail segment. Bids were opened for the project on June 27, 2006, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Project funding is available from a federal CTEP grant, a state Recreational Trails Program (RTP) grant and required local match funds from the Parks and Trails General Obligation (GO) bond approved in 1999.

Location of Work: Stewart Park and alley in Ryan Subd. (between the park and Monad)

Funding Sources: CTEP Grant (\$237,230), RTP Grant (\$35,000) and local match (\$36,770 + \$8,750) provided by GO bond

Approved Dollar Amount for Project: \$317,750

Spent (and obligated) to date: \$ 51,043

Funding available: \$266,707

Bids were opened on June 27, 2006 with the following results:

Firm	Base Bid (Main Trail)	Bid Alternate No. 1	Bid Alternate No. 2	Total
CMG Const., Inc.	\$172,786.00	\$3,150.00	\$3,500.00	\$179,436.00
JTL Group, Inc.	\$183,306.00	\$3,150.00	\$4,100.00	\$190,556.00
C & S Const., Inc.	\$306,499.74	\$4,444.17	\$5,843.21	\$316,787.12
EHC, LLC	\$425,824.00	\$11,540.00	\$6,850.00	\$444,214.00
<i>Engineer's Estimate</i>	\$200,273.00	\$3,575.00	\$4,250.00	\$208,098.00

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 05-10 – Stewart Park Path, Federal Aid No. STPE 1099(40), for the Base Bid (Main Trail), Bid Alternate No. 1 and Bid Alternate No. 2 to CMG Construction, Inc., for \$179,436.00 and 45 calendar days, contingent on CTEP concurrence.

ATTACHMENT

Approved By: City Administrator City Attorney

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Approval of Award to Purchase Six New 2007 Truck Cabs and Chassis for the Solid Waste Division

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division FY07 Budget includes funds to replace six older garbage trucks. All are included in the approved Equipment Replacement Plan and they are scheduled to be purchased this fiscal year.

Public Works bid the truck chassis separate from the compactor bodies. This bid recommendation is for the truck chassis only. The truck chassis will be delivered to the compactor manufacturer for installation of the packer body. That vendor is then required to deliver the completed truck to the City of Billings. Bids were advertised June 15th and 22nd.

Public Works is ordering three different styles of trucks. Automated "side load" trucks are used to pick up 90 and 300-gallon residential containers, "roll-off" trucks are used to pick up compactor containers and construction boxes, and "rear load" trucks are used to manually pick up residential and commercial refuse.

FINANCIAL IMPACT: The Solid Waste Division budgeted adequate funds to purchase six truck chassis. Four bids were received June 27, 2006 as follows:

SCHEDULE I - 62,000 GVW Cab & Chassis w/ Dual Steering, Lift Axle, and 5-Year Engine and Transmission Warranty (Barrel Truck)

	I-State <u>Truck Center</u>	Tri-State <u>Equipment</u>	Motor Power <u>Equipment</u>	Northwest <u>Truck & Trailer</u>
Brand	Freightliner	AutoCar		
Total Bid-1 Unit	\$114,819	\$113,708	No Bid	No Bid

SCHEDULE II - 62,000 GVW Cab & Chassis with Lift Axle and 5-Year Engine and Transmission Warranty (Roll-Off Truck)

	I-State <u>Truck Center</u>	Tri-State <u>Equipment</u>	Motor Power <u>Equipment</u>	Northwest <u>Truck & Trailer</u>
Brand	Freightliner	Mack	International	Sterling
Total Bid-2 Units	\$212,036	\$208,558	\$213,826	\$190,196

SCHEDULE III - 62,000 GVW Cab & Chassis with Lift Axle and 5-Year Engine and Transmission Warranty (Rear Load Truck)

	I-State <u>Truck Center</u>	Tri-State <u>Equipment</u>	Motor Power <u>Equipment</u>	Northwest <u>Truck & Trailer</u>
Brand	Freightliner	Mack	International	Sterling
Total Bid-3 Units	\$319,779	\$312,546	\$319,839	\$285,294

RECOMMENDATION

Staff recommends that Council award the contract for purchase of six 2007 model truck cabs and chassis as follows:

Schedule I –One Unit – Tri-State Truck & Equipment	\$113,708
Schedule II – Two Units – Northwest Truck & Trailer	\$190,196
Schedule III – Three Units – Northwest Truck & Trailer	\$285,294

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

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B3



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

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

DEPARTMENT: Public Works/Solid Waste Division

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

PROBLEM/ISSUE STATEMENT: The Solid Waste Division FY07 Budget includes funds to replace six older garbage packers. All are included in the approved Equipment Replacement Plan and they are scheduled to be purchased this fiscal year.

Public Works bid the truck chassis separate from the compactor bodies. This is the bid recommendation for the packer bodies only. The truck chassis will be delivered to the compactor body manufacturer for installation of the packer body. The packer vendor is then required to deliver the completed truck to the City of Billings. Bids were advertised June 15th and 22nd.

Public Works is ordering three different packer bodies. Automated "side load" trucks are used to pick up 90 and 300-gallon residential containers, "roll-off" trucks are used to pick up compactor containers and construction boxes, and "rear load" trucks are used to manually pick up residential and commercial refuse.

FINANCIAL IMPACT: The Solid Waste Division's FY07 budget includes adequate funds to purchase six garbage compactor bodies. Bid packets were provided to nine vendors, and two of those submitted bids prior to the 2:00pm bid opening on June 27, 2006. One bid was received after the deadline and could not be considered. The bids are summarized as follows:

Kois Brothers Equipment

McNeilus Companies, Inc

Schedule I – 1 Side Load
Less Trade #0125
Net Bid

\$118,989
(26,000)
\$92,989

No Bid

Schedule II –2 Roll Offs	\$77,946	No Bid
Less Trade #0091	(15,000)	
Net Bid	\$62,946	
Schedule III –3 Rear Loads	\$188,511	\$206,253
Less Trade #0090	(6,500)	\$0.00
Net Bid	\$182,011	\$206,253

Kois Brothers Equipment submitted a trade allowance of \$25,000 for roll-off unit #109, the Street Division will purchase that truck as outlined in the approved equipment replacement plan.

RECOMMENDATION

Staff recommends that Council award the contract for purchase of six 2007 model garbage compactor bodies as follows:

Schedule I – One Unit – Kois Brothers Equipment	\$92,989
Schedule II –Two Units – Kois Brothers Equipment	\$62,946
Schedule III – Three Units – Kois Brothers Equipment	\$182,011

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

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C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: SID 1370 Interlachen Drive (Phase 1), Approval of Change Order #5 (Final) (Balancing)

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: SID 1370 provides for the construction of missing sidewalks, drive approaches, accessibility ramps, curb & gutter, street widening, and storm drainage improvements on Interlachen Drive between River Oaks Drive and Skyview Drive (South) and on Lakewood Drive between Interlachen Drive and the East end of Lakewood Drive. Phase 1 of the project, construction of missing improvements on Interlachen Drive, began on March 10, 2006, and Phase 1 is now substantially complete. This Change Order #5 will increase the contract amount beyond the ten percent above the original contract amount, so Council approval of the change order is necessary.

FINANCIAL IMPACT: Funding for the project is available from SID bonds and City contribution (Storm Drain \$10,000, Gas Tax \$10,000).

Location of Work: Interlachen Drive between River Oaks Drive and Skyview Drive
Funding Sources: SID Bonds and City contribution (\$20,000)

Approved Project Budget (Phases 1 and 2)(Bond Amount):	\$333,000
Spent to date (Construction (\$168,421.56) and Admin. Expenses (\$5,000):	\$173,422
<u>Change Order #5 (This memo)</u>	\$ 27,118
Funding available to complete Phase 2 construction	<u>\$132,460</u>

Funding for this change order is available in the assessments for the work items and from City funds allocated to this project.

RECOMMENDATION

Staff recommends that Council approve Change Order #5 (Final)(Balancing) for SID 1370 Interlachen Drive (Phase 1) with HL Ostermiller Construction, Inc. for \$27,117.26.

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

INTRODUCTION

SID 1370 provides for the construction of missing sidewalks, drive approaches, accessibility ramps, curb & gutter, street widening, and storm drainage improvements on Interlachen Drive between River Oaks Drive and Skyview Drive (South) and on Lakewood Drive between Interlachen Drive and the East end of Lakewood Drive. Council passed Resolution No. 04-18195 on July 26, 2004, creating SID 1370, and Council passed Resolution No. 04-18221 on November 8, 2004, authorizing construction bids. Phase 2 of the project includes finishing public improvements on Lakewood Lane and construction of a storm drain outfall into Lake Elmo. Phase 2 is currently in design, and it is expected to bid in Fall 2006 and be complete by Spring 2007.

PROCEDURAL HISTORY

Completed Items

- July 26, 2004 – Council passed the Resolution to Create SID 1370
- November 8, 2004 – Council authorized soliciting for construction bids for SID 1370
- September 27, 2005 – Construction bid opening
- October 11, 2005 – Council awarded the construction contract for Phase 1 to HL Ostermiller Construction, Inc.
- March 10, 2006 – Notice to Proceed for Phase 1 was given to begin construction
- May 31, 2006 – Construction of Phase 1 was substantially complete
- June 2, 2006 – Substantial completion

Future Items

- July 10, 2006 – Approval of Phase 1 Change Order #5 (**this memo**)
- Summer 2006 – Finalize design and permitting for Phase 2 construction
- Fall 2006 – Expected advertising, bidding and award of Phase 2 construction contract
- Fall 2006 – Expected commencement of Phase 2 construction
- Spring 2007 – Expected completion of Phase 2 construction

BACKGROUND

The project design, bidding and construction administration for Phase 1 (and planned for Phase 2) were performed by Engineering Division staff in an effort to save money for the property owners within the district's boundary. The original contract amount for Phase 1 was \$153,481.50. With approval of Change Order #5, the final contract amount will become \$195,678.76, an increase of \$37,918.50 (27.5%) above the original contract amount.

Change Order #5 includes increases in the quantities of concrete flatwork removal, 4" concrete, and asphalt street restoration. The reason for these increases is that the quantity of required driveway (both asphalt and concrete) cutbacks and replacements far exceeded the bid quantity. With few

exceptions, the existing driveways do not drain towards the drive approach then into the curb & gutter. In this case, each driveway must be cut back enough (towards the garage) that the grade of the replacement driveway section will match the new drive approach, will drain laterally and will not pond water in a storm. The cutbacks on this project were significantly more than the typical cutback areas used to calculate the original contract quantities. Besides the quantity used to restore asphalt driveways (paid as street restoration), the amount of asphalt street restoration required increased above plan quantity due to two other reasons: (1) Longer and wider transitions than originally estimated tie-ins to the new concrete double gutters, and (2) Poor condition existing asphalt immediately adjacent to new asphalt was removed and replaced in order to avoid immediate deterioration of both areas of asphalt.

RECOMMENDATION

Staff recommends that Council approve Change Order #5 (Final)(Balancing) for SID 1370 Interlachen Drive (Phase 1) with HL Ostermiller Construction, Inc. for \$27,117.26.

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Approval of Morrison-Maierle, Inc., Amendment 11 for Engineering Services for Passenger Facility Charge (PFC) Project – Airfield Lighting Vault

DEPARTMENT: Aviation and Transit

PRESENTED BY: Thomas H. Binford, A.A.E., Assistant Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Morrison-Maierle, Inc., under Amendment 3 to the five-year term contract with the City of Billings Logan International Airport, provided the initial engineering, survey and contract administration services for the original Passenger Facility Charge (PFC) funded, Airfield Lighting Vault project for the original engineering fee of \$142,558. Amendment 11 to the five-year term contract totaling \$35,409 is required, as additional engineering services were required to complete the project.

As you may recall, the PFC application for this project was amended with the Federal Aviation Administration (FAA) to increase the total project cost to include the airfield lighting control hookup to the new Air Traffic Control Tower with backup capabilities to the Airfield Operations Building. The cabling specifications for both control hookups called for the use of fiber optics to significantly reduce the risk of damaging the new Airfield Electrical Vault Equipment from a lightning strike. This expanded project was previously approved in the Fiscal Year 2005 Capital budget and CIP; however, the initial bids received last June were substantially higher than the budgeted amount and the bids were rejected. The project scope was re-engineered, again, so it could be put out for bid within the authorized PFC and City budget limits. Since the FY 2005 budget authority lapsed with the rejection of the original bids, new budget authority was reestablished in the first quarter budget adjustment approved on October 24, 2005. This project was subsequently rebid and Council Award was approved with Ace Electric on November 14, 2005. Amendment 11 includes the additional engineering design and contract administration services Morrison-Maierle, Inc. incurred to substantially redesign the project and provide the required bid and contract documents as required during the history of this project. Because the

scope of this important project changed significantly from the approved engineering fees established in Amendment 3, additional compensation is due Morrison and Maierle for the additional work required to complete this project. Airport staff has reviewed, negotiated, and approved these additional fees. Including Amendment 11, the total cost of the engineering work under this contract during the first four and one half years has totaled \$3,102,744, and has produced over \$19,870,787 in construction projects, and \$830,000 in equipment purchases.

FINANCIAL IMPACT: The total cost of Amendment 11 to the term contract with Morrison-Maierle, Inc. is \$35,409. The source of the funding for this project is the Department's PFC Capital fund.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 11 to the Morrison-Maierle, Inc. term contract in the amount of \$35,409 to cover the engineering services needed to complete the PFC project – Airfield Lighting Vault.

Approved By: City Administrator City Attorney

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Library Security Guard Service

DEPARTMENT: Parmly Billings Library

PRESENTED BY: Bill Cochran, Library Director

PROBLEM/ISSUE STATEMENT: The City Council approved a three-year agreement with Guardian Security for Library guard service on June 13, 2005. The agreement allows the City and Guardian to negotiate a new hourly rate for the service annually on the anniversary date of the agreement. Guardian has proposed to continue the current rate of \$15.35 per hour for the second year of the agreement.

FINANCIAL IMPACT: The estimated annual cost for the second year of the three-year agreement is \$64,654. The Library has sufficient funds in the proposed FY07 budget to cover the cost of the services.

RECOMMENDATION

Staff recommends that Council approve the hourly rate for the second year of the three-year agreement with Guardian Security.

Approved By: City Administrator City Attorney

ATTACHMENTS

- A. Listing of reported incidents – (pages 4 & 5)
- B. Library Journal article regarding Tacoma Library 2/25/02 – (page 6)

INTRODUCTION

The current agreement with Guardian Security is for a three-year period, which began July 1, 2005. The terms of the agreement allow for an annual rate adjustment in the hourly rate paid to Guardian Security. The proposed rate charged to the Library for all costs associated with the service Guardian Security provides will remain the same as the rate charged last year. The use of a guard service helps to maintain safety for patrons, staff and facility as per Attachments A and B.

PROCEDURAL HISTORY

Members of the selection committee included Bill Lamdin, Library Board; Officer Mike Samson, Billings Police Department; Candi Beaudry, Planning Division Manager and 4th Floor Safety Committee representative; Elizabeth Fellerer, Library Circulation Staff and Sandy Raymond, Library Senior Administrative Coordinator.

The contract was advertised in The Billings Times on April 21 and April 25, 2005. In addition, RFP packets were mailed to the four local security firms listed in the current telephone directory. Two companies submitted proposals to provide the guard service and copies of the proposals were supplied to committee members a week prior to the interviews on May 19, 2005.

D-N-D	\$15.00/hour with additional charge for security checks of the building beyond 2 times per day
Guardian Security	\$15.35/hour with no charge for 3-4 daily security checks of the building and parking lot late evening and early morning

Guardian Security was chosen by the committee based on the criteria, which was 50% related experience and qualifications and 50% level of service and price.

BACKGROUND

Since the City Council approved the agreement for Library guard service in 1999, the guards have responded regularly to criminal activities including vandalism, theft, indecent exposure, consumption of alcohol and use of illegal substances in the building and on the Library grounds and viewing pornography in children's area and Teen Center. There have been a number of medical emergencies involving people coming into the Library who have been hurt and need assistance to patrons who have been transported to the hospital for medical attention. On a daily basis they deal with people who are panhandling on Library property and patrons whose conduct is not within the guidelines of the Library policy. See attachment A for a more detailed listing.

The guard is in contact with all floors of the Library at all times via cell phone and is in radio contact with the Guardian Security office and the Library 2nd floor via radio. This allows them to respond to incidents in the facility in a short period of time. The agreement also calls for

checking the building and parking lot 3 – 4 times during the late evening, early morning, and weekend hours. These checks have helped the Library avoid problems with vandalism and building maintenance emergency issues. An example of such instances includes discovering doors that have been broken in an attempt to break in to the facility and doors that were inadvertently left unlocked. See attachment B for an article regarding guard service at another library.

Since the service started, there have been many positive comments from the public and city staff that enjoy the increased safety and change of atmosphere.

RECOMMENDATION

Staff recommends that Council approve the hourly rate for the second year of the three-year agreement with Guardian Security.

ATTACHMENTS

- A. Listing of reported incidents – (pages 4 & 5)
- B. Library Journal article regarding Tacoma Library 2/25/03 – (page 6)

Attachment A

Library Security Guard Listing of Reported Incidents

Daily Situations

- advise intoxicated persons that they are not allowed in the Library
- advise people that are panhandling in the Library, lobby and parking lot to move along
- stop people who have set off the Library's security system to see if they have any library items in their possession
- recover patron's personal property left on tables, desks and computer terminals (purses, library cards, billfolds, cell phones etc.)
- enforce Library policies which restrict the use of the children's area and Teen Pit to minors and parents or guardians who accompany them
- enforce cell phone policy
- monitor activities of known registered sex offenders that come into the Library
- monitor people going in and out of the public bathrooms
- monitor children playing on circular staircase or elevators, and locate parents
- monitor people that are loitering on sidewalk around the Library
- help to clear the Library at closing time by asking patrons to shut down computers and checking to insure that all patrons are out of the building and all doors are locked
- check to see that the appropriate doors are locked during regular business hours
- escort staff to their vehicles when the Library closes at 9:00 p.m.

Recent Situations

- issue criminal trespass warnings to patrons when necessary
- deal with patrons engaged in arguments in the Library
- monitor conduct of petition canvassers on Library sidewalk to insure it is not aggressive to the level of being harassment and assist in mediating conflicts between canvassers working on different issues
- prohibit men from entering the women's bathroom alone and/or in the company of an adult female
- intervene when people circumvent the internet filters to access pornography in the teen and children's area, per Library policy
- call Fire Department and standby until they can assist sick, injured or impaired patrons
- respond to front desk calls for assistance with irate and/or threatening patrons
- advise people outside of the building that they can't consume alcoholic beverages on Library property
- respond to vehicle accidents in the parking lot

- contact police when unlocked bicycle stolen from bike rack
- stop toddlers and small children who are about to wander outside and into the parking lot
- assist patrons who have locked keys in their car
- advise adult patrons that sleeping is not allowed
- upon request, escort patrons to their vehicles
- investigate inappropriate patron behavior in Teen area
- help parents locate children that have wandered away
- contact police when patrons have personal items stolen in Library
- contact police when patron reported that a person who they have a restraining order against was following them into the Library
- patrol areas where empty alcoholic beverage containers have been found inside the building
- stop people who are abusing the telephone privilege by exceeding the time limit or talking in a loud and or threatening manner on the telephone
- respond to staff calls because adult patron was loud and trying to sabotage one of the computers in the children's area
- investigate problem with patron who was angry and trying to damage security gates
- contact Police Department and Fire Department regarding a patron who was passed out in the bathroom and were unable to wake them
- stop patrons who are smoking in the Library
- advise maintenance when public bathrooms need attention because people have been sick and cleanup needs to occur

Other Special Situations

- stopped suspected thief, known to Police Department, who was casing cars in parking lot
- assisted with emergency response to suicide attempt in the women's restroom
- aided the Police Department in apprehending walk-away psychiatric patient
- stopped person/s urinating and/or defecating in doorways and/or parking lot and stairway
- removed persons sleeping in NW fire escape
- reported person in possession of a weapon
- stopped person who was committing incident exposure in Library

Attachment B

Library Journal

Tacoma PL Director Says Library Beset by Drunks/Junkies

-- 2/25/2002

Facing budget cuts in 2001, the Tacoma Public Library, WA, was forced to either reduce hours or trim its security team. In the interest of public service, Director Susan Odencrantz cut security. Though there was little choice, she's paying for the decision now. Odencrantz reports that the library has become a haven for drunks and drug dealers. A large contributing factor was the 2001 closure of a nearby homeless shelter, which was razed to make space for a new convention center. With the shelter gone, the homeless now have relocated to the library, which has experienced a 22 percent rise in gate count while its circulation figures have decreased. As many as 100 homeless are passing the daylight hours at the library, but the number of other patrons is falling off.

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AGREEMENT

This agreement entered into this ____ day of July 2006, by and between Parmly Billings Library/City of Billings, hereinafter referred to as "Library", and Guardian Security, Inc., hereinafter referred to as "Contractor".

I. TERM

The term of this contract is July 1, 2006 with security services outlined in this Agreement starting that day and continuing through June 30, 2007. The term of this agreement may be extended for one (1) additional year upon mutual agreement of Library and Contractor.

II. SCOPE OF SERVICE

Contractor will provide one (1) security guard on the Library's property at 510 North Broadway according to the following schedule:

On days that the Library is open, the duty schedule shall be as follows,

Monday-Thursday	7:30 a.m. – 9:30 p.m.
Friday	7:30 a.m. – 6:30 p.m.
Saturday	7:30 a.m. – 5:30 p.m.
Sunday	12:30 p.m. – 5:30 p.m.

Contractor and Library may adjust this schedule by mutual written agreement.

The Library is closed on City legal holidays and on Sundays from Memorial Day through Labor Day. Security coverage will not be required on these days.

Security coverage will include, but not be limited to, patrol of the grounds and parking lots, the perimeter of the Library facility, and all publicly accessible interior areas of the facility while open, and other security duties as assigned by the Library Director.

Patrol duties will include, but not be limited to, observing, and intervening to address, criminal activities and violations of the Library's policies and guidelines for conduct; checking all doors and elevators for appropriate lock status; and other activities to enhance the safety and security of Library facility.

In addition, Contractor will make provisions for radio or cellular telephone contact with Library staff in a form approved by the Library. Security agents will be required to respond immediately upon contact by staff through this or other means.

Security agents will maintain regular communication with Library managers and/or designated staff, including submission of detailed daily reports in a form approved by the Library.

Although no regular comprehensive coverage of the facility is desired beyond the hours noted above, Contractor will provide random checks of the exterior and grounds of the facility from three (3) to six (6) times per evening, including days when the Library is closed, and will monthly provide to the Library written documentation of the checks.

COMPENSATION

The Library will be billed \$15.35 per hour per officer. If Contractor and Library agree to an extension of the contract, a new rate will be negotiated for the additional year the contract can be extended. Each month the Contractor shall present an invoice to the Library describing the work for which it seeks payment and documenting the hours worked by the security officer in the previous month. One officer will be assigned to the facility unless the parties mutually agree in writing to assignment of additional officers.

OTHER PROVISIONS

1. Contractor will observe and abide by all federal, state and local statutes, ordinances and regulations.
2. The Contractor shall indemnify, hold harmless, and defend the City of Billings and its Library, its agents and employees from and against any and all claims, demands, or actions from damages to property or injury to persons or other damage to person or entities arising out of, or resulting from the performance of this Agreement, provided such damage to property or injury to persons is due solely or partially to the act, error, or omission of the Contractor or any of its employees.
3. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the contractor, agents, employees, representatives, assigns, or subcontractors. The Contractor shall provide the following insurance:
 - A. Workers' compensation and employer's liability coverage as required by Montana law.

- B. Commercial general liability, including contractual and personal injury coverage of \$1,500,000 per occurrence and \$3,000,000 general aggregate.
- C. Commercial automobile liability of \$1,500,000 per occurrence.

Each policy of insurance required above shall provide for no less than 45 days' advance notice to the Library prior to cancellation, shall list the City as a primary additional insured, and contain a waiver of subrogation against the City on all policies except the Worker's Compensation policy.

4. It is mutually agreed that the Contractor is an independent contractor and is responsible for all expenses related to such status.
5. The Contractor shall not sell, subcontract, or otherwise assign this Agreement or any of the services to be rendered without first securing the written consent of Library.
6. The Contractor shall provide, at its expense, uniforms approved by the Library, for all Library security officers.
7. All persons with responsibilities in the performance of the terms of this Agreement shall not discriminate against any person(s) on the basis of race, religious creed, color, sex, national origin, age, political affiliation or beliefs, marital status, mental or physical handicaps, or ancestry, in any activities performed pursuant to the Agreement.
8. The Library agrees to notify Contractor as soon as possible of any changes in procedures that might affect the Library's security or the security officer's performance in their duties.
9. Either party has the right to cancel and terminate this agreement forthwith upon giving thirty (30) days written notice.
10. Complete Agreement: This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written contract shall be valid or binding and this contract may not be enlarged, modified, or amended, except in writing signed by the parties.

Dated this ____ day of _____, 2006.

Ron Tussing, Mayor

Date

City Of Billings

Guardian Security Co.

Date

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F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Renewal of Commercial Aviation Ground Lease with Edwards Jet Center
DEPARTMENT: Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Acting Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The lease term for the Commercial Aviation Ground Lease with Edwards Jet Center for the use of Commercial Lot 2 at the Billings Logan International Airport expires July 31, 2006. The original ten-year Lease expired last year and the Lease was extended for one additional year. This parcel sits directly east of the Airport Terminal Building, and extends from the taxiway system on the north end of the parcel to the Airport's frontage road on the south. Since this parcel is adjacent to the Airport frontage road, there is some potential that some portion of this parcel may be impacted by the forthcoming design for the new Airport Road Improvements that will rebuild secondary Highway 318 from the Airport down to Alkali Creek. In order to safeguard against holding up this important road improvement project, staff is recommending that this Lease be once again renewed for only one additional year until it is known what the final design of the Airport Road Improvements will be. At that point, staff can negotiate a new lease term for this 64,900 square foot parcel, which Edwards Jet Center uses in their Fixed Base Operator business.

FINANCIAL IMPACT: This one-year Lease will generate \$11,422 over the next year for the City's Airport Operation. This rate was calculated by adjusting the old lease rate by the increase in the Consumer Price Index for All Urban Consumers (CPI-U). The adjusted rate of \$.176 per square foot is very similar to the other lease rates in place for commercial aviation property, including Edwards Jet Center's other ground leases.

RECOMMENDATION

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

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

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G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Approval of Lease Renewal for Edwards Jet Center's West End Fuel Farm
DEPARTMENT: Department of Aviation and Transit
PRESENTED BY: Thomas H. Binford, A.A.E., Assistant Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: Edwards Jet Center has requested the renewal of the West End Fuel Farm Ground Lease that they have with the City of Billings. Edwards assumed control of this ground lease when it was assigned to them during the purchase of Corporate Air's Fixed Base Operator (FBO) business, back in April of 2001. This 10,218 square foot site contains an underground fuel tank and pump systems, and is utilized to fill the Edwards fuel trucks that service the aircraft operators on the west end of the Airport. The lease renewal will be for five years.

FINANCIAL IMPACT: This Lease will generate \$3,637 during the first year for the City. The rental rate will be subsequently adjusted each following year using the Consumer Price Index for all Urban Consumers (CPI-U) to keep pace with inflation. The current lease rate of \$.356 per square foot per year matches the lease rate for space in the Airport's east end fuel farm.

RECOMMENDATION

Staff recommends that Council approve the renewal of Edwards Jet Center's West End Fuel Farm Ground Lease for a five-year term.

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

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H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Approval of NorthWestern Energy Easement to Provide Electric Service to Blonco Circle

DEPARTMENT: Department of Parks, Recreation, and Public Lands

PRESENTED BY: Gene Blackwell, Acting PRPL Director

PROBLEM/ISSUE STATEMENT: Earlier this year the culverts supporting the Blonco Circle crossing of Alkali Creek collapsed. This required reconstruction of the crossing and the street and the relocation of utilities located in the street to provide service to the Blonco Circle residences. The electric service has been given a temporary crossing for an underground powerline over the public owned Alkali Creek floodplain from Gold Dust Circle to Blonco Circle. North Western Energy has requested an easement to enable the new power service access to be made permanent. The easement crosses undeveloped flood plain property that will not be developed or put to any other use. It removes the electric power line from under the Blonco Circle pavement where it was located. Because there is a long-term benefit to the city for the upkeep and maintenance of Blonco Circle street right-of-way and the Alkali Creek crossing if the electric service is not buried there, it is recommended that this easement be approved as presented. The Easement is the standard easement format used by North Western Energy to provide electric service to cross property to provide service.

FINANCIAL IMPACT: The lease agreement provides for no fees to be paid but may be of benefit to the city over the long-term by not being buried in the Blonco Circle right-of-way. It will have no financial impact on the public park floodplain that it crosses.

RECOMMENDATION

Staff recommends approval by the City Council of the Easement as presented.

Approved By: City Administrator _____ City Attorney _____

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AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday July 10, 2006

TITLE: American Dream Downpayment Initiative Funds
DEPARTMENT: Planning & Community Development Division
PRESENTED BY: Candi Beaudry, Acting Planning & Community Services Director, and Brenda Beckett, Community Development Manager

PROBLEM/ISSUE STATEMENT: The State of Montana, Department of Commerce will receive \$82,255 in American Dream Downpayment Initiative (ADDI) grant funding from the U.S. Department of Housing & Urban Development. To date, the state has granted a total of \$97,969 in these funds to the City of Billings. This year, the state has chosen to allocate an additional \$11,516 ADDI funds to the City for first time homebuyer activities, bringing the total granted to \$109,485. The funds are the result of an initiative of the Bush Administration to assist new homebuyers and do not require a local match.

ALTERNATIVES ANALYZED: Alternatives considered include: a) accepting the ADDI funding to increase resources available for the City First Time Homebuyers Program; and b) not accept the assistance. Additional resources for homebuyer activities in Billings are needed as housing costs continue to rise. If the City rejected the grant, the funds would be allocated by MDOC to other Montana communities.

FINANCIAL IMPACT: HOME and CDBG funds are awarded to the City of Billings annually from HUD for affordable housing projects. In FY 07, \$435,000 of these funds was budgeted for the First Time Homebuyers Program. The ADDI funding will be combined with the HOME resources to provide an additional \$11,516 for the City's First Time Homebuyer Program.

RECOMMENDATION

Staff recommends the City Council accept the additional \$11,516 in American Dream Downpayment Initiative grant funding provided through the Montana Department of Commerce and authorize the Mayor to sign the contract amendment.

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

Attachments:
3 Copies of Contract Amendment for Contract M04-SG3001-01B

HOME Investment Partnerships Program Grant Contract Amendment

Amending Contract #M04-SG3001-01B

This contract amendment is entered into by the City of Billings, 210 North 27th Street, Billings, Montana herein referred to as "the Grantee" and the State of Montana, Department of Commerce, Helena, Montana herein referred to as "the Department."

WITNESSETH THAT the Grantee and the Department mutually agree to amend Contract #M04-SG3001-01 executed by them on December 13, 2004 relating to the Budget for the addition of the 2006 American Dream Downpayment initiative (ADDI) funds as approved by the Department under the Montana HOME Investment Partnerships (HOME) Program for FY '06, as follows:

1. Section 7, **BUDGET (A)** is amended to include an additional **\$11,516** in ADDI funds for the 2006 FY. Section A is amended to read:

The initial amount to be awarded to the Grantee under this Contract will not exceed \$74,891, the Grantee's portion of FFY 2003 and 2004 American Dream Downpayment Initiative (ADDI) funds. FFY 2005 funds in the amount of \$23,078 were added to this contact with Amendment #M04-SG3001-01A. An additional amount of \$11,516 for FFY 2006 has now been added to the Grantee's budget. Total amount of this Grant is now \$109,485, and is reflected in the attached Budget. Future amounts to be awarded to the Grantee under this Contract for FFY 2007 will depend upon ADDI appropriations from HUD to the State of Montana. Future amounts will be determined based on the number of low-income renters residing in the City of Billings relative to the number of low-income renters residing in the State of Montana.

The remaining provisions of the original Grant Contract remain in full force and effect. This amendment is fully incorporated into, and by this reference is made a part of, that contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract Amendment to be executed.

City of Billings, Grantee

Department of Commerce

Chief Elected Official

Anthony J. Preite, Director
Montana Department of Commerce

Date: _____

Date: _____

SECTION C - FINANCIAL
PART II - USES OF FUNDS

	SOURCE	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
ADMINISTRATION						
Personnel Services						
Supplies						
Communications						
Printing/Duplication/Postage						
Advertising						
Accounting/Auditing						
Travel						
Training						
Other Administration						
TOTAL ADMINISTRATION COSTS						
LAND/ BLDG./ACQUISITION						
Land						
Existing Structure						
Demolition						
Homebuyer's Assistance	91,969					
TOTAL LAND & BUILDING COSTS						
SITE WORK						
Site Work						
Off-Site Improvement						
Environmental						
Other						
TOTAL SITE WORK COSTS						
CONSTRUCTION AND REHAB						
New Building						
Rehabilitation						
Accessory Structures						
General Requirements						
Contractor Overhead						
Contractor Profit						
Construction Contingency						
Community Revitalization						
Other						
TOTAL REHAB & CONST. COSTS						
SUBTOTAL	91,969					

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J

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Annexation Petition #06-10: Acknowledge receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: Owner and petitioner, the State of Montana Department of Natural Resources and Conservation, is petitioning to annex an approximate 288 acre parcel legally described as unplatted portions of the N1/2, Section 20, T1N, R26E and Certificate of Survey 1904, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on Wicks Lane south of Skyview High School in the Heights. The petitioner is requesting annexation in order to obtain city water and sewer services for completion of a major subdivision including several possible zone changes on the property. The subject property is currently vacant rangeland and zoned Agricultural-Open Space. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for July 24, 2006. The Council will vote on the petition at that public hearing.

ALTERNATIVES ANALYZED: Section 7-2-4600, MCA, permits owners of more than 50% of a property to petition the City for annexation. The only alternative that is consistent with City Council policy is to acknowledge receipt of the petition and set a public hearing date. The subject property is surrounded on three (3) sides by properties within the City limits and is depicted on the adopted Limits of Annexations Map in an area proposed to be annexed within the next six (6) years.

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

RECOMMENDATION

Staff recommends that the City Council acknowledge receipt of the annexation petition and schedule a public hearing for July 24, 2006, to consider annexing this property.

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

ATTACHMENTS

- A. Property Data
- B. Annexation Petition
- C. Annexation Map

ATTACHMENT A
Property Data

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

Petitioner: State of Montana Department of Natural Resources and Conservation

Purpose of annexation: To Obtain City Services

Property included: N1/2, Section 20, T1N, R26E and Certificate of Survey 1904

Location: On Wicks Lane south of Skyview High School in the Heights

Total area: 288 acres

Current zoning: Agricultural Open Space

Current land use: Vacant

Future zoning: Commercial and Residential (multiple zones)

Future land use: Commercial and Residential

ATTACHMENT B
Annexation Petition

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

NOTICE TO PETITIONER

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

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.
The map must show:
 - a. The present and proposed boundaries of the municipality;
 - b. The present streets, major trunk water mains and sewer mains;
 - c. The zoning of the property requesting annexation and the property immediately adjacent to it.
3. The Petition may be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.
4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.
5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
6/6/06	Mary Sexton	Mary Sexton	1625 11 th AVE Helena MT 59620

(continued on separate page)
Revised 6/09

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

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

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

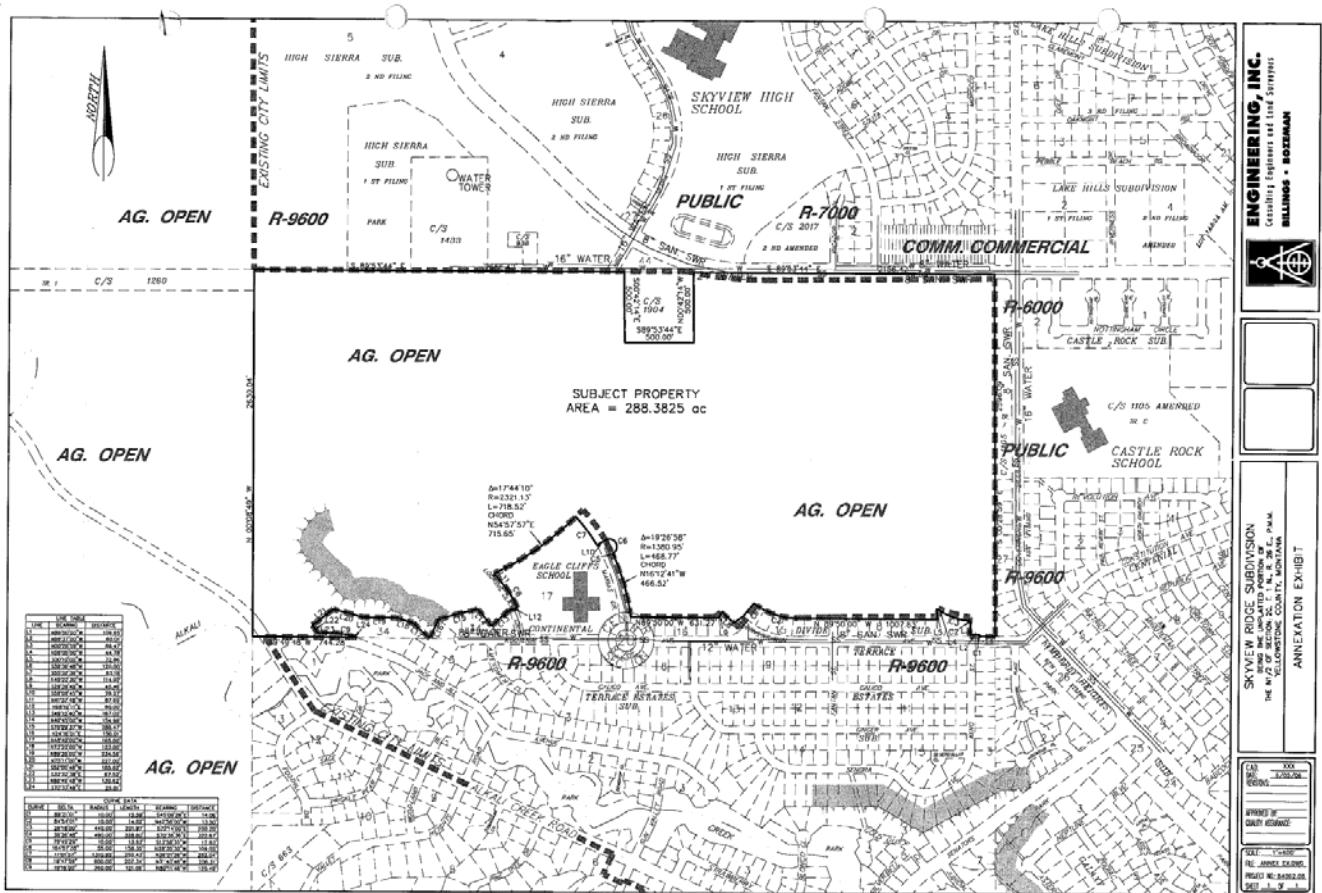
Date Submitted: _____ Received By: _____ Petition Number: _____

Fee Paid: _____

P:84052_07_Skyview_Ridge_Annex_Permit

(06805006) diml

ATTACHMENT C
Annexation Map



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K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 10, 2006

TITLE: "Clark on the Yellowstone" Bicentennial Signature Event Street Closure Request

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: The Lewis and Clark Bicentennial Commission requests the closure of 2nd Avenue N. between alley west of 27th Street N and 29th Street N and North Broadway between 1st Avenue N and 3rd Avenue N. on Friday, July 21, 2006, from 2:00 pm to 11:00 pm for it's Bicentennial Signature Event. There will be one lane access for traffic on North Broadway and 2nd Avenue North from 2:00 pm-4:00 pm. The event will include music, food on the street, a family atmosphere, and reflectives of the historical Lewis and Clark.

Recommended conditions of approval include the Lewis and Clark Bicentennial Commission:

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 at least 2 weeks prior to event
3. Clean the area to be used after the event 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 with required liability amounts naming the City of Billings as additional insured and provide insurance for liquor liability from the catering vendor
6. Provide and install adequate traffic barricades and signs directing motorists around closure
7. Have a 15' lane on either side of street that is free of kiosks or any obstacles other than pedestrians to allow for emergency vehicles
8. Coordinate with the Police and Traffic Engineering Departments to ensure proper traffic control and police assistance

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closure named above for the Bicentennial Signature Event if all recommended conditions are met.

Approved By: City Administrator City Attorney

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K2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 10, 2006

TITLE: Skyview High School's Homecoming Parade Street Closure

DEPARTMENT: Parks, Recreation and Public Lands

PRESENTED BY: Gene Blackwell, Interim Parks, Recreation and Public Lands Director

PROBLEM/ISSUE STATEMENT: Skyview High School requests permission to hold their annual Homecoming parade on Friday, September 8, 2006, from 12:30 pm to 2:00 pm (including set up and disbanding time). They will be assembling at the Skyview High School parking lot and proceeding down Wicks Lane to St. Bernard's Church.

Recommended conditions of approval include Skyview High School:

1. Have no alcohol consumption in the public right of way
2. Clean the area to be used after the event and provide and empty waste cans
3. Contact all businesses and make them aware of the event 60 days in advance
4. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
5. Provide and install adequate traffic barricades and signs directing motorists around closure
6. Provide a certificate of insurance with required liability amounts naming the City of Billings as additional insured

ALTERNATIVES ANALYZED:

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

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

RECOMMENDATION

Staff recommends that Council approve the closure named above on September 8, 2006, for Skyview High School's Homecoming Parade.

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

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



AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Zone Change #779, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Residential Professional to Neighborhood Commercial on Lots 2B and 2C, Block 1 of Hancock Grand Subdivision. The property is located at 3737 Grand Avenue and the applicant is Darrell Kreitzberg. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on June 26, 2006.

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 will not have an effect on the City's tax base.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #779 on 2nd reading and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lots 2B & 2C, Block 1, Hancock Grand Subdivision,
containing approximately 1.26 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 2B & 2C, Block 1, Hancock Grand Subdivision, containing approximately 1.26 acres and is presently zoned Residential Professional 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 Professional** to **Neighborhood Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Commercial** 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 June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

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

ZC#779

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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 10, 2006

TITLE: Zone Change #781, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting to change the zoning on Tract 1-B-2, Certificate of Survey 2277, Amended, from Community Commercial to Public. The subject property is located at the northeast corner of Central Avenue and Shiloh Road and is currently vacant. The owner is the Board of Regents of Higher Education of the State of Montana and the representing agent is Engineering, Inc. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 4-0 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on June 26, 2006.

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 may effect on the City's tax base as it would place this parcel in the public zone, instead of the community commercial zone.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #781 on 2nd reading and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION FOR Tract 1-B-2, C/S 2277, Amended containing approximately 6.14 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 Tract 1-B-2, Certificate of Survey 2277, Amended containing approximately 6.14 acres and is presently zoned Community Commercial and is shown on the official zoning maps within this zone.

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

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

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

PASSED by the City Council on first reading June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

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

ZC#781

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Zone Change #782, 2nd Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Agriculture-Open Space (County) to Community Commercial on Tract B of Certificate of Survey 1011 located on the north east corner of the intersection of Zimmerman Trail and Grand Avenue. The applicant is Rocky Mountain Community Church, the agent is Engineering, Inc. and the prospective buyer is Skip King. The Zoning Commission conducted a public hearing on June 6, 2006, and voted 3-1 to recommend approval to the City Council. The City Council held a public hearing and approved the first reading of this zone change on June 26, 2006.

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 will increase the City's tax base when the property is annexed and developed.

RECOMMENDATION

The Zoning Commission on a 3-1 vote recommends that the City Council approve Zone Change #782 on 2nd reading and adopt the determinations of the 12 criteria.

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

ATTACHMENTS:

A: Ordinance

ATTACHMENT A

ORDINANCE NO. 06-_____

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Certificate of Survey Tract B, containing approximately 3.96
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 Tract B of Certificate of Survey 1011, containing approximately 3.96 acres and is presently zoned Agriculture-Open Space 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 **Agriculture-Open Space** to **Community Commercial** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Community Commercial** 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 June 26, 2006.

PASSED, ADOPTED AND APPROVED on second reading July 10, 2006.

CITY OF BILLINGS:

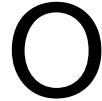
BY: _____
Ron Tussing, Mayor

ATTEST:

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

ZC#782

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Final Plat of Gunn Estates Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Gunn Estates Subdivision is being presented to the City Council for approval. On June 12, 2006, Council approved the final plat for Gunn Subdivision. Shortly after that approval, it was determined that the name "Gunn" had already been used for a subdivision filed in Yellowstone County in 1997. Therefore, the name of this subdivision has to be changed to something unique. The subdivider is requesting to change the name to Gunn Estates Subdivision; this name is acceptable to the County Clerk & Recorder.

The thirty three (33) lot preliminary major plat was approved by the Council on July 12, 2004. The owner is William Mankin and the agent is Engineering, Inc. The property is generally located on both sides of Lux Avenue, between Calhoun Lane and Orchard Lane, on the City's Southwest side. 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 Gunn Estates Subdivision.

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

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P1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 10, 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 \$2,266,462.22 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 9, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

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

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

P2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 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 \$2,876,812.22 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 16, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

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

AGENDA ITEM:

TITLE: Public Hearing and Resolution for Annexation #06-07

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Wyeth Friday, Planner II

PROBLEM/ISSUE STATEMENT: Felton Associates, LLC, owners and petitioners, are requesting approval of the petition to annex the N1/2NE1/4 (Less Certificate of Survey 515 and 1335) and Certificate of Survey 999, T1N, R26E, Section 23, containing 57 acres. The property is located south of Wicks Lane between Hawthorne Lane and Bitterroot Drive. The owner is requesting annexation in order to obtain municipal sewer for a future residential subdivision in accordance with 7-2-4601 et. seq., MCA. This public service report describes the City's capacity to serve the proposed development.

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

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

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

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

improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENT

A. Resolution and Exhibit A

INTRODUCTION

The owner on May 8, 2006, submitted a petition for annexation of an approximately 57 acre property located south of Wicks between Hawthorne Lane and Bitterroot Drive in the Billings Heights. The owners have discussed development of the property with City staff and intend to submit a preliminary subdivision plat application in the future. The property is currently zoned R-7000. The owners have not stated if they plan any zone changes in the future but have discussed development of the property with the existing R-7000 zoning in place. This property is in an area that has been specified in the City's Annexation Policy for annexation in the short term. The property is bordered by the City Limits on two sides and is eligible for annexation.

PROCEDURAL HISTORY

- May 8, 2006 – The Planning and Community Services Department receives signed petition to annex the subject property into the City of Billings.
- June 26, 2006 – The City Council acknowledges the petition to annex and sets a public hearing date for the City Council meeting on July 11, 2006.
- July 10, 2006 – City Council holds public hearing and acts on the petition to annex the subject property.

ALTERNATIVES ANALYSIS

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

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

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

Departmental Response: City departments, Yellowstone County Departments and the Board of County Commissioners were given the opportunity to comment on this annexation. School

District #2 also was notified of this annexation. All City departments responded favorably. No comments were received from School District #2 or Yellowstone County.

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

Water: Water service will be provided by the Heights Water District. The property has been annexed into the Heights Water District. The property is expected to be served from an existing 24" water main in Hawthorne Lane and a 12" water main in Bitterroot Drive.

Sewer: There is a 15" sanitary sewer line in Bitterroot Drive and several 12" and 8" lines accessible from across Hawthorne Lane and at the southern boundary of the property in Columbine and Shannon Street. Depending on the future development, the exact connection points for sewer service would have to be reviewed and approved by the City.

Stormwater: There are no City stormwater facilities directly adjacent to the property. Development of the site would be expected to drain its stormwater to existing City stormwater lines in Wicks Lane. This will require the developer to participate in construction of a stormwater main from the property down Bitterroot Drive to Wicks Lane.

Transportation: The subject property is bordered by Hawthorne Lane, a collector, to the west and Bitterroot Drive, a principal arterial, to the east. It is estimated that development of this property could produce approximately 1,600 trips on an average weekday. The connecting street system has sufficient capacity for the additional residential units. However, improvements to the road system could be required as traffic increases in the future.

The initial, conceptual plan for this development shows approaches on both Hawthorne Lane and Bitterroot Drive. There are several existing rights-of-way that intersect the property frontage on both Hawthorne Lane and Bitterroot Drive and future approaches could be aligned with some of these existing intersections.

Parks: Only conceptual plans have been provided on the future provision for parks and recreation. The initial proposals included some trail corridors with the balance of the park land dedication addressed with cash-in-lieu. The City Parks, Recreation and Public Lands Department commented that given the size of the property, a single contiguous park area of a minimum of four acres would be usable for a neighborhood park and should be considered. Any future subdivision will be required to participate in a park maintenance district. There is a Billings Bench Water Association irrigation ditch that runs across the property from southwest to northeast. To the west of Hawthorne Lane in the J and E Subdivision, a trail corridor has been provided to connect to the Kiwanis Trail. There has been some discussion that future development on this property could utilize the irrigation ditch corridor for a trail and the trail could connect to the existing corridor in the J and E Subdivision and across the subdivision to Bitterroot Drive. The trail property could be incorporated into any park land dedication that occurs.

Bicycle and pedestrian facilities: The area proposed for annexation is within the study area of the Heritage Trail Plan. Hawthorne Lane and Bitterroot Drive are both designated for on-street bicycle routes and there is an existing connection to the Kiwanis Trail across Hawthorne Lane from the subject property in the J and E Subdivision. An existing BBWA irrigation ditch that crosses the subdivision could serve as a corridor for a linear park and trail from Hawthorne Lane to Bitterroot Drive.

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

Transit: MET has three existing routes mainly running at peak times of the day that would be able to serve this property via Bitterroot Drive and Hawthorne Lane. MET had no problem with the petition to annex.

Fire: The property is within the Billings Urban Fire Service Area and is currently served by the Billings Fire Department. Interim fire protection will be provided to this property after annexation from Fire Station No. 6 at St Andrews and Wicks Lane. Based on 2002 statistics, the Fire Department responded to approximately 85 incidents per 1000 people. At this level of impact, the development could generate approximately 42 incidents per year at full build out. The Fire Department had no problems with the petition to annex.

Police: The Police Department had no problems with the annexation of this property.

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

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

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

STAKEHOLDERS

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

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The property is also within the area covered by the recently adopted Heights Neighborhood Plan. The proposed development is consistent with the applicable land use goals of this Plan in terms of the level of residential density expected in this area of the Heights, the fact that this is an infill

development on the eastern side of the Heights, and the development is expected to be similar to the surrounding neighborhood.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

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

ATTACHMENT

- A. Resolution and Exhibit A

RESOLUTION NO. 06-_____

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

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

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

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

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

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

Tracts of land situated in the NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Being the N1/2 NE1/4 of Section 23, T.1N., R.26E., P.M.M., Yellowstone County, less Certificate of Survey 515, recorded June 28, 1952, under Document No. 493273, Records of Yellowstone County, Montana, and inclusive of all Amendments to date, including subdivisions thereof, also less Certificate of Survey 1335, recorded July 26, 1973, under Document No. 940459, Records of Yellowstone County, Montana, and inclusive of all Amendments to date; including also Certificate of Survey 999, recorded July 29, 1965, under Document No. 759624 Records of Yellowstone County, Montana
Containing 57.004 gross and net acres, more or less.

(# 06-07) See Exhibit "A" Attached

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

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

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

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

PASSED by the City Council and APPROVED this 10th day of July, 2006.

THE CITY OF BILLINGS:

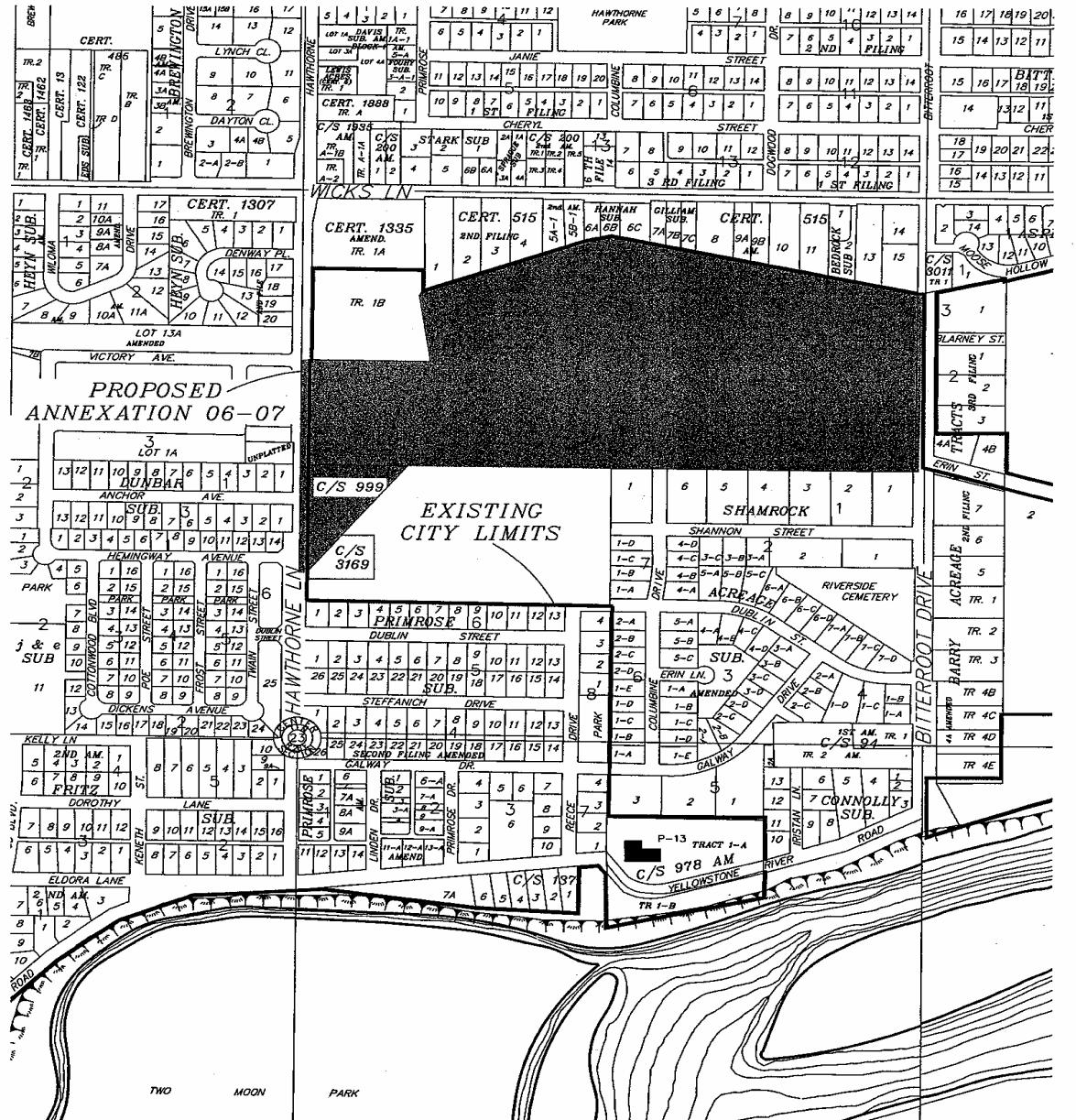
BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

(AN 06-07)

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Public Hearing and Resolution for Annexation #06-09, Rice Wagon, LLC
DEPARTMENT: Planning and Community Services Department
PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: Rice Wagon, LLC, owners and petitioners, are requesting to annex a property legally described as Tract 2 of Certificate of Survey 2771 the NE1/4 of section 23, T.1.S., R25E. The property is located on the south side of Hesper Road and west of South 32nd Street West. The owner is requesting annexation in order to obtain municipal sewer and water for a proposed daycare facility in accordance with 7-2-4601 et. seq., MCA. This public service report describes the City's capacity to serve the proposed development.

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

FINANCIAL IMPACT: The City can provide service to this property. While the annexation will increase the City's tax base, the proposed use will not be a major tax revenue generator.

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

2. That prior to development of the site the following shall occur:
 - c. A Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or
 - d. A Subdivision Improvements Agreement (SIA) and Waiver of Protest the Creation of an SID shall be approved and filed that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure

improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

ATTACHMENT

A. Resolution

INTRODUCTION

The owner submitted a petition for annexation for properties totaling approximately 2.137 acres located on the south side of Hesper Road west of South 32nd Street West on May 25, 2006. The owners have submitted a site plan for this location with a proposed daycare facility. The property is currently zoned Controlled Industrial (CI). The owners have not stated if they plan any zone changes in the future. This property is in an area that has been identified in the City's Annexation Policy for annexation in the next six (6) years. The property is bordered by the City Limits on one side and is eligible for annexation.

PROCEDURAL HISTORY

- May 25, 2006 – The Planning and Community Services Department receives signed petition to annex the subject property into the City of Billings.
- June 26, 2006 – The City Council acknowledges the petition to annex and sets a public hearing date for the City Council meeting on July 10, 2006.
- July 10, 2006 – City Council holds public hearing and acts on the petition to annex the subject property.

ALTERNATIVES ANALYSIS

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

8. The area is located within the Limits of Annexation and within the Urban Planning Area.
9. The City is able to provide adequate services.
10. The proposed improvements would meet City standards.
11. Prior to approval of a final subdivision plat, the owners will sign a Waiver of Right to Protest the Creation of Special Improvement Districts.
12. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
13. Residential densities do not apply to this application.
14. The proposed annexation meets the goals of the City-County Growth Policy.

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

Departmental Response: City departments, Yellowstone County Departments and the Board of County Commissioners were given the opportunity to comment on this annexation. All City departments responded favorably.

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

Water: Water service is available from the city as there is an existing 12" water line in Hesper Road.

Sewer: There is an 18" sanitary sewer line in Hesper Road. Depending on the future development, the exact connection points for sewer service would be reviewed and approved by the City.

Stormwater: There are no City storm water facilities in the vicinity. Nearby subdivision developments have been required to retain storm water drainage onsite, or if permissible, discharge into a local irrigation facility.

Transportation: The study area adjoins South 32nd Street West, a principal arterial, to the east, King Avenue, to the north, also a principal arterial, and Gable Road, a principal arterial, to the west. Each street is expected to be affected by future development. The connecting street system has sufficient capacity for the additional traffic that would be created by a Daycare Facility.

The conceptual plan for this development shows approaches off of Hesper Road. There are no existing rights-of-way that intersect the property frontage; therefore future approaches would be offset from existing intersections.

Parks: This area is zoned Controlled Industrial so there are no requirements for park land dedication. If in the future, the tract is rezoned for residential uses the parks department would require that this tract of land submit a cash-in-lieu contribution for park land.

Bicycle and pedestrian facilities: This property is not depicted within the Heritage Trail Master plan for preservation of a future trail corridor.

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

Transit: MET currently has no existing routes running through this area however it is in an area where a special needs vehicle would be able to make a trip if the need was present.

Fire: The property is currently within the Billings Urban Fire Service Area (BUFSA) and is served by the Billings Fire Department. After annexation, the Billings Fire Department will continue to serve this area. The Fire Department expressed no concerns with the petition to annex. Fire protection will be provided to this property from Fire Station No. 5, located at 24th Street and Rosebud.

Police: The Police Department had no concerns with the annexation of this property.

Ambulance Service: The City does not provide ambulance service but dictates the level of service provided by American Medical Response (AMR). By City ordinance, 90% of

ambulance calls must be answered within 8 minutes. This annexation is within the area of acceptable response time.

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

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

STAKEHOLDERS

The annexation by petition method does not require notification of adjoining landowners but does require the City Council to hold a public hearing. Notice of the public hearing was posted on the property on 6-19-06 and published in the Billings Times on 6-20-06. The Planning Division has received no comments on this proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The property is within the West Billings Neighborhood Plan and is consistent with the applicable land use goals of this Plan in the following manner:

West Billings Neighborhood Plan:

1. Future Land Utilization: This map shows Development Pattern goals set by the neighborhood. *The future development is in the Regional Center and would be consistent with the land use set out by the plan.*
2. Planned Growth. *It is consistent with the planned growth of the area as depicted on the map. It is within the Urban Expansion Area.*

RECOMMENDATION

Staff recommends that City Council approve the Resolution of Annexation with the following conditions:

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

ATTACHMENT

A. Resolution

RESOLUTION NO. 06-_____

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

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

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

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

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

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

Tract of land situated in the NE1/4 of Section 23, T.1S., R.25E., P.M.M., Yellowstone County, Montana, described as:

Tract 2 of Certificate of Survey No. 2771 on file in the office of the Clerk and Recorder of said County, Under Document No. 1688587. (# 06-09) See Exhibit "A" Attached

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

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

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

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

PASSED by the City Council and APPROVED this 10th day of July, 2006.

THE CITY OF BILLINGS:

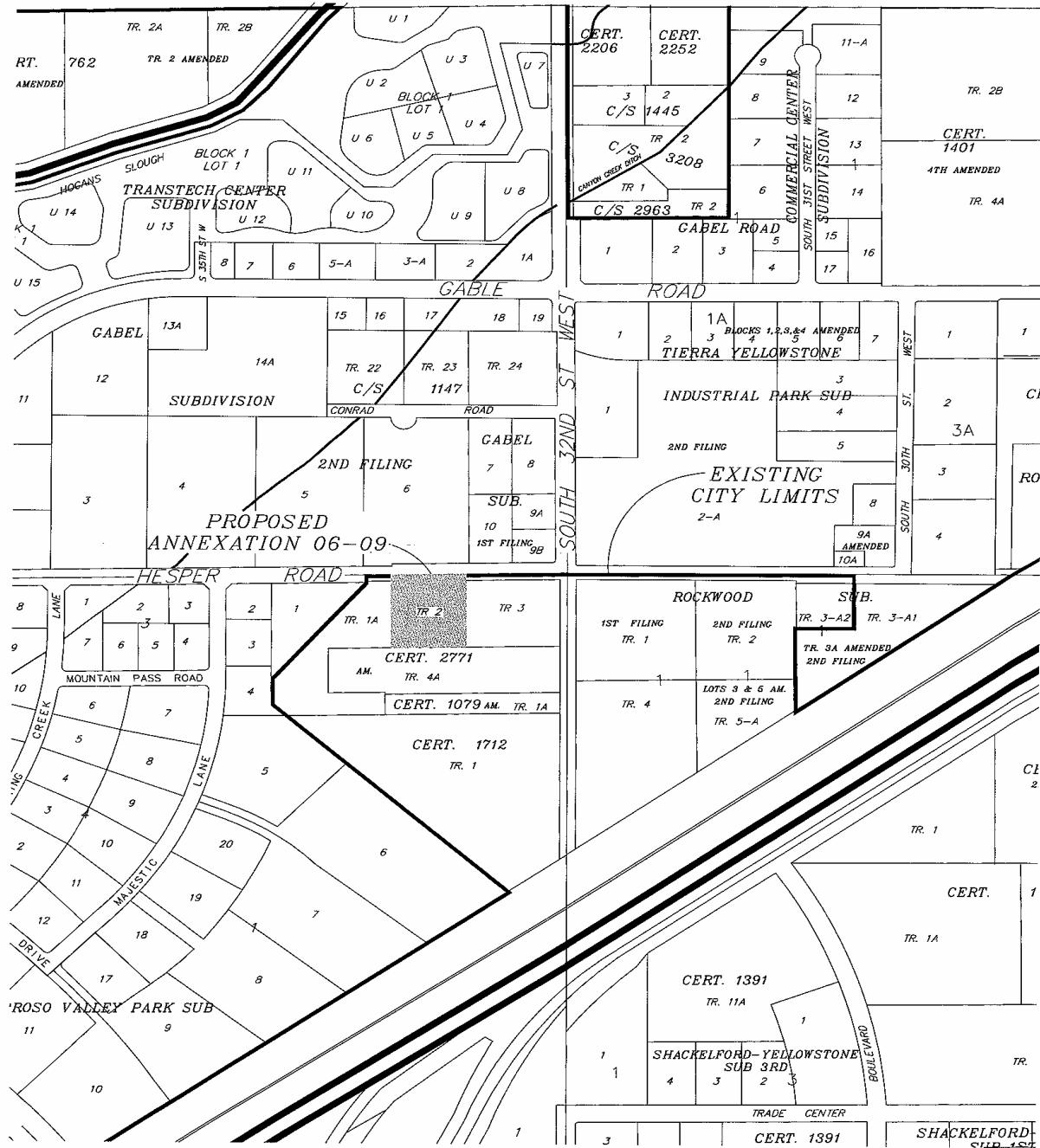
BY: _____
Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

(AN 06-07)

EXHIBIT A



(Back to Regular Agenda)



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 10, 2006

TITLE: Public Hearing and First Reading of an Ordinance for Amended Sections 23-304, 23-308, and 23-410 of the City Subdivision Regulations

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: On February 15, 2006, the City Council approved Ordinance 06-5359 amending the City Subdivision Regulations in their entirety. Since that time, the new regulations have been successfully implemented. It has become apparent, however, that a couple of items in the regulations are in need of change and clarification. Specifically, Sections 23-304 and 23-308, which outline procedures for review of subsequent minor subdivisions, are in need of clarification and Section 23-410, which outlines procedures for placement of utility easements on subdivision plats, is in need of review.

The City-County Planning Board held a public hearing and reviewed the proposed amendments to Sections 23-304, 23-308 and 23-410 of the City Subdivision Regulations on June 27, 2006. The City Council must hold a public hearing on the proposed amendments and decide whether to adopt them.

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

RECOMMENDATION

The Planning Board recommends that the Billings City Council approve the proposed amendments to Sections 23-304, 23-308 of the City Subdivision Regulations, and postpone amendments to Section 23-410 of those regulations until a later unspecified date.

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

ATTACHMENTS

A: Ordinance

INTRODUCTION

On February 15, 2006, the City Council approved Ordinance 06-5359 amending the City Subdivision Regulations in their entirety. Sections 23-304 and 23-308 outline procedures for review of subsequent minor subdivisions. As approved with the recently amended regulations, subsequent minor subdivisions are required to follow the major subdivision review procedures. Considering the fact that most minor subdivisions in the City limits are subsequent minor subdivisions, the change in procedure has become both cumbersome and discouraging to infill City developments that already have adequate public services. Therefore, the Planning Board is recommending that within the City limits, subsequent minor subdivisions should follow the review process for first minor subdivision. The recommended amendments would facilitate this change.

Section 23-410 outlines procedures for the placement of utility easements on subdivision plats. There have been several recent discussions with utility companies and City Engineering to clarify the preferred locations and widths of utility easement placement. When these amendments were first initiated, staff felt a solution had been reached and that amendments to Section 23-410 were appropriate. Since that time, City Engineering has requested to postpone changing this section until a later date to allow for more discussion with the affected utility companies. However, the public hearing announcing these changes has already been advertised. Therefore, staff and the Planning Board are recommending that the public hearing be held, and changes to Section 23-410 not be made at this time.

PROCEDURAL HISTORY

- February 15, 2006—the City Council approved, on second reading, Ordinance 06-5359 amending the City Subdivision Regulations in their entirety.
- June 27, 2006: Planning Board held a Public Hearing on the proposed amendments to Sections 23-304, 23-308 and 23-410 of the City Subdivision Regulations.
- July 10, 2006: City Council will hold a Public Hearing and may act on the 1st Reading of Ordinance.
- July 24, 2006: City Council to act on the 2nd Reading of Ordinance.

STAKEHOLDERS

There were no public comments received at the Planning Board's Public Hearing held on June 27, 2006. However, City Engineering staff requested that the amendments to Section 23-410 regarding the utility easements be postponed for now, until further negotiations could be held with the affected utility companies. The Planning Board voted to grant that postponement, and the draft Ordinance reflects this change.

RECOMMENDATION

The Planning Board recommends that the Billings City Council approve the proposed amendments to Sections 23-304, 23-308 of the City Subdivision Regulations, and postpone amendments to Section 23-410 of those regulations until a later unspecified date.

ATTACHMENTS

A: Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 23-304, AND 23-308; PROVIDING A PROCEDURE FOR REVIEW OF SUBSEQUENT MINOR SUBDIVISIONS.

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

Section 1. That Section 23-304 of the Billings, Montana, City Code be amended so that such section shall read as follows:

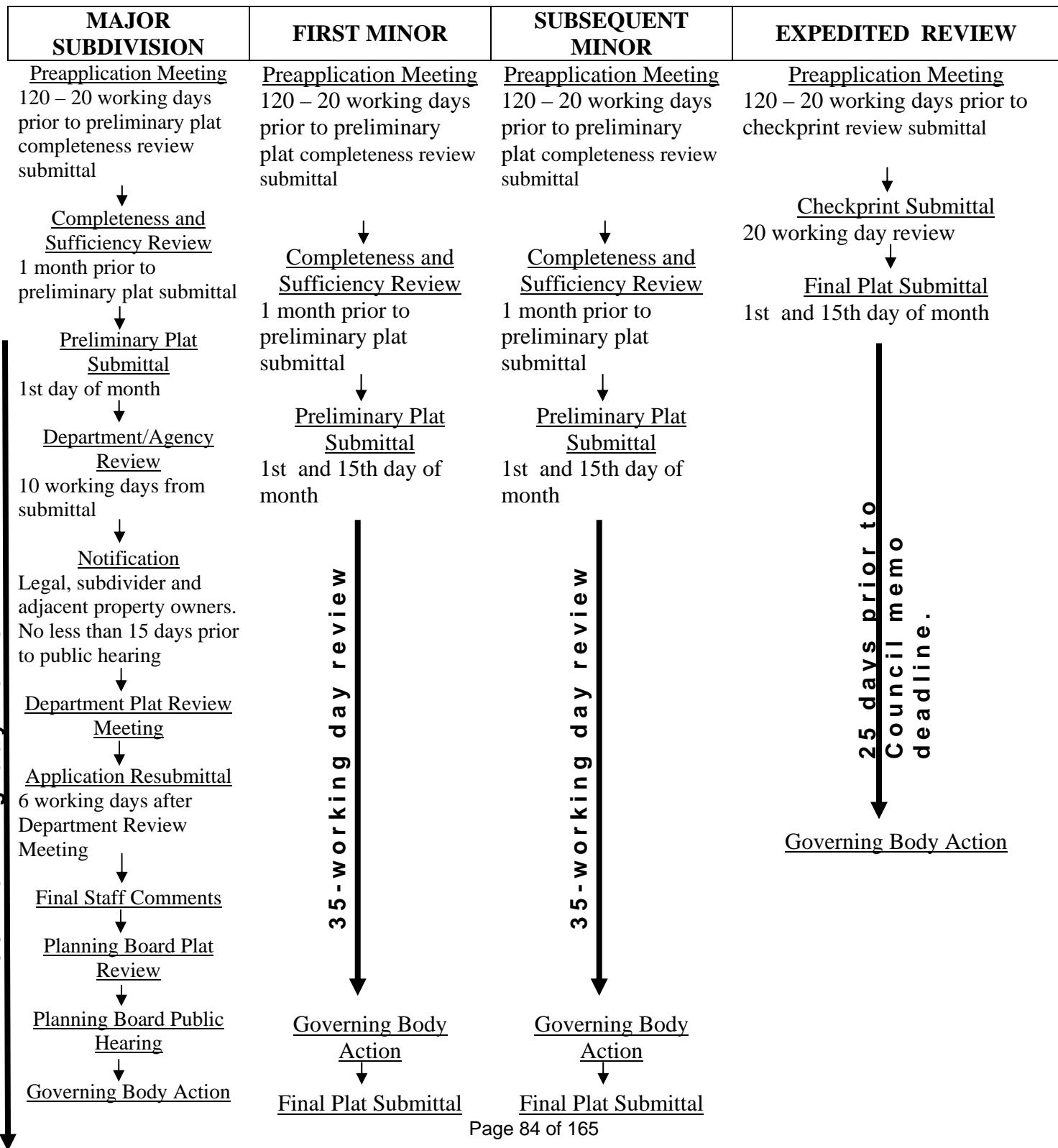
Section 23-304. Subsequent Minor Subdivisions.

Divisions of land creating five (5) or fewer lots that are not first minor subdivisions from a tract of record shall be reviewed as ~~major~~ first minor subdivisions in accordance with Section 23-302~~303~~ of this Article (76-3-609(4), MCA). The subsequent minor subdivision will be reviewed by the governing body where the jurisdiction in which it is located. A copy of the application shall also be provided to school district trustees (76-3-601(2)(b), MCA).

Section 2. That Section 23-308 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Section 23-308.

Flowchart of Subdivision Procedures.



↓
Final Plat Submittal

Section 3. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 10th day of July, 2006.

PASSED, ADOPTED and APPROVED on second reading this 24th day of July, 2006.

CITY OF BILLINGS

By _____
Ron Tussing, Mayor

ATTEST:

By _____
Marita Herold, CMC/AAE City Clerk

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

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 10, 2006

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

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: On June 26, 2006, the City Council approved the annexation of Tract B, Certificate of Survey 1011 and the adjoining right-of-way containing 5.651 acres (Annexation #06-06). The petition for annexation was submitted by Rocky Mountain Community Church, owner of property. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on July 10, 2006. The second reading of the ordinance is scheduled for Council action on July 24, 2006.

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

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward IV.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

- A. Ward Ordinance and Exhibit A**

ORDINANCE NO. 05-_____

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

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

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

A tract of land situated in the S1/2 of Section 34, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract B of Amended Plat of Certificate of Survey 1011, recorded November 10, 1970, under Document No. 871097 Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Zimmerman Trail and Grand Avenue. Containing 5.651 gross and 4.264 net acres.

(# 06-06) 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 10th day of July, 2006.

PASSED by the City Council on the second reading this 24th day of July, 2006.

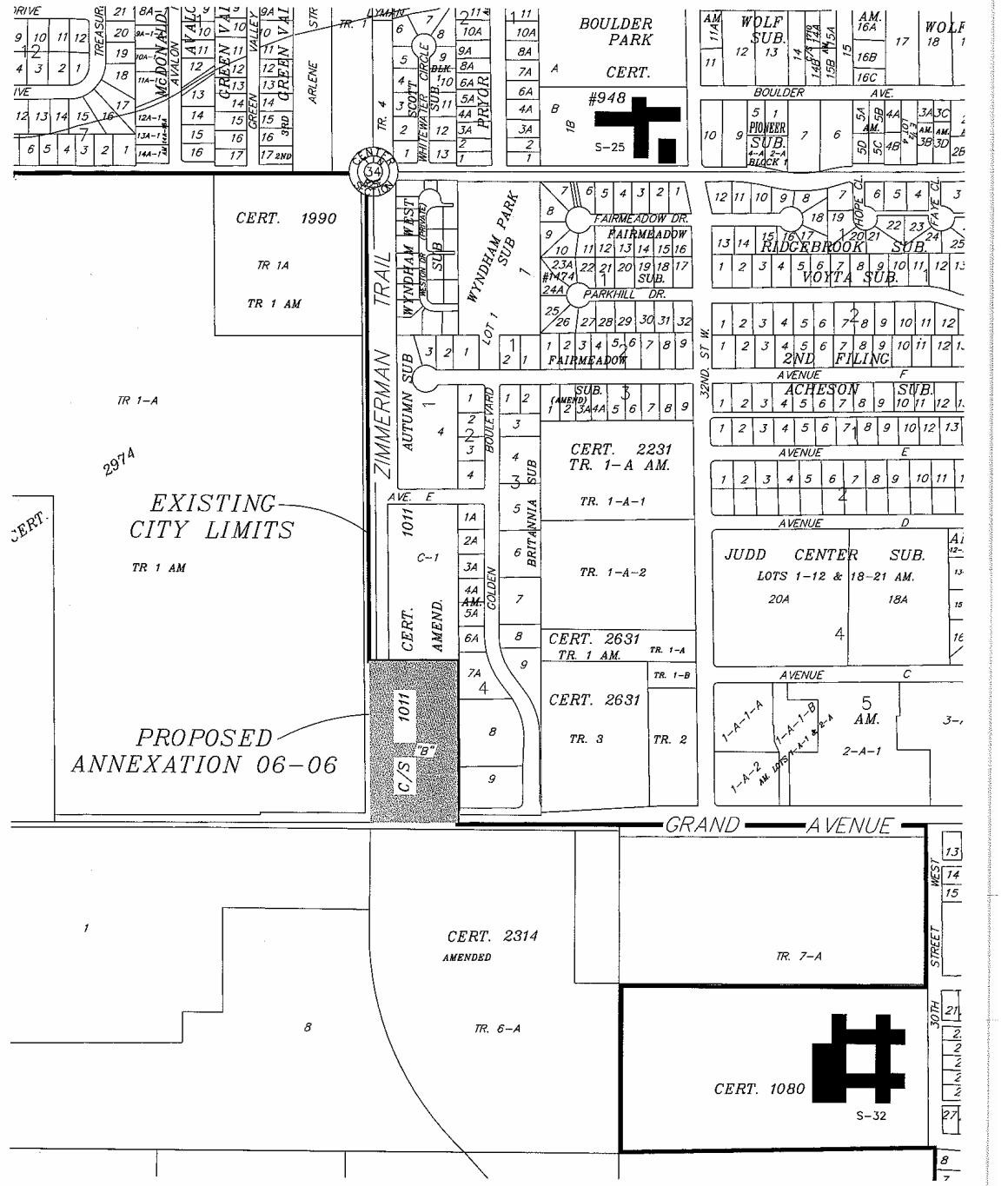
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



(Back to Regular Agenda)

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 10, 2006

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

DEPARTMENT: Planning and Community Services

PRESENTED BY: Candi Beaudry, AICP, Interim Director

PROBLEM/ISSUE STATEMENT: On June 26, 2006, the City Council approved the annexation of two properties described as portions of Tract 3-C-1, Certificate of Survey 1834 and total 2.66 acres (Annexation #06-08). The petition for annexation was submitted by Aviara, Inc., owner of property. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on July 10, 2006. The second reading of the ordinance is scheduled for Council action on July 24, 2006.

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

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward IV.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

B. Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

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

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

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

A tract of land situated in the S1/2 of Section 29, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: That portion of Tract 3-C-1 of Amended Tracts 3-C and 3-D, Certificate of Survey 1834 Second Amended, recorded April 25 2006, under Document No. 3375001, Records of Yellowstone County, Montana, less that portion of Tract 3-C previously annexed as Tract 1 and Tract 3C of Amended Tract 3A, C/S 1834, recorded July 26, 2001, Under Document No. 3138828, records of Yellowstone County, Montana, annexed by City of Billings Resolution No. 01-17723 passed and approved by City Council July 23, 2001. Containing 2.660 gross and net acres.

(# 06-08) See Exhibit "A" Attached

4. **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 10th day of July, 2006.

PASSED by the City Council on the second reading this 24th day of July, 2006.

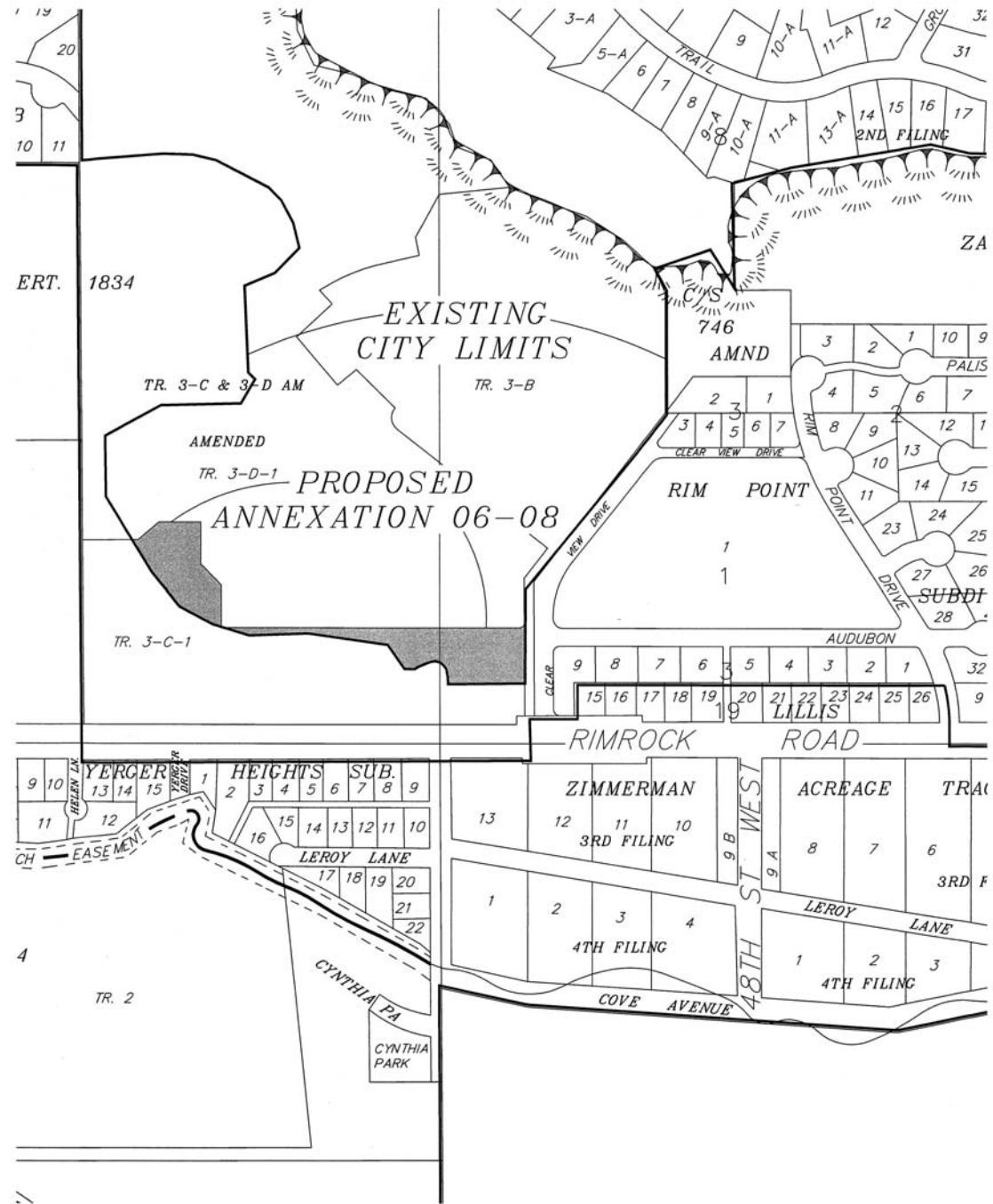
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CMC/AAE CITY CLERK

EXHIBIT A



(Back to Regular Agenda)

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Resolution—Temporary Suspension of the Camping Ordinance

DEPARTMENT: City Administrator's Office

PRESENTED BY: Tina Volek, Interim City Administrator

PROBLEM/ISSUE STATEMENT: The Big Sky Polka Club is seeking an exemption from the City's RV and camper parking ordinance for its annual Polka Festival, to be held Labor Day Weekend (Sept. 1-3, 2006) at the Shrine Auditorium, 1125 Broadwater Ave.

BMCC 24-411. Parking for Camping Purposes. prohibits parking for camping in anything other than an authorized tourist park, except for a 10-hour rest period in a parking lot in which the owner permits it. The ordinance also provides, however, for a temporary suspension of the ordinance for a special event, as follows:

“Upon approval by resolution, the city council may temporarily suspend the requirements and restrictions imposed by section 24-411 in order to accommodate special events held within the city. The resolution of suspension shall become effective forty-eight (48) hours prior to the official start of the scheduled event and shall terminate forty-eight (48) hours after official conclusion of the event.”

ALTERNATIVES ANALYZED:

- Approve a resolution allowing RV and camper parking in the Shrine Auditorium for the Polka Festival. Such an exemption was granted in 2005 for the same event.
- Do not approve the resolution.

FINANCIAL IMPACT: None anticipated.

RECOMMENDATION

Approve a resolution allowing RV and camper parking in the Shrine Auditorium parking lot for 48 hours on either side of the Big Sky Polka Club's Polka Festival, Sept. 1-3, 2006.

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

Attachments:

- A: Resolution
- B: Letter from Big Sky Polka Club, Inc.

Attachment A

RESOLUTION O6-__

**A RESOLUTION OF THE BILLINGS CITY COUNCIL
TEMPORARILY SUSPENDING BMCC 24-411 TO ALLOW
CAMPING IN THE SHRINE AUDITORIUM PARKING
LOT FOR THE 2006 BIG SKY POLKA FESTIVAL.**

WHEREAS, BMCC 24-411. Parking for Camping Purposes. prohibits parking for camping in the City of Billings in anything but authorized tourist parks, but allows a temporary suspension beginning 48 hours before and extending 48 hours after special events held within the City if a resolution is obtained from the City Council; and

WHEREAS, the Big Sky Polka Club, Inc., will hold its annual Big Sky Polka Festival from September 1 to September 3, 2006, at the Shrine Auditorium, 1125 Broadwater Avenue; and

WHEREAS, the owners of approximately 18 to 25 recreational vehicles and campers are expected to attend the event, and the Big Sky Polka Club has asked that they be allowed to park their vehicles at the event site from August 31 through September 4, 2006.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA that BMCC 24-411 is hereby temporarily suspended for the period a period of 48 hours on either side of September 1-3, 2006, at the Shrine Auditorium, 1125 Broadwater, for Big Sky Polka Festival.

PASSED AND APPROVED by the City Council this 10th day of July, 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, July 10, 2006

TITLE: 4th and Broadway Development Review Ad Hoc Committee Report

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council appointed this ad-hoc committee on January 9, 2006 with the charge to develop agreements with Stockman Bank and Harrison Fagg for the sale and development of city owned land at 4th and Broadway. Due to delays with Park II expansion and uncertainty about available funding, the Council extended the original 90 day negotiating period another 90 days, or until July 10, 2006. The Committee has continued working with both parties and is offering this report to the Council and requesting additional guidance.

ALTERNATIVES ANALYZED: The alternatives include:

- Terminate negotiations with either or both developers
- Extend negotiations with either or both developers for a fixed time

FINANCIAL IMPACT: The impacts vary depending on the development and the incentives offered by the City. Stockman Bank offered the City \$900,000 for the corner six (6) lots. The bank requests that the City provide up to 60 parking spaces for its exclusive use. The only way to provide that number of spaces is to build a parking structure or purchase additional property in the area that will accommodate at least 60 vehicles. The estimated cost for either option exceeds \$1 million.

The Fagg mixed-use development is more complex; it may involve land trades and various development incentives are available. The incentives could range from \$0 to over \$5 million depending on what is requested by the developer and what the City is willing to offer. At this time, the ad-hoc committee recommends that the developer purchase the City property for market price (approx. \$600,000), that the City create a tax increment district that is projected to produce approximately \$3 million in bondable increment and extend up to \$2 million in a Fannie Mae loan to assist the housing component.

RECOMMENDATION

The Ad-Hoc Committee will report the status of negotiations and requests additional guidance from the City Council regarding development incentives and a time extension.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Lockwood Sewer District Wastewater Agreement

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated when the District was unable to meet certain agreement conditions. In preparation for again pursuing a bond election the District requested that the City enter into a new agreement for wastewater service. After meeting with District personnel city staff drafted a new agreement. The agreement has been approved by the District, Public Utilities Board and is now being submitted to the Council for consideration and approval.

ALTERNATIVES ANALYZED: Staff has identified the following alternatives:

1. Approve.
2. Approve with modifications.
3. Do not approve.

FINANCIAL IMPACT: Staff has identified the following financial impacts:

1. **Approve as requested:** The financial impact of this action is that, per the agreement, the City will undertake a rate study to determine the rates to be charged to the District. This study would not be undertaken until it was assured that the District was proceeding with their project. Staff estimates this study will cost \$40,000 to \$50,000.
2. **Approve with modifications:** The financial impacts related to this action will depend on the modifications the Council may incorporate; however, as a minimum, the cost of a rate study as mentioned in the above alternative would also apply here.
3. **Do not approve:** There is no financial impact associated with this action.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

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

Attachments: A – Wastewater Service Agreement
B – December 12, 2003 memo from Towleron to Mumford

INTRODUCTION

The City approved an agreement for wastewater service with the Lockwood Water & Sewer District (District) on September 13, 1999. After multiple failed bond elections the agreement was terminated after the District was unable to meet certain agreement conditions. In preparation for again pursuing a bond election the District requested that the City enter into a new agreement for wastewater service. After meeting with District personnel city staff drafted a new agreement. The agreement has been approved by the District, Public Utilities Board and is now being submitted to the Council for consideration and approval.

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

PROCEDURAL HISTORY

- The Public Utilities Board recommended approval of the original service agreement on August 26, 1999.
- The City Council approved the original agreement on September 13, 1999.
- The District requested a 3 year extension of the agreement and waiver of the reserve plant capacity charge by letter dated March 11, 2004.
- City Administrator Kristoff Bauer responded to the District on November 1, 2004 indicating that, for various reasons, the agreement should be allowed to lapse.
- The Public Utilities Board, at the June 15, 2006 meeting, recommended approval by the City Council of the new agreement.
- The action before the Council is to act upon the new agreement at the July 10 meeting.

BACKGROUND

The District has conducted multiple, unsuccessful bond elections to build a wastewater system for Lockwood. They wish to conduct another bond election and have asked the City to enter into a new service agreement prior to the election.

The new agreement mirrors the original service agreement with the following exceptions:

- Sewer Use Regulations (Section 9) – the old agreement prohibited the discharge of wastewater from vehicle washing facilities, RV dumps and vehicle maintenance floor drains. The new agreement requires that discharges from these types of facilities be done in accordance with the policies and practices as applied within the city limits.
- Annexation and Dissolution of District – the old agreement contained a provision whereby if 55% of more of the property within the District became annexed “...either

voluntary or by election..." the District would be dissolved. The new agreement contains no reference to or requirement of annexation, now or in the future.

- Reserve Plant Capacity Charge – the old agreement contained time deadlines requiring that the District begin discharging wastewater to the City within 5 years or within 7 years if their wastewater facilities were under construction at the 5 year point. Failure to meet these deadlines required that the District pay a reserve plant capacity charge to maintain the agreement in effect beyond those deadlines. The District did not pay the reserve charge. The new agreement allows the District 2 years from approval of the agreement to approve a financing program and 3 years from the approval of the agreement to begin construction (Section 24, Milestones). With this shorter time period staff believes a reserve plant charge is not necessary and has not been included.

Staff has attached a December 12, 2003 memo from Al Towleron to Dave Mumford to address some questions raised in relation to the original service agreement.

ALTERNATIVES ANALYSIS

Approve: Council approval of the agreement will provide the District with a continued opportunity to pursue construction of a wastewater system. There is sufficient capacity in the wastewater treatment plant to accommodate Lockwood. The state Department of Environmental Quality is in the process of reissuing the City's discharge permit for the wastewater plant. Indications are that this permit will require a higher degree of treatment, which will necessitate modifications to the treatment process and facilities at a future time. While the detail and extent of these modifications have not been identified, staff believes that the city's service requirements will drive the need for these modifications with or without the Lockwood flow contribution.

Approve with modifications: Approval of the agreement with modifications as the Council may determine will, as a minimum, provide the District with the continued opportunity mentioned above. The remaining benefits to the District will, of course, depend upon the nature of the modifications. Such modifications could address the issues of annexation or system development fees; however, staff cautions Council to proceed carefully regarding the system development fee issue for the reasons outlined in the attached December 12, 2003 memo. The annexation issue could be addressed by requiring property owners to waive their right to protest annexation at the time of connection to the wastewater system. Staff believes this requirement addresses the City's current goal of providing for either immediate or future annexation when furnishing municipal services. Staff does have concerns with this in that such a system would be difficult to administer since the City would not be directly issuing the connection permits as happens within the city system. Based on the media coverage during past District bond elections staff expects annexation will be a controversial issue.

Do not approve: This action will not provide the District with the flexibility and time they need to consider further options.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The City's annexation policy anticipates that property receiving municipal services will be annexed as a condition of receiving services. At the time the original service agreement was negotiated and approved, the various city departments did not want to annex the Lockwood area. While a recent survey of all city departments has not been conducted, there are still departments, such as Public Works and Police, which have concerns with immediate annexation because of the lack of or condition of facilities in Lockwood, such as storm drainage and streets, or because of the demand for additional services. While not allowing for immediate annexation, a provision for waivers of annexation, should the Council choose to include such a provision, will give the City the option for future annexation.

An opposing perspective to the city's normal annexation requirement is to view the new agreement as a business transaction and contract for service. A benefit of such an arrangement is to provide a needed health-related service to an area that is part of the global community.

RECOMMENDATION

Staff recommends that Council approve the wastewater service agreement with the Lockwood Water and Sewer District.

Wastewater Service Agreement

THIS AGREEMENT made and entered into this ____ day of _____, 2006, by and between the City of Billings, Montana, a municipal corporation, hereinafter referred to as "CITY," and the Lockwood Area/Yellowstone County Water and Sewer District, a county water and sewer district organized and existing under the laws of the State of Montana, hereinafter referred to as "DISTRICT";

W I T N E S S E T H

WHEREAS, the CITY is authorized under state law to establish, construct, reconstruct, extend, operate and maintain a municipal wastewater utility with a plant for the treatment and/or disposal of wastewater and to regulate, establish and change the rates, charges, and classifications imposed on persons served by the municipal wastewater utility; and

WHEREAS, the DISTRICT is authorized under state law to construct, purchase, lease, acquire, operate and maintain a wastewater system to benefit the inhabitants of the DISTRICT; and

WHEREAS, the DISTRICT has determined that it would be cost effective at this time for the DISTRICT to transport its wastewater to the municipal wastewater system and to contract with the CITY for the treatment and disposal of said wastewater; and

WHEREAS, the CITY has determined that it has sufficient capacity in the municipal wastewater system to treat and dispose of the DISTRICT'S wastewater in a manner that meets all the effluent limitations set forth in the CITY'S current Montana Pollutant Discharge Elimination System Permit, MT-0022586.

NOW, THEREFORE, BE IT RESOLVED that in consideration of mutual covenants to be performed by the parties hereto, it is hereby agreed as follows, inclusive of the referenced Exhibits and Attachments:

1. Contractual Relationship: Approval of this wastewater service agreement (Agreement) does not create in behalf of the DISTRICT and/or the DISTRICT'S users any ownership rights in the municipal wastewater system, nor is any joint venture, partnership, cooperative or other legal relationship between the CITY and the DISTRICT and/or the DISTRICT'S wastewater users created hereby. The only relationship established by this Agreement shall be that of municipal wastewater utility (Public Works Department) and contractual customer (DISTRICT), subject to the conditions set forth herein. Also, approval of this Agreement does not authorize any infringement of federal, state or local laws by either party.

2. Service Area: This Agreement obligates the CITY to accept for treatment domestic wastes that are contributed from the DISTRICT'S users whose properties are situated entirely

within the boundaries of the DISTRICT at the time of its creation under County Resolution #96-83, dated August 22, 1996, and as more specifically described and shown on Exhibit "A" and Exhibit "B," respectively. Said area will hereinafter be referred to as "Service Area." It is further understood between the parties hereto that the DISTRICT shall not expand its Service Area to include any additional properties without first obtaining the CITY'S written consent to do so and that CITY has sole discretion to withhold such consent.

3. Point of Connection: The DISTRICT'S force main shall connect to the municipal wastewater system at or near the site of the municipal wastewater treatment plant, with the exact location subject to the written approval of the Public Works Director (Director). A professional engineer licensed to practice in the State of Montana shall design the method of connection. The Director and the Montana Department of Environmental Quality (DEQ) shall approve in writing the detailed plans and specifications for the connection prior to its construction. The DISTRICT shall bear all costs associated with construction, operation, maintenance and replacement of the DISTRICT'S force main and appurtenances, including the connection of its force main with the municipal wastewater system.

4. Reserve Capacity: Exhibit "C" is a January 22, 1998 Memo from Bill Enright, Morrison-Maierle, Inc., to Al Towlerton, Public Utilities Department. Therein the District's engineering consultant estimates that for the Year 2010, the DISTRICT'S average daily wastewater flow will be 0.82 million gallons per day (mgd), its maximum daily flow of wastewater will be 2.53 mgd, and its maximum-day-to-average-day peaking factor will be 3.1 (2.53/0.82). Said engineering consultant also estimates therein that for the Year 2010, the DISTRICT'S average Biochemical Oxygen Demand (BOD) Loading will be 1,715 pounds per day and its average Total Suspended Solids (TSS) Loading will be 1,707 pounds per day. The aforementioned flows, loadings and peaking factors shall constitute the amount of capacity that the CITY will reserve in the municipal wastewater system for the sole benefit and use of the DISTRICT. The rates and billing methodologies developed for these flows and loadings, as outlined in paragraphs 19 and 20 shall be complied with by the DISTRICT. If there are flows or loads exceeding the limits specified in this section that have not been previously negotiated the CITY shall notify the DISTRICT of such noncompliance. If the DISTRICT does not restrict the flows or loads exceeding the limits within 5 days, the rates for these flows and loadings shall be tripled.

Each time this Agreement is renegotiated, the DISTRICT may, at its sole discretion, decrease the amount of the reserve capacity set forth herein. Any increase in the reserve capacity at that time, however, shall be subject to the approval and acceptance of the CITY. Said renegotiated adjustments in the reserve capacity shall be taken into account the first time the CITY adjusts the rates that it charges the DISTRICT for treatment of the DISTRICT'S wastewater following such renegotiations. In any event, the CITY reserves the right to require the DISTRICT to contribute up-front for the construction cost of any additional reserve capacity that may be renegotiated.

The DISTRICT shall not sell nor transfer to any other party all or any portion of this reserve capacity. Any reserve capacity not being used by the DISTRICT at the termination of this

Agreement (measured by utilizing the last 365 days of flow data as well as BOD and TSS Loading data) shall revert back to the CITY at no cost or charge to the CITY.

The DISTRICT may not at any time exceed the reserve capacity the CITY has set aside for the DISTRICT. In the event that the DISTRICT should exceed such reserve capacity, The DISTRICT shall accept no new customers or service line connections into its system and will immediately commence design and construction of pretreatment and/or I/I storage facilities to reduce flows and loads received by the CITY below the reserve capacity. Such facilities shall be completed within two years of notification by the CITY and if not completed, this contract will be terminated and service will be disconnected within an additional two years.

5. Compliance with Regulations: The DISTRICT hereby agrees to accept and abide by the following regulations governing wastewater service:

- A. All applicable provisions of the Billings Montana City Code and the CITY'S Rules and Regulations Governing Wastewater Service or any future amendments thereto;
- B. All state, federal and local regulations governing the discharging of wastewater and industrial wastes into the municipal wastewater system and any future amendments thereto; and
- C. Any special conditions set forth in this Agreement.

If DISTRICT violates any of said codes, regulations and/or special conditions, the indemnification provisions set forth in Paragraph 27 shall apply.

6. Flow Measurement: The DISTRICT, at its sole expense, shall install, operate and maintain any flow measuring facilities designated by the Director. The DISTRICT shall keep said facilities in good operating condition at all times. The flow measuring facilities shall, as a minimum, accurately and continuously indicate and record at the municipal wastewater treatment plant the rate of flow and volume of all wastewater passing through the DISTRICT'S force main and into the municipal wastewater system.

All such flow measuring facilities shall be calibrated at least annually under the direct supervision of a professional engineer who is licensed to practice in the State of Montana. Said professional engineer shall be mutually acceptable to both the DISTRICT and CITY. The professional engineer shall certify in writing to the CITY and DISTRICT within thirty (30) days of performing the calibration that the flow measuring facilities, including the wastewater meter, have been properly calibrated according to the manufacturer's recommendations and are operating within approved accuracy limits. All costs associated with the annual calibration of the flow measuring facilities, including the wastewater meter, shall be borne by the DISTRICT. Reasonable, estimated flow adjustments shall be made for any incorrect meter readings. The DISTRICT agrees to verify the calibration of the flow measuring facilities, at its sole expense

and at the request of the CITY, in the event flow information deviates from normal indicating a problem with the facilities.

7. Testing and Sampling: The DISTRICT, at its sole expense, shall install, operate and maintain all sampling facilities designated by the Director. As a minimum, the DISTRICT shall install sampling and testing facilities at or near the point of connection of the DISTRICT'S force main with the municipal wastewater system and prior to the mixing of the CITY'S and DISTRICT'S wastewater. Such facilities shall be designed by a professional engineer, licensed to practice in the State of Montana. The facilities shall be located above ground and shall be designed to meet appropriate safety regulations and to satisfactorily operate under all weather conditions. The DISTRICT and the CITY shall have equal access at all times to said facilities.

The Director shall determine the type of tests to be performed, frequency of sampling, limits for test compliance, and methods and points of sampling on the DISTRICT'S influent wastewater. Said parameters are subject to change from time to time at the Director's sole discretion. Such changes do not require renegotiations of this agreement. (See Attachment I)

A mutually acceptable DEQ-certified testing laboratory (CTL) shall perform all the sampling and testing of the District's wastewater required under this Agreement. The CTL shall perform said sampling and testing in accordance with 40 Code of Federal Regulations (CFR) Part 136, *Guidelines Establishing Test Procedures for the Analysis of Pollutants*. The CTL shall provide the CITY and DISTRICT with a written copy of the results of each test within 30 days of performing the test. The DISTRICT shall bear all costs associated with such testing and sampling. Reasonable, estimated adjustments shall be made for incorrect test results.

8. Test Noncompliance: Test results on samples of the DISTRICT'S wastewater that are in noncompliance with specified limits shall automatically trigger repeat sampling and testing by the CTL. If the follow-up test results remain out of compliance, the DISTRICT shall forthwith begin an in-depth investigation to determine the cause of noncompliance. Upon making such determination, the DISTRICT shall take immediate steps to correct the problem and regain full compliance. The DISTRICT shall, as a result of such noncompliance, make timely payment to the CITY of all costs, damages and penalties imposed by this Agreement and/or by any other applicable codes and regulations.

9. Sewer Use Regulations: The DISTRICT shall adopt sewer use regulations to regulate the use of its wastewater system. Said regulations shall be subject to the Director's written approval prior to their adoption by the DISTRICT. The sewer use regulations shall, as a minimum, be equivalent to the CITY'S adopted sewer use regulations and the model sewer use ordinance set forth in WPCF Manual of Practice No. 3, *Regulation of Sewer Use*, 1975. The DISTRICT shall aggressively enforce such regulations at all times, especially as it relates to prohibited pollutants and/or any limited pollutants allowed to enter the DISTRICT'S wastewater system. The DISTRICT agrees to adopt and enforce any sewer use regulations of the CITY as they may change from time to time.

The sewer use regulations shall also specifically prohibit the discharging of septage into the DISTRICT'S wastewater system. The DISTRICT shall assure, both through regulation and practice, that the discharging of any nondomestic and/or nonmetered wastes into the DISTRICT'S wastewater system from vehicular washing facilities, recreational vehicle (RV) dumps, and floor drains located in facilities utilized to maintain, repair or house vehicles and other motorized equipment shall conform with all policies, practices, administrative orders, rules and regulations, resolutions and ordinances of the CITY. The DISTRICT shall also prohibit in its sewer use regulations the discharge of any unpolluted waters into its wastewater system, such as storm water, groundwater, roof runoff, subsurface drainage, cooling water or industrial process waters.

10. Construction Standards: The DISTRICT shall adopt the CITY'S construction, testing and inspection standards that govern the installation of its sanitary sewers, the purpose of which shall be to ensure proper installation of said sewers and to ensure compliance with infiltration/inflow (I/I) requirements set forth herein. Plumbing systems and building sewers serving property within the DISTRICT'S Service Area shall comply with the Uniform Plumbing Code prior to connection with the DISTRICT'S wastewater system. I/I in the DISTRICT'S sanitary sewers and building sewers shall not exceed, at any time, 100 gallons per day, per inch-diameter, per mile of sewer pipe.

The DISTRICT shall maintain adequate records (such as inspection reports, test results, as-built drawings, permits, etc.) to document that its facilities have been properly inspected, tested and constructed during installation.

11. Operation and Maintenance: Failure by DISTRICT to properly operate and maintain its wastewater system can substantially influence the volume, rate of flow, and characteristics of the wastewater discharged by DISTRICT into the municipal wastewater system. Accordingly, the DISTRICT shall at all times operate and maintain its wastewater system in a manner that is consistent with good utility practice, as set forth in Water Environment Federation Manual of Practice 7, *Wastewater Collection systems Management*, latest edition. The DISTRICT shall maintain adequate records to document its compliance with this section.

To ensure access to the DISTRICT'S wastewater system for operation and maintenance purposes, the DISTRICT'S sanitary sewer lines shall be located in street right-of-way and easement locations shall be kept to a minimum. In any event, all such easements shall guarantee DISTRICT unrestricted access to its sanitary sewers for such purposes at all times and under any weather conditions.

12. Conservation: The DISTRICT shall actively encourage its users to conserve water and to utilize flow reduction measures, such as reduced-flow shower heads, toilets, and faucets. The DISTRICT shall maintain an ongoing educational program for this purpose.

13. Pretreatment Program: The DISTRICT shall not permit any person to discharge industrial wastes into the DISTRICT'S wastewater system without first adopting a Pretreatment Program, which shall be subject to the prior written approval of the Director and the EPA Regional Pretreatment Coordinator. The Director's approval shall be withheld until such time as the DISTRICT legally adopts enforceable pretreatment standards and requirements equal to or exceeding that adopted and enforced by the CITY and those set forth in 40 CFR Part 403. For further information and details regarding this issue as well as information regarding significant industrial users, see BMCC 26.611.

14. Odor and Corrosion Control: The DISTRICT recognizes the CITY'S concern of the potential for odor generation and facility corrosion at the point of connection between the DISTRICT'S force main and the municipal wastewater system as well as downstream thereof. Accordingly, the DISTRICT shall construct adequate facilities to control such odors and corrosion using the Best Available Technology prior to beginning discharge of its wastewater into the municipal wastewater system. All odor and corrosion facility plans shall be reviewed and approved by the CITY prior to construction.

15. Enlargements and Modifications: The DISTRICT shall obtain the Director's written approval prior to enlarging or modifying any of its wastewater facilities which would change the character, volume, or rate of discharge of its wastewater entering the municipal wastewater system over and above that specified in this Agreement.

16. Access, Records and Contact Person: The DISTRICT shall grant the Director access at all times to DISTRICT'S wastewater system facilities for the purpose of inspecting, sampling, and studying the DISTRICT'S wastewater and permission to contact any individual users. Also, the DISTRICT shall, on request, provide the Director with copies of any flow, sampling and testing records that the Director may deem appropriate for said purposes or for the purpose of checking DISTRICT'S compliance with sewer use, industrial waste and/or pretreatment regulations. Prior to beginning the discharge of wastes into the municipal wastewater system, the DISTRICT shall also advise the Director in writing of the name, telephone number and mailing address of its official representative, who shall be authorized to make decisions on the DISTRICT'S behalf regarding the terms of this Agreement and to receive any notices, service bills, correspondence, etc. required herein.

17. Notification: The DISTRICT shall immediately notify the Director and the CITY'S wastewater treatment plant in the event of any accident, negligence, or other occurrence that occasions discharge to the municipal wastewater system of any waters or wastes not covered by this Agreement as well as any accidental slug discharges of authorized pollutants. In addition, the DISTRICT agrees to file with the Director, within five (5) working days of such discharge, a written report explaining why said discharge occurred. The report shall also identify in detail the DISTRICT'S plan of action to prevent reoccurrence of such type discharge. The DISTRICT shall be responsible for all damages, costs, and fines of the CITY due to unauthorized or negligent discharges.

18. Degree of Treatment: It is understood by the parties hereto that the CITY can only treat the DISTRICT'S wastewater to the extent the CITY is presently capable of treating said wastewater utilizing the existing municipal wastewater treatment facilities. In the event that DEQ, EPA or other agency requires a greater degree of treatment, the CITY shall comply with such requirements and DISTRICT shall be assessed a higher rate for the disposal as agreed by the parties or as set forth in paragraph 21 and 22 herein.

19. Billing: The DISTRICT shall pay to the CITY a monthly charge for the treatment and disposal of the DISTRICT'S wastewater. Monthly payments shall begin at the time the DISTRICT commences discharge of wastewater into the municipal wastewater system. Payments are due and payable in full no later than thirty (30) days from the date of billing. Payments not received within thirty (30) days shall become delinquent and subject to a late-payment interest charge. The late-payment interest charge shall be the amount stated in the CITY'S wastewater special fees and charges.

20. Future Wastewater Rate Making Methodology: It is the intent of the parties hereto that during the life of this agreement, the DISTRICT shall pay reasonable and just rates for treatment of its wastewater and that the CITY, in turn, shall receive a reasonable and just compensation for the treatment of the DISTRICT'S wastewater. Accordingly, the wastewater rate charged to the DISTRICT in the future for treatment of its wastewater shall be based upon cost-of-service principles as set forth in 40 Code of Federal Regulations (CFR) Part 35, *Guidelines for User Charges*. When calculating the cost-of-service rate to be charged the DISTRICT for treatment of its wastewater, the CITY'S rate expert shall use the "utility approach" to determine revenue requirements and the industry standards when allocating costs of service to cost components. In addition, the rate expert shall, among other things, take into consideration the following when calculating the cost-of -service rate to be charged the DISTRICT:

A. The amount and level of service that the CITY is providing the DISTRICT as well as any contributions the DISTRICT has made for the construction of the CITY'S wastewater treatment facilities.

B. The amount of contributions made by inside-city customers towards facilities utilized to serve the DISTRICT.

C. The amount of reserve capacity that the CITY has set aside for the DISTRICT in the municipal wastewater system.

D. The costs of any construction improvement required for increases in reserve capacity requested by the DISTRICT.

The rate expert shall also take into consideration the fact that the DISTRICT is classified as a non-owner customer under this Agreement, and as such, it should pay a return on investment to the CITY'S owner customers throughout the life of the Agreement. Moreover, the return on

investment paid by the DISTRICT shall be based, among other things, upon the depreciated cost of the facilities needed to provide the reserve capacity the CITY has set aside for the DISTRICT'S exclusive use. Finally, the rate of return to be used to calculate the return on investment shall be a minimum of 15% in order to recognize the risks incurred by the CITY in serving the DISTRICT as well as the fact that the replacement cost of the reserve capacity the CITY has set aside herein for the DISTRICT will greatly exceed its original cost as a result of inflation, etc.

The DISTRICT shall pay its proportionate share of any federal, state or local fees assessed the municipal wastewater utility. Such fees shall be due and payable as set forth in Section 19, above.

In the event the strength of the pollutants (BOD, TSS, etc.) contained in the DISTRICT'S wastewater are determined to exceed those normally present in domestic wastes, the CITY may charge the DISTRICT reasonable fees for the treatment of such extra-strength wastes.

The rates the CITY charges the DISTRICT for the treatment of any special wastes and/or permitted industrial wastes shall be determined on a case-by-case basis. Determination of such rates requires separate study and negotiation. (See BMCC 26-106 for additional information regarding special agreements and payments for unusual wastewater treatment.) In any event, such rates shall be charged to the DISTRICT in addition to any other rates set forth herein. The CITY reserves the right to periodically adjust the rates set forth herein under the procedures set forth in paragraph 21 and 22.

21. Wastewater Rate Study: With respect to any wastewater rate study that would affect the wastewater rate charged to the DISTRICT, the CITY shall give the DISTRICT advance notice of its intent to have a rate expert undertake such a study. The rate expert's draft report(s), work papers and any underlying data used to generate such report(s) shall be available upon request to the DISTRICT. The CITY'S rate expert shall be available to meet at reasonable times with the DISTRICT and/or its rate experts during this process or the DISTRICT Manager or member of the DISTRICT'S staff, but not to include counsel. The DISTRICT agrees to provide any information relevant to determining the DISTRICT'S customer service characteristics.

Once the CITY'S rate expert has completed its written report, the CITY shall promptly provide a copy of that report to the DISTRICT, and the DISTRICT shall respond to that report within forty-five (45) days after receiving the report by submitting a written response to the Director.

If the CITY and DISTRICT are unable to agree on a reasonable and just wastewater rate to be charged the DISTRICT, then the CITY and DISTRICT shall have thirty (30) days from the date of submission of the DISTRICT'S response to the CITY'S wastewater rate study within which to informally attempt to reach an agreement through non-binding mediation. The CITY and DISTRICT agree to work together in good faith in attempting to reach an agreement on a reasonable and just rate.

22. Wastewater Rate Arbitration Procedure: If, after the consultation described in Section 21, the DISTRICT and the CITY are still unable to agree on a reasonable and just wastewater rate to be charged to the DISTRICT, then the matter(s) in dispute shall be submitted to binding arbitration. The CITY'S wastewater rate expert, who conducted the study and participated in the negotiation described in Section 21, and a wastewater rate expert retained by the DISTRICT shall mutually agree and appoint a third wastewater rate expert who shall be the sole neutral arbitrator of the dispute. The appointment of the arbitrator shall be made within twenty (20) days of the conclusion of the negotiation period described in Section 21. The arbitrator shall be neutral, shall never have been a resident of Yellowstone County, shall never have worked for either of the parties, and shall be a qualified wastewater rate expert.

A. Within twenty (20) days of the appointment of the arbitrator, the parties shall exchange expert disclosure statements containing the information set forth in Rule 26(b)(4), Mont. R. Civ. P., together with any draft report(s), work papers, and underlying data generated and/or used by any expert, and shall provide a list of all lay witnesses and the substance of their testimony.

B. The arbitration hearing shall be held no later than sixty (60) days following the appointment of the arbitrator, and the arbitrator shall render a decision no later than thirty (30) days after the hearing.

C. Both the CITY and the DISTRICT shall present their respective positions to the arbitrator. Following the arbitration hearing, the arbitrator shall be limited to adopting that party's position which best represents the intent of this agreement, but shall be prohibited from adopting any alternative rates.

D. The arbitration hearing shall be conducted according to such procedure as the arbitrator may choose so as to allow each party to fully present its position and may be formal or informal.

E. The cost of the arbitrator shall be borne equally by both parties.

23. Term of Agreement: The term of this Agreement is fifteen (15) years. This Agreement is renegotiable at any time if both parties so consent in writing. Either party may terminate this agreement by giving the other party eight (8) years written notice. If no notice to terminate is received at least one (1) year prior to the expiration of this Agreement, then this Agreement will renew for an additional ten (10) years. This Agreement may be subsequently renewed three more times for an additional ten (10) years each, subject to the preceding clause.

24. Milestones: The DISTRICT shall have two (2) years from the date this agreement is initially signed to successfully approve a financing program that will allow construction of a wastewater system. Construction of the wastewater improvements shall commence within three

(3) years from the date this agreement is initially signed. Should the DISTRICT fail to meet either of these milestones, this agreement shall terminate immediately.

25. Non-Binding Mediation: As a prerequisite to commencing litigation on any unresolved dispute arising from this Agreement, the parties agree that, with the exception of wastewater rate adjustment matters, all unresolved claims, demands, disputes, controversies and differences that may arise between the parties concerning the content of this Agreement shall first be submitted to non-binding mediation. The parties shall confer and agree upon selection of a mediator for such purposes; however, if they cannot agree, each party shall select a mediator and both mediators shall then agree upon and select a third mediator before whom all disputes shall be presented. Thereafter, either party may pursue litigation and shall have a right to file an action if mediation does not result in a final agreement and release between the parties which resolves all disputes pending at that time. Jurisdiction of all litigation shall be in Montana State District Court and venue shall be in Yellowstone County, Montana. Each party shall bear its own internal costs of mediation including attorney fees and costs, if any. Each party shall pay 50% of any and all fees and costs charged by the selected mediator.

In lieu of the above paragraph, the parties may agree and stipulate to binding arbitration in lieu of mediation. The arbitrator shall be selected, the arbitration conducted and the arbitration ruling shall be pursuant to the Montana Arbitrators' Association. Binding arbitration shall preclude litigation in District Court by either party on any issue decided by the arbitrator. Each party shall bear their own attorney fees and related costs and expenses if binding arbitration is selected as the dispute resolution method.

The Court shall be authorized to award the prevailing party reasonable attorney fees and costs should the parties proceed with litigation as described above in District Court.

26. Definitions: Terms/phrases used herein this Agreement (such as but not limited to Biochemical Oxygen Demand (BOD), customer, domestic wastes, industrial wastes, Montana Pollutant Discharge Elimination System (MPDES) Permit, municipal wastewater system, municipal wastewater treatment plant, municipal wastewater utility, pollutant, pretreatment, public works department, public works director, rules and regulations, septage, service agreement, Total Suspended Solids (TSS), infiltration/inflow (I/I), user, wastewater, and wastewater meter) shall be defined as set forth in the Billings Montana City Code or the CITY'S Rules & Regulations Governing Wastewater Service, or any future amendments thereto.

27. Indemnification: The DISTRICT agrees to indemnify, hold harmless, and defend the CITY from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees) which the CITY may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage is caused by; (1) the DISTRICT breach of this Agreement; or (2) any

negligent or willful act or omission of DISTRICT or its employees or agents in the performance of services.

The CITY agrees to indemnify, hold harmless, and defend the DISTRICT from and against all liabilities, claims, penalties, forfeitures, suits, and costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which the DISTRICT may incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent that such damage, is caused by; (1) the CITY'S breach of this Agreement; or (2) any negligent or willful act or omission of the CITY or it's employees or agents.

28. Severability: In the event any provision of this Agreement is declared void, invalid or contrary to law, the parties hereto agree that the remaining provisions shall continue and remain in full force and effect.

IN WITNESS WHEREOF, each of the Parties has executed and delivered this Agreement as of the date first above written.

City of Billings, Montana

By: _____
Mayor

By: _____
City Attorney

Attest:

City Clerk

Lockwood Area/Yellowstone
County Water & Sewer District

By: _____
Chairman

By: _____
District Attorney

Attest:

Secretary

ATTACHMENT I

Pursuant to the Agreement between the City of Billings (City) and the Lockwood Area/Yellowstone County Water and Sewer District (District), this Attachment sets forth the tests to be performed by District on the wastewater it discharges into the municipal wastewater system. This Attachment also sets forth the frequency of sampling, the limits for test compliance and the methods of sampling. The following parameters and other criteria are subject to periodic change by the Director, at his sole discretion:

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
BOD ₅	300 mg/l	Weekly ¹	Composite
TSS	300 mg/l	Weekly ¹	Composite
pH	5.5 - 9.0	Daily	Grab
Total Oil & Grease ^{2,5}	100 mg/l	2x/week	Grab
TPH (Total Petroleum Hydrocarbons)	100 mg/l	Bi-monthly	Grab
Total Phosphorus (as P)		1x/Quarter	Composite
Total Ammonia (as N)		1x/Quarter	Composite
Nitrate & Nitrite (as N)		1x/Quarter	Composite
TKN (Total Kjedahl Nitrogen)		Quarterly	Composite
Temperature		Weekly	Instantaneous
Volatile Organics ^{3,4}		Annually	Grab
Organic Acids ^{3,4}		Annually	Composite
Base/Neutral Organics ^{3,4}		Annually	Composite
Pesticides ^{3,4}		Annually	Composite
Antimony (Total)		Quarterly	Composite
Arsenic (Total)	2.5 mg/l	Quarterly	Composite
Beryllium (Total)		Quarterly	Composite
Cadmium (Total)	13.9 mg/l	Quarterly	Composite
Chromium (III)		Quarterly	Composite
Chromium (VI)		Quarterly	Grab
Chromium (Total)	35.3 mg/l	Quarterly	Composite

Test Parameter	Parameter Limit	Sample Frequency	Type of Sample
Lead (Total)	2.2 mg/l	Quarterly	Composite
Mercury (Total)	0.15 mg/l	Quarterly	Composite
Nickel (Total)	26.8 mg/l	Quarterly	Composite
Selenium (Total)	< Detection Limit	Quarterly	Composite
Silver (Total)	1.1 mg/l	Quarterly	Composite
Thallium (Total)		Quarterly	Composite
Zinc (Total)	1.1 mg/l	Quarterly	Composite
Cyanide (Total)	2.6 mg/l	Quarterly	Grab
BTEX (Benzene, Toulene, Ethelbenzene, Xylene)		Monthly	Grab
Tetrachloroethylene		Quarterly	Grab

Footnotes:

- 1 A 24-hour, composite sample to be taken on progressive days each sampling event.
- 2 A visual sheen shall be considered a violation.
- 3 Minimum parameters to be tested for as determined by the Director.
- 4 A minimum of every 5 years, or sooner if determined necessary by the Director; monthly analysis for parameters designated by Director shall be done in support of local limits re-evaluation.
- 5 In addition to the visual sheen criteria set forth in Footnote 2, above, oil and grease shall not cause any interference or obstruction in the municipal wastewater system.



CITY OF BILLINGS

PUBLIC WORKS DEPARTMENT

Deputy Director – Alan Towleron, P.E.

P.O. Box 30958
Billings, MT 59111
2251 Belknap Avenue
Billings, MT 59101
Office (406) 657-8310
FAX (406) 657-8319

December 12, 2003

Attachment B

TO: Dave Mumford, Public Works Director
FROM: Al Towleron
SUBJECT: Lockwood Wastewater Service Agreement

I wanted to follow up on Monday's council meeting and a discussion that took place after the meeting between me and Councilmember Don Jones and Clayton Fiscus regarding wastewater service to Lockwood. Unfortunately, I wasn't prepared for some of the questions and I feel that I didn't adequately respond to their questions so I wanted to provide some additional clarification.

They were asking questions about the arrangements for wastewater service to Lockwood. The issue was initially raised by Mr. Fiscus during his testimony where he asked "...if the Council is going to ask the Lockwood community to pay \$3,500 for every person connecting to the City water system". Mr. Jones asked about the term of the Lockwood contract and both were interested in whether Lockwood would have to pay system development fees. I told them that there is a contract in place with Lockwood and that it did not require annexation or payment of system development fees. They both were concerned about Lockwood not paying system development fees as they apparently feel it is inequitable compared to the rest of the City.

The following is a summary of the pertinent items in the contract:

- The effective date of the contract is September 13, 1999 with an initial term of 15 years and the ability to renew for an additional 30 years in 10 year increments.
- If the District has not started discharging wastewater to the City within 5 years of the effective date of the agreement, or by September 13, 2004, they may either request that the contract be terminated or they must start paying to the City a reserve plant capacity charge. However, if they have started construction on their facilities within the 5 years, the contract grants them an additional 2 years to commence wastewater discharge. The best estimate by the District is that they will be discharging to us by January 2005 assuming their next try at the bond election is approved.
- There is no requirement for payment of system development fees. While this may seem inequitable at first blush, it is predicated on the basis that Lockwood is a non-owner in the city wastewater facilities and, as such, are supplied services on a contract basis. As non-owners they pay a rate of return on the city's investment in the facilities that are used

to provide service. This is the same basis that is used for providing contract service to the Billings Heights Water District. In the case of Lockwood, the minimum specified rate of return is 15%. As a comparison, the rate of return for the Heights Water District is 9.55%. I understand that this is the typical way of handling contract services with non-owner customers as opposed to having them pay system development fees. As a matter of note, if they did pay system development fees, the value of those payments would reduce the rate base against which the rate of return is applied, thus resulting in a lower dollar rate of return. In any event, the City will hire a rate consultant to determine “reasonable and just” rates to be charged to Lockwood for the services. The consultant will take into account the appropriate factors to determine these rates.

- While not requiring annexation, the contract provides that if 55% or more of the property within the District becomes annexed either voluntarily or by election, the District will transfer any assets and liabilities to the city and dissolve.

I recommend that we furnish this information to Kristoff for his review and then pass on to the Council in case this issue has a bearing on any discussions or raises questions at the January 12 hearing on our fees adjustment. Let me know if you have any questions or wish to discuss further.

cc: S. Stanley
M. Rubich
B. Krizek
S. Emerick
D. Weagel
File

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 10, 2006

TITLE: Montana Public Employees Association Billings Police Unit 2006 - 2009 Contract

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: All police officers below the rank of Sergeant are members of this local chapter of the Montana Public Employees Association (MPEA). The contract between the local and the City expired on June 30, 2006. Management staff and union representatives began negotiating a new contract in May. The Council is being asked to approve a new three (3) year contract.

ALTERNATIVES ANALYZED: The Council can approve the contract, approve it with changes or reject the contract. Amending it or rejecting it will return the contract to management and union representatives to continue negotiations, or either party may request mediation. By state law, police officers cannot strike, so the process for resolving contract disputes is mediation, followed by fact-finding and concluding with binding arbitration.

FINANCIAL IMPACT: The estimated cost for the three (3) year contract is approximately \$966,508 in wages and benefits. Nearly two-thirds (2/3) or \$591,859 of the cost of the contract is attributed to the annual cost of living adjustments (COLA). Staff is able to recommend this level of resource commitment due, in part, to the personnel cost savings from the anticipated retirement of senior officers over the next 2-3 years as the officers conclude their DROP retirement periods.

RECOMMENDATION

Staff recommends that Council approve the three (3) year contract with the MPEA.

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

ATTACHMENTS

A: Contract

INTRODUCTION

All police officers below the rank of Sergeant are members of this local chapter of the MPEA. The contract between the local and the City expired on June 30, 2006. Management staff and union representatives have been negotiating a new contract since May. The Council is being asked to approve a new three (3) year contract.

BACKGROUND

The City and the MPEA have historically negotiated three (3) year contracts. The most recent contract expired on June 30, 2006. Management and union negotiators agreed to embark on a new method of bargaining, known as Interest Based Bargaining (IBB). Both sides participated in a training session on IBB that was conducted by Ms. Vicki Knudsen of the Department of Labor and Industry Employment Relations Division. This process focused on interests rather than positions and utilized a collaborative problem solving approach.

While the contract contains many changes, the primary interests for both management and union negotiators were recruitment and retention, scheduling to put more police officers on the streets during each shift and changes to the pay structure to entice the more experienced officers to move from day shift to either afternoon or night shift. The changes that have the greatest impact on operations or finances are as follows:

- The wages for police officers in the first year of the contract will have a COLA based on the CPI-U (3.4%). The wages for the last two years of the contract will include a COLA based on the CPI-U with a 3% floor and a 4% ceiling.
- The grievance process will change to include the addition of a meeting between the employee and the supervisor at Step 1, the addition of the MPEA Grievance Review Board to determine whether the grievance has merit and should continue through the process and the inclusion of the Human Resources Manager into the process at Step 4.
- The reimbursement for relevant higher education expenses will increase from \$10,000 to \$15,000 per year.
- A degree incentive will be paid to police officers who possess either an associate or bachelor degree to encourage existing officers to pursue higher education and encourage recruits to obtain degrees before or soon after initial employment.
- Shift differential pay will increase incrementally through the life of the contract to \$1.00 for afternoon shift and \$2.00 for night shift in an attempt attract senior officers to work less attractive schedules and to increase the experience level on these shifts.
- Weekend pay of \$.25 in FY 07 and FY 08 and \$.50 in FY 09 will be paid to officers who work weekend shifts, again as a way to attract senior officers to less attractive shifts.
- A wage step was added at year 20 and will be phased in over the life of the contract.
- The physical fitness program will be voluntary so officers won't be paid for testing. Compensatory time will be granted for scoring well on standardized tests.

- A contract re-opener that is triggered if a revised 10 hour shift schedule to be implemented in January 2007 is not successful in putting at least 9 officers per shift on the streets. If the contract is reopened, other shift arrangements, including 12 hours shifts, will be considered as a means to assign more officers to each shift.

ALTERNATIVES ANALYSIS

The Council can approve, reject or amend the contract proposal. Approving it puts the contract provisions in place effective on July 1, 2006 through June 30, 2009. Rejecting or amending the contract forces the union and management to reopen negotiations or either party can request mediation. By state law, police officers can't strike, so the process for resolving contract disputes begins with state mediation, then fact-finding and finally ends with binding arbitration. In mediation the two sides identify the outstanding issues and the mediator works between the two sides, trying to devise a resolution. Fact-finding involves both sides presenting their cases and the fact-finder recommending solutions to the issues. Those recommendations are made public and public airing of the issues and solutions is intended to pressure the two sides to agree with the recommendations. Binding arbitration requires both parties to make final proposals and the arbitrator must choose one of them. Arbitration imposes a solution on the parties and the decision may not be appealed unless the arbitrator exceeds his/her authority as outlined in state law.

RECOMMENDATION

Staff recommends that Council approve the three (3) year contract with the MPEA.

ATTACHMENTS

A: Contract

AGREEMENT

CITY OF BILLINGS, MONTANA

AND

MONTANA PUBLIC EMPLOYEES
ASSOCIATION
BILLINGS POLICE UNIT

JULY 1, 2006 - JUNE 30, 2009

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AGREEMENT

PREAMBLE

This Agreement is made and entered into, by and between the CITY OF BILLINGS, MONTANA hereinafter referred to as the “EMPLOYER”, and the MONTANA PUBLIC EMPLOYEES ASSOCIATION, BILLINGS POLICE UNIT hereinafter referred to as the “ASSOCIATION”. It is the purpose of this agreement to set forth the terms and conditions to which each party is bound, and that such agreement has been reached voluntarily without undue or unlawful coercion or force by either party. The rights of the Employer and the Association shall be respected and the provisions of the Agreement shall be observed through the orderly settlements of questions arising from it.

For the purpose of this Agreement, the term “collective bargaining” shall be defined as to include any questions concerning wages, fringe benefits, and working conditions.

The Employer and the Association furthermore agree to accept their mutual responsibility to ensure Equal Employment Opportunity in all aspects of employment as set forth in this Agreement.

ARTICLE I

Recognition

The BILLINGS POLICE UNIT, hereinafter called the “Association”, is hereby recognized by the CITY OF BILLINGS, MONTANA, hereinafter called the “Employer”, as the sole bargaining agent for the Police Personnel in the Billings Police Department, as determined by the State Board of Personnel Appeals. For the purpose of this Agreement, a Police Officer (Employee)

shall be defined as a full-time sworn officer of the Billings P.D., who is a peace officer with arrest authority and is working at least, but not more than, forty (40) hours per week, except as overtime as addressed later herein. Newly sworn Police Officers of the City of Billings shall be entitled to the benefits of this Agreement upon employment with the City of Billings.

ARTICLE II

Management Rights

A. The Association recognizes the prerogative of the City to operate its affairs in all respects in accordance with its responsibilities, and the powers or authority which the City has not officially abridged, delegated or modified by this Agreement are retained by the City, and in such areas as, but not limited to, the following to-wit:

1. Directing employees;
2. Hiring, promoting, transferring, assigning and retaining employees;
3. Relieving employees from duties because of lack of work or finds or under conditions where continuation of such work would be inefficient and non-productive;
4. Maintaining the efficiency of government operations;
5. Determining the methods, means, job classifications, organization, and personnel by which operations of the City of Billings are to be conducted;
6. Taking whatever actions may be necessary to carry out the mission of the City of Billings in situations of emergency;
7. Establishing the methods and means by which work is to be performed;
8. Establishing reasonable or ordinary work rules and policies;
9. Scheduling overtime work as required, in a manner most advantageous to the City and consistent with its requirements.
10. The **Employer** shall have up to one (1) year after an employee begins duty to determine his/her satisfactory performance in any position covered by this

Agreement and may dismiss such employee without cause during such probationary period.

B. The **Association** recognizes that the **Employer** has statutory and other rights and obligations in contracting for matters relating to municipal operations. The right to contract or subcontract shall not be used for the purpose or intention of undermining the Union, nor to discriminate against any of its members.

ARTICLE III

Grievance & Arbitration Procedure

A. A grievance or a grievable issue is defined as a dispute or a difference of interpretation of this Agreement between a non- probationary employee(s) and the **Employer**, involving economic issues or disciplinary actions which affect wages, fringe benefits or working conditions. as expressly provided in the terms of the Agreement. Disciplinary actions, involving warning letters, suspension, or discharge shall be grievable; all lesser disciplinary actions are not grievable. If a number of employees have a grievance, involving the same issue(s), the grievance shall be filed as one (1) joint grievance.

B. The Association will certify in writing to the Employer all Employees designated by the Union as Stewards, within 30 days of an annual shift change must be certified in writing to the Employer. A steward shall be authorized reasonable amount of time to process a grievance during regular work hours provided the Steward has the Supervisor's approval and does not disrupt the work of others. A Steward, who cannot be released upon request, due to work requirements, will be released as soon as work permits, but no later than the beginning of his or her next scheduled shift. An updated steward list shall be provided to City Human Resources in January of each year. The union also agrees to supply an updated steward list anytime during the calendar year that the City requests such an update in writing.

C. Failure to comply with the established formal procedures provided in this Article shall constitute a waiver to continue the grievance process by the party in default. If the **Employer** fails to respond to a grievance, it shall be automatically moved to the next step.

D. **Grievance and Arbitration** Process:

Step 1: An employee, who has a grievance, shall within (10) working days of its occurrence, with or without the Steward present, orally discuss the grievance with the immediate supervisor **shall meet and submit the grievance, in writing, to**

their supervisor. The written grievance must contain the following minimal information:

- 1. The name and signature of the grievant: (The signature requirements shall be waived if the grievant is physically unable to sign the grievance form.);**
- 2. The date the grievance occurred;**
- 3. The issue and nature of the grievance;**
- 4. The terms of the Agreement in dispute; and**
- 5. The adjustment sought.**

The grievance must be initiated no later than ten (10) business days after the grievable act occurred or the first opportunity to have reasonably had knowledge of its occurrence. The supervisor's response to the grievance shall be in writing and within five (5) business days of the Step 1 meeting.

Step 2: Within ten (10) working days following the oral discussion of **Supervisor's response to** the grievance, the employee and Steward shall **present the grievance to the Deputy Chief. notify the Association Field Representative of the result of the discussion. The Association Field Representative shall convene the Local Chapter Review Board (President, Vice President, Secretary or Treasurer and two optional**

representatives). The grievance shall be presented in written form containing as a minimum the following information:

- a. The name of the grievant(s);
- b. The date(s) of the grievance;
- c. The nature of the grievance;
- d. The terms of the Agreement in dispute;
- e. The adjustment sought;
- f. The grievant(s') signature;
- g. The date discussed verbally with supervisor, who the supervisor was, and a brief description of the result of the meeting;
- h. The signature of the ~~union~~ Business Agent. Association Field Representative.

After review, the Local Chapter Board shall decide if the grievance is to move to Step 3 of the Grievance Process or if the grievance does not have merit

Step 3: With step 2 completed, the grievance must be filed with the Human Resources Manager within ten (10) business days of the written Step 2 response from the Local Chapter Board. Within ten (10) business days of receipt of the grievance, a meeting will be held between the key individuals in the grievance including: the employee, the Union Steward, the Union Business agent, the supervisor, the Police Chief or designee and a representative from Human Resources Office to discuss the grievance. The Human Resources office will set up this meeting and will respond to the grievance in writing within ten (10) business days after the meeting is held.

~~Within ten (10) working days of the date of the Deputy Chief's reply, the Steward shall present the written grievance, along with the Association's reason for non-acceptance of the Deputy Chief's reply to the Police Chief. The Police Chief shall attempt to resolve the grievance and shall respond in writing to the Steward within ten (10) working days of the receipt of the grievance.~~

Step 4: If the grievance is not resolved at step 3, the steward may, within (10) working days, present the grievance, along with the Association's reason for non-

acceptance of the Police Chief's response, to the City Administrator. The City Administrator shall attempt to resolve the grievance and shall respond in writing to the Steward within ten (10) working days of receipt of the grievance. then the Human Resources office will set up a meeting between the Police Chief or designee, the City Administrator, the Union Business Agent, and the Human Resources Manager (or designated representative) to discuss the grievance. The City Administrator will respond in writing with an answer to the grievance within ten (10) business days - after the step 4 discussions.

Step 5: If the grievance is not resolved based on management's response in Step 4, the Association may, within ten (10) working business days of the City Administrator's response, notify the Employer Human Resources Manager in writing of the Union's intention to take submit the grievance to final and binding arbitration. The Association-Union shall request the Federal Mediation and Conciliation Service, the MT Department of Labor or the American Arbitration Association to provide a list of five arbitrators. The parties, shall, within ten (10) fifteen (15) business days of the receipt of the list, select the arbitrator by the method of alternately striking names with the Association striking the first name. the parties flipping a coin to determine who strikes the first name. The final name left on the list shall be the arbitrator. The arbitrator chosen will be contacted immediately and asked to start proceedings at the earliest possible date. During the arbitration proceedings, all evidence shall be presented. The arbitrator's decision shall be final and binding on both parties, but he shall not have the power to alter the terms of this Agreement, City Ordinance, State, or Federal Law. His decision shall be within the scope and terms of this Agreement and he shall be requested to issue his decision within 30 calendar days after the conclusion of the proceedings, including filing of briefs, if any. Expenses for the arbitrator's services shall be borne equally by the Employer City and the Association Union.

- E. Other persons may replace any position mentioned in the above procedures, so long as the other party is notified in advance and provided that such appointee has

full authority to act in the capacity of the person replaced.

F. Any employee, who attempts to adjust a grievance issue through an alternative review process, such as the Courts, State Agencies, or similar recognized judicial bodies, waives all rights for further review of his grievance through this Agreement's grievance process.

G. It is understood and agreed that when an employee files a grievance, the act of filing such a grievance shall constitute his authorization to the Employer to reveal to the participants in the grievance procedure any and all information available to the Employer relating to said grievance. Such filing shall further constitute a release of the **Employer** from any and all claimed liability by reason of such disclosure.

H. Time limits at any stage of the grievance procedure may be extended by written mutual agreement of the parties at that step.

I. Working Business days shall be defined as Monday through Friday, excluding recognized City of Billings' Holidays.

ARTICLE IV

Dues Assignment

A. The Employer agrees to accept and honor an employee's voluntary written assignment of wages for payment of Association dues or equivalent contributions, as specified in amount by the Association. The Association agrees that all deductions, and any future changes, will be consistent and uniform for all members covered by this Agreement.

B. **The aggregate deduction will be remitted, together with an itemized list of individual employee names, contributions, and addresses of record, to the Treasurer of the Association within five (5) working days from the date of the payroll distribution. The list will also contain the names of all new hires and/or terminations.**

C. **The Association agrees to hold the Employer harmless for unintentional errors in the collection of voluntary written assignments of monies.**

D. **All present employees covered by this Agreement who have not made application for**

membership in the Association, shall, as a condition of employment, pay to the Association an amount equal to Association dues as a contribution toward the administration of this Agreement. New employees who fail to comply with this requirement within thirty (30) days after employment shall be discharged by the Employer within fifteen (15) calendar days after receipt of written notice from the Association unless the employee(s) comply with the requirement within the fifteen (15) calendar days.

ARTICLE V

Hours of Work and Compensation

A. **Hours of Duty:** The normal working hours shall be the equivalent of forty (40) hours per week. The normal working hours shall be four (4) ten (10) hour days. The alternate schedule for full-time employees shall be five (5) eight (8) work hour days per week, as long as it is mutually agreed to between the Association and the Employer. The Court Officer may work 5-8's or an altered shift such as 4-10's. The hours will be posted prior to annual shift bidding. The daily hours shall be consecutive with the exception of the lunch break, which may normally be granted sometime in the middle of the shift, depending upon work demands. Those employees who are assigned to be School Resources Officers shall be allowed to work 5 eight-hour shifts with days off being Saturday and Sunday.

Should it be determined that 10-hour days provides insufficient staffing the contract will be reopened in 2008, to discuss 12 hours work schedules. The measurement standards will include the number of times the department was required to minimum staff for unanticipated shortages.

B. **Compensation:** Effective July 1, 2003 2006, the employee's base wage will be as detailed in Attachment A.

C. **Pay for Performance:** In order for officers to progress to the next vertical step and/or receive incentive pay for intermediate or advanced certificates, they must have received a

satisfactory rating on their annual performance evaluation immediately preceding the date the raise would take effect. For additional details, see Attachment A.

D. **Overtime:** Employees required to work more than forty (40) hours per week at the direction of proper City authority shall be compensated at a rate of 1-1/2 times the regular rate of each hour of overtime worked. This overtime shall be computed to the nearest quarter (1/4) hour starting one minute after the quarter (1/4) hour begins and extending to the full quarter hour. The Employer shall determine the employees to receive the overtime necessary to be worked. When overtime is computed, sick leave, vacation, holiday or compensatory time taken during the workweek, will be considered as time worked. Employees shall not be required to suspend work during regular scheduled hours to absorb overtime.

E. **No Pyramiding:** Nothing contained in this Agreement shall be interpreted as requiring a duplication or a pyramiding of holidays, call-out and court-time, standby, training time, or any other form of overtime payments involving the same hours of labor.

F. **Standby Pay:** Authorized standby assignments, consistent with sound law enforcement practices shall be for a fixed predetermined period of time not to exceed 24 hours. Employees formally placed on standby status shall be compensated on a basis of a ratio three hours straight pay for eight hours of standby or fraction thereof. If the employee is called back to work, normal callout rules shall apply for actual hours worked.

G. **Shift Premium:** Those officers required to work the majority of their regularly assigned shift within the following hours, shall be compensated in addition to their regular base rate accordingly.

FY 2007

<u>Shift Designated as Afternoon Shift</u>	<u>\$.60</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$1.10</u> per hour

FY 2008

<u>Shift Designated as Afternoon Shift</u>	<u>\$.80</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$1.50</u> per hour

FY 2009

<u>Shift Designated as Afternoon Shift</u>	<u>\$1.00</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$2.00</u> per hour

This differential pay will be included in all hours paid to the officers assigned to the afternoon and night shifts. It will also be paid to any officer assigned to work during the afternoon or night shift hours at the direction of a supervisor.

Officers working weekend shift (6:00 pm Friday to Monday at 6:00 am) shall receive \$.25/hr weekend pay during FY 2008. In FY 2009, this will increase to \$.50/hr.

H. Short Change Over Pay: Any employee, required by the Employer to work two full shifts without benefit of a break in between the work shifts, equivalent to a full shift's time off, shall be paid an additional four (4) hours pay at the overtime rate of pay. Annual January shift changes, ~~and participation in training programs~~, scheduled court time, as described in Section H, paragraph 1 of this contract, shall be excluded. from short change over pay unless the court appearance extends beyond four (4) hours. Officers called out to maintain minimum staffing shall be paid at time and one-half for the shift. Short change over pay (the above paragraph) shall not apply for this purpose. **Mandatory training will be paid per this article.**

I. Minimum Staffing:

All shifts will be manned at a minimum of one (1) officer per beat, per shift.

J. Court Time Pay: Any Association member, who is required by the proper authority to be in Justice of the Peace, City, District, and Federal, and excluding Civil, Court during his/her off-duty hours that are not an extension (one and one-half (1-1/2) hours before) of his/her regular shift shall be compensated for a minimum of four (4) hours at the overtime rate of pay. Hours for court appearances that are extensions of the regular shift will be paid at the overtime rate for actual hours worked. Court time pay is compensation for actual hours spent in court, not payment for each court appearance in the same day. Each member who is scheduled to appear in City Court must contact the Court before 5:00 p.m. on the last normal court day preceding the scheduled trial day. If the trial is canceled after the member contacts the court, and the court fails to notify the officer of the cancellation, the member is entitled to the minimum hours for court time for his or

her shift. If the member fails to contact the Court and the Court is canceled, the member shall not be entitled to the minimum court time pay. Additionally, any officer normally scheduled to work, who has been approved leave for that day, shall receive a minimum of two (2) hours pay to be credited to the leave bank they have used on their time sheet for that day if subpoenaed for court.

K. Compensatory Time: Employees may accumulate compensatory time, in lieu of cash payment at their option for actual time worked in overtime, holidays, mandatory training, and/or required court appearances. The maximum amount of compensatory time that can be accumulated shall be ~~180~~ **240** hours. The maximum number of compensatory hours that can be converted to a cash payment, at the time of retirement and/or termination, is ~~180~~ **240** hours.

Additionally, employees can cash out up to 60 hours per contract year. The employee must provide a written request to Human Resources, and cash out is done on a ~~quarterly~~ **per pay period** basis.

L. Call Outs: An employee called back to work, not as an extension of the regular shift, shall be compensated for a minimum of three (3) hours at 1-1/2 times the regular rate of pay. No overtime shall be paid for travel time to and from the job.

M. Negotiator's Pay: The City agrees to allow the Association's members to exchange accrued vacation and/or compensatory time for negotiation time.

N. Clothing Allowance: Plain clothes officers shall receive an annual clothing allowance **or police-related equipment allowance** of \$510.

O. Equipment Allowance: Uniform officers shall be reimbursed for police related equipment (including boots and overshoes) up to \$150 per contract year.

P. Canine Pay: Each officer assigned to canine patrol shall be granted one hour of overtime for each non-scheduled workday in order to care for the dog. This agreement shall be retroactive to the day that the officer returns from the dog academy.

Q. Field Training Officer (FTO): An FTO, during training, will receive ten (10) hours of straight compensatory time and four (4) hours of overtime pay at time and one half either compensatory time or pay per month during phase 1, 2, and 3. An FTO, during training,

will receive five (5) hours of straight compensatory time and two (2) hours of overtime pay at time and one half, either compensatory time or pay during Phase 4.

ARTICLE VI

Fringe Benefits

A. Vacation Leave

1. Each employee shall earn annual leave credits. Proportionate credits shall be earned at the end of each pay period. Employees are not entitled to any vacation leave with pay until they have continuously been employed for a period of six (6) calendar months. Credits shall be earned according to the following schedule:

Year of Employment	Working Hours Credit
1 Full Pay Period through 10 years	120
11 Years through 15 Years	144
16 Years through 20 Years	168
21 Years on	192

2. Separation from service or transfer to other departments—cash for unused vacation leave. An employee who terminates his employment with the City, for reasons not reflecting discredit on himself, shall be entitled on the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period. However, if an employee transfers between agencies of the same City jurisdiction, there shall be no cash compensation paid for unused vacation leave. In such a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.
3. Unused Vacation Leave may be accumulated to a total not to exceed two (2) times the maximum number of hours earned annually as of the last day of the

calendar year. Excess vacation time is forfeited unless taken within ninety (90) calendar days from the last day of the calendar year in which the excess was accrued. **will be administered according to state law.**

4. The dates when an employee may take accrued vacation shall be determined by agreement between the employee and the supervisor.
5. In the event an employee becomes ill while on vacation, the employee may substitute sick leave in lieu of vacation leave for the time the employee was ill, provided that the Police Chief may require a health physician's certification of the illness.
6. Unused vacation leave time shall be paid at his or her regular rate of compensation to the employee or his or her heirs at the time of separation from service or death.
7. It shall be unlawful for the Employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this agreement
8. Seniority preference for vacation time:
 - a. From the effective date of annual shift change, after the first of the year, until the fifteenth of February, employees may bid on vacation time by seniority.
 - b. Up to a total of three (3) vacation time preferences may be bid. A vacation choice is defined as a set of continuous days off. The employee must have sufficient annual leave accrued or the ability to accrue the amount requested by the time the requested vacation arrives.
 - c. Vacation choices will be assigned on a seniority basis. However, a member who does not receive their first choice will receive their second choice (by seniority) before any member who received their first choice is granted a second choice. The same process will be used for third choice.
 - d. After the fifteenth of February, vacation time will be granted on a first come first served basis.

- e. No requests for first come first served vacation will be processed until after February fifteenth unless it is a request for time that is to be used prior to the fifteenth of February.
- f. In the event that two employees request vacation after the fifteenth of February at the same time for the same date, seniority will prevail.

9. Paternity Leave:—~~Upon prior notification of the pregnancy and with as much advance notice as possible, police personnel shall be granted four (4) consecutive work shifts off charged against sick leave for purposes of assisting their spouse upon the birth or placement of a child. Such leave allowances shall not affect or alter regularly scheduled vacation slots.~~

For the birth or adoption of a child, the provisions of the Family and Medical Leave Act apply. Time off will first be charged against the employee's sick leave until it is exhausted. Once sick leave is exhausted, the employee will then have time off charged against vacation and compensatory time. Leave without pay will not be authorized until all of sick leave, vacation, and compensatory time is exhausted.

B. Sick Leave

- 1. Each employee shall earn sick leave credits from the first day of employment. Proportionate credits shall be earned and credited at the end of each pay period. Credits shall be earned at the rate of one (1) working day (8 hours) for each month of service without restriction as to the number of working days accumulated. Employees are not entitled to be paid for sick leave until they have been employed continuously for ninety (90) days.
- 2. An employee who terminates employment with the City is entitled to a lump sum payment equal to one-fourth (1/4) of the pay attributed to his/her accumulated sick leave. The pay shall be computed on the employee's rate of compensation at the time of termination. An employee who received a lump sum payment, and who is again employed by the City, shall not be credited with any sick leave earned during previous service.

3. Abuse of sick leave is cause for discipline up to and including dismissal and forfeiture of lump sum payment.
4. An employee, during illness, must notify the shift supervisor on duty in sufficient time (at least one (1) hour) before the beginning of the shift, each day that he/she is sick.
5. A physician's certificate may be required by an employee's supervisor to substantiate a sick leave charge. Such required physician's certificate shall be furnished by the Employer's physician at the Employer's expense.
6. Local medical appointments of the employee may be charged to sick leave. Each absence shall be reported separately and authorized in advance by the employee's supervisor. Any appointments outside the local area must be approved by the Chief.
7. **Maternity leave may be charged against sick leave credits.**
8. **Sick leave charged in excess of earned sick leave may be charged to earned and available leave at the employee's request. Sick leave must be earned prior to its use.**
9. **Sick leave credits will be used on a first earned first charged basis.**

C. Holidays

1. Employees shall be granted the following holidays without loss of pay:
 - a. January 1 - New Years Day
 - b. Third Monday in January - Martin Luther King Day
 - c. Third Monday in February - President's Day
 - d. Last Monday in May - Memorial Day
 - e. July 4 - Independence Day
 - f. First Monday in September - Labor Day
 - g. Second Monday in October - Columbus Day
 - h. November 11 - Veterans Day

- i. Fourth Thursday in November - Thanksgiving Day
- j. December 25 - Christmas

In addition to the above holidays, employees shall be granted the following days as holidays without loss of pay: Any additional day declared a legal holiday by the Governor of Montana or the Mayor of Billings with the exception of Sundays which are not otherwise holidays.

Any day in an even numbered year in which a State general election is held throughout the State of Montana.

- 2. Employees who work on any of the above referenced holidays shall be compensated at their regular rate of pay, plus time and one-half for their normal shift (i.e. officer normally working 4-10 hour days shall receive holiday pay based upon 10 hours, even if training is scheduled for 8 hours). The employees may receive cash payment or compensatory time. If an employee chooses compensatory time, he/she may choose to put the time in the regular compensatory time bank allowed for in Article V Section I or into a holiday leave bank. The maximum number of hours an employee can have in the holiday leave bank is ~~120~~ 150 hours. Any time in excess of ~~120~~-150 hours must be either used or the officer must receive holiday pay. The holiday leave bank must be cashed out at the end of each fiscal year. Any or all of this cash out may be invested in one of the City's
- 3. Employees, whose regularly scheduled day off falls on the actual holiday, and who are not granted another work day and one-half off in lieu of the holiday, shall be compensated at their regular rate of pay, plus one and one-half additional day's pay. The holiday will be paid on the day that is closest to the workday. If the holiday falls in the middle of an officer's days off, the holiday will be paid on the last working day unless the officer submits written notification one week prior to the holiday that he will be paid holiday pay on the first working day after the holiday. Employees may receive cash payment or compensatory time.

- a. The **Employer** shall determine those employees who shall work such holiday time. The **Employer** may schedule employees an alternate day and one-half off in lieu of such holiday time. That day shall be subject to the same rights and limitations as vacation.
4. Employees will receive a day and one-half off with pay for any holiday that falls during a leave with pay.
5. School Resource Officers (SRO): Holidays for SRO's shall be paid at the same rate as those officers working ten (10) hour shifts.

D. Attendance Incentive

Employees will be granted one (1) to three (3) days of additional vacation time for each twelve month period (July 1 -June 30) depending upon the employee's sick leave usage. Use of vacation time, earned under the Attendance Incentive Plan, is subject to the provisions under Article VI, Section A. Vacation Leave. The maximum of twenty-four (24) hours for employees on eight hour shifts and thirty (30) hours for employees on ten (10) hour shifts will be reduced, hour for hour, for each hour of sick leave the employee has used during each contract year. The amount of incentive will be pro-rated for employees hired during the year.

E. Emergency Leave

1. In the event of a death in the employee's family, as defined below, the employee may be allowed, with the Police Chiefs approval, two (2) paid days off to be in attendance.
2. In the event an employee's presence is required because of an emergency caused by a major illness or injury to an employee's family member as defined below, the employee may use accrued leave of the employee's choice to be in attendance.
3. Family, for the purpose of this Agreement, shall include spouse, any legal dependent, or any parent, child, grandparent(s), brother, sister, or corresponding in-law(s).

F. Jury Service and Subpoena

Each employee who is under proper summons as a juror or subpoenaed as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the Employer. Juror fees earned during an officer's normal working hours shall be applied against the amount due to the employee from his Employer. However, if an employee elects to charge his juror or witness time against his annual leave, he shall not be required to remit his fees to the Employer. In no instance is an employee required to remit to his Employer any expense or mileage allowance paid by the court. Employee shall not lose cumulative benefits because of juror or witness service.

G. Military Leave

Any employee who is a member of the organized National Guard of the State of Montana or forces of the United States Army, Navy, Marine Corps, Air Force, or Coast Guard, shall be given an annual leave of absence with pay, after six (6) months of employment, for attending encampments, training cruises, or similar training programs, not to exceed fifteen (15) working days per calendar year under military orders properly issued by military authorities. Such absence shall not be charged against other leave credits earned by the employee.

H. Personal Day

Officers are entitled to schedule a personal day off. This day will be paid at the straight time rate of pay. The day an officer may use as his/her personal day must be scheduled with his/her commander the same as a vacation day. The personal day must be taken by the officer, or lost. An officer cannot work on his personal day; it must be a day off.

I. Leave Without Pay

1. Employees may request to take leave of absence without pay for good and sufficient reasons in the best interest of the City with prior approval of the Police Chief and the City Administrator.

2. Request for leave of absence without pay shall be submitted in writing by the employee to the Police Chief or his designee. All pay benefits shall be discontinued during the leave, unless otherwise specified by the Police Chief. Health, Life and Dental Insurance coverage shall continue until the end of the calendar month in which the leave without pay begins. Should an employee return to work in the following month, his insurance benefits will remain in full force and effect for that entire month.

J. General Provisions

1. An employee may not accrue any leave credits during a continuous leave of absence without pay which exceeds fifteen (15) calendar days.
2. All leaves covered under this Agreement must have prior notification and approval of the employee's supervisor. Leaves shall not be unreasonably denied.
3. All leaves covered under this Agreement shall be charged to the nearest one-quarter (1/4) hours.

K. Insurance

1. Health and Life:
 - a. Health Insurance Committee: The City of Billings shall establish a City of Billings ~~Benefit~~ **Health** Insurance Committee to maintain a group health insurance plan for employees of the City of Billings and their dependents. The committee shall consist of 15 members appointed as follows:
 1. Three members of each employee union appointee by each union.
 2. Six members appointed by the City Administrator. One member shall be a retired city employee currently covered by the city health insurance plan.
 - b. The Committee will manage the City Health Insurance Plan and report directly to the City Administrator.
 1. The committee shall meet at least quarterly to:
 - a. Review the existing city group health insurance plan;

- b. Review the claims experience, projections and plan problems;
 - c. Maintain the plan on a sound actuarial basis;
 - d. Establish plan premium rates and cost sharing by both the City and the employees;
 - e. Advise the City Administrator on all other group insurance matters;
 - f. Decisions will be made by a simple majority vote where all members have one vote and can vote by absentee ballot.
- c. The terms and conditions of the master insurance contract or policy between **Employer** and the insurance carrier shall govern the participation of employee and their dependents in such insurance plan.
- d. The **Employer** agrees to accept and honor employee's voluntary written assignments, designating a specified amount of payroll deduction for payment of premiums on the Union's Dental, Vision and Drug Insurance Program.

2. Industrial Accident: The **Employer** shall carry Industrial Accident Insurance on all employees. Each employee must report in writing to the **Employer** any injury or accident received in the course of employment. Failure to do so may result in the loss of benefits.

L. Educational Benefits

1. Tuition Reimbursement:

Any employee matriculated into a program of higher education shall be reimbursed for 75% of the cost of all tuition for all courses approved by the Chief of Police upon furnishing evidence of satisfactory completion of course within thirty (30) days of its completion. The City will have available a minimum of ~~\$10,000 (ten thousand dollars)~~ **\$15,000 (fifteen thousand dollars)** to assure funding of the above provision. If an officer

receives benefits under this Section and resigns prior to the completion of their 5th year of service, all educational benefits must be repaid to the City

2. Degree Incentive:

An officer who holds an Associates Degree shall receive \$25 per pay period. An officer who holds a Bachelors Degree or higher shall receive \$50 per pay period.

ARTICLE VII

Working Conditions

A. **Seniority:** Seniority means an employee's length of continuous service within the Department, and shall be computed from the date the employee begins such service.

1. To be absent from the job due to layoffs will be considered lost time for the purpose of seniority. Previous service upon re-employment shall count toward seniority.
2. To be absent from the job due to voluntary leave of absence without pay that exceeds fifteen (15) calendar days will be considered lost time for the purpose of seniority; however, previous service upon re-employment is counted towards seniority.
3. To be absent from the job due to involuntary active military leave will not affect seniority. Such time spent in military service will count towards seniority.
4. An employee's continuous service for purpose of seniority shall be broken by voluntary resignation, discharge for just cause, and retirement.
5. Employees may protest their seniority designation through the usual grievance procedure if they have cause to believe an error has been made. Employer shall post a seniority roster December 1st and June 1st of each year.
6. Temporary absences due to job related injury shall be considered as time worked for the purposes of determining seniority.
7. Layoffs caused by reduction in force shall be in order of seniority within the department; that is, the employee last hired in the department shall be the first

released. Employees who are scheduled to be released shall be given at least twenty-one (21) calendar days notice. All recalls to employment shall likewise be in order of seniority within the department; that is, the last employees released as a result of a reduction in force shall be the first rehired. All recall rights established herein shall expire at the conclusion of two (2) years from the effective date of the employee's layoff. It shall be the employee's responsibility to maintain a current notification address on record with the Police Chief or his designee. The Association shall also be notified in advance of all recall actions. An employee who is notified to report to duty, but fails to notify the Employer within five (5) calendar days of his intention to report to work shall forfeit his right to re-employment. The City agrees not to lay off any frill-time law enforcement officer while active reserve law enforcement officers are continuing to be utilized by the City.

- B. Bulletin Boards:** The Employer agrees to provide suitable space for an Association bulletin board. Postings by the Association on such boards are to be confined to official business of the Association.
- C. Shift Trading:** Upon approval of the supervising officer, subject to review of the Chief, any employee may exchange shifts or trade time with other qualified employees. The practice of exchanging or trading time will be a voluntary program by the employees in order to permit any employee to absent himself or herself from work to attend to purely personal pursuits. (Must use Shift Trade form, see a commander)
- D. Training:**
 - 1. Local In-Service Training:** In-Service training schools which are scheduled by the Police Department for the employees, will be posted as soon as practicable prior to the school. If schooling is mandatory for promotions, school will be held twice, when possible, on different dates if necessary, to accommodate the officers, because of the officers' days off and vacations. Anyone wishing to attend a school will submit a letter of request.

2. **Out of Area Training:** Employees will be granted leave with pay to attend authorized training out of the area. Mileage shall be paid based upon one vehicle for every three employees in the training.
3. **Joint Labor/Management Training Board:** There shall be a joint labor/management training board whose functions shall include, but are not limited to: establishing training policy, determining training schools to offer and participate in, and to establish who shall attend such training. The Board shall meet monthly at a time established by the Board and minutes will be kept. If, however, a short notice training opportunity arises, and the Training Board cannot meet before the selection of who is attending must be made, then the Chief or his/her designee may select the employee(s) who will attend. The board shall be composed of four (4) members appointed by the Union and four (4) members appointed by the Chief of Police.

~~E. Physical Fitness Requirement: Any police officer hired after July 1, 2000 will be required to meet the fitness standards for their age and gender as prescribed by Montana POST for basic certification.~~

~~All officers will be required to test at the regularly scheduled departmental testing date on an annual basis unless excused for legitimate medical reason, confirmed by a physician's verification, or an excused absentee. For officers hired before July 1, 2000, the results of the test will not be used as a basis for an employment action. For officers hired after July 1, 2000, failure to meet the requirements, except for legitimate medical reasons, which is confirmed by a physician's verification, will result in progressive discipline up to and including termination, if the officer fails to meet the requirement at the next scheduled fitness testing.~~

E. Physical Fitness: Those wishing to participate in the physical fitness program can do so voluntarily. The standards applied to the program will be those established by the Cooper Institute. It is agreed that the most recent age and gender bias

standards available will be applied. The test will be administered in the Spring and in the Fall. Participants must have a minimum score of 40% in each; push-ups, sit-ups, sit and reach and the mile and one half run. (Airdyne test with approval.) All participants will be awarded a pre-selected item. Compensatory time will be awarded to participants based on their individual scores according to the following scale:

<u>85% or higher</u>	<u>20 hours</u>
<u>80 - 84%</u>	<u>18 hours</u>
<u>70 - 79%</u>	<u>14 hours</u>
<u>60 - 69%</u>	<u>10 hours</u>
<u>50 - 59%</u>	<u>6 hours</u>
<u>40 - 49%</u>	<u>4 hours</u>

Any adjustments to the fitness standards will be addressed through the Labor-Management Committee.

F. **Service Weapon:** Upon a full service or disability retirement, officers will be given their badge and allowed to purchase their service weapon at fifty percent (50%) of the replacement cost.

G. **Just Cause:**

1. Confirmed officers may be disciplined by the Employer for just cause.
2. For other than criminal offenses and serious misconduct, the Employer shall use progressive discipline, based upon warning letters, suspensions, transfers (effective thru 6/30/98) and/or discharge. The employee and the Union will be notified in writing of any disciplinary action within twenty (20) working days after the violations, or first knowledge of the violation's occurrence. However, both parties recognize that from time to time additional information may be needed and that hasty action would be detrimental to all parties. Therefore upon notification, the twenty (20) working day period MAY be waived FOR AN AGREED UPON period of time. Complaints on individual officers may be turned over to internal affairs for investigation. Employees under internal

investigation shall be given weekly updates at their request. Any disciplinary action necessary as a result of an internal affairs investigation will be issued to the employee and the Union will be notified within twenty (20) working days after the final internal affairs investigative report is submitted to the Chief of Police. Any officer who has been disciplined, suspended, removed, or discharged by the City Manager may appeal the decision pursuant to State Law.

Note: The paragraph below is intended to clarify how complaints or potential disciplinary issues will be addressed, which occur beyond the confines of the workplace. Its intent is also to establish consistency with all similar incidents, while adhering to contractual time lines for disciplinary or potential disciplinary issues. An internal affairs complaint will be initiated and held in abeyance until information is available, which would call for an appropriate internal affairs investigation. Upon completion of the investigation, the internal affairs file will be turned over to the Chief of Police for resolution according to contract language above.

3. ~~All disciplinary notices/letters written prior to July 1, 2000 shall be considered current and in effect for a period of 12 months after issuance.~~ Any disciplinary notices/letters issued on ~~or after July 1, 2000~~ shall be considered in effect for a period of 24 months after issuance. Oral or Verbal warnings and counseling are considered informal progressive discipline and will not be documented in writing in the officer's personnel file.

H. Job Safety: Officers shall not be required to use defective equipment. Officers will not be required to carry out orders which are unethical or violate policies/procedures or laws and which would unreasonably endanger their safety. Issues regarding job safety shall be brought to the Police Chief or his designee by the Association for resolution.

I. Disabilities:

1. In the event that an employee becomes incapable of performing the duties of his regular classification through occupational illness or industrial accident, the

Employer may transfer the employee to light duty, or with his consent, to another agency.

2. Any employee, who is injured in the performance of their duties as a police officer that renders them unable to perform their duties as a police officer shall be paid by the employer the difference between their salary and the amount they receive from Workman's Compensation Insurance until their disability has ceased, as determined by the Workman's Compensation Insurance, or for a period not to exceed one year, whichever shall first occur. Whenever, in the opinion of the employer, supported by the employer's physician's opinion, the officer is able to perform specified types of light police duty, payment of his partial salary amount shall be discontinued if he refuses to perform such light duty when it is available and offered to him.

J. Shift Preference: Individual shift assignments shall be on the basis of seniority preference, except temporary assignments, not exceeding three (3) months, where necessary to meet department needs. Individual assignments made out of seniority preference, other than that above, shall be made for just cause. Juvenile Detectives and Adult Detectives shall be considered separate entities under this provision.

K. Bill of Rights: In an effort to ensure that investigations made by Superior Officers, as designated by the City Administrator or the Chief of Police, are conducted in a manner which is conducive to good order and discipline, the Association shall be entitled to the protection of what shall hereafter be termed as the "Police Officers' Bill of Rights". Every employee who becomes the subject of an internal investigation by an Internal Investigator shall be advised at the time of the interview that he/she is suspected of: (a) committing a criminal offense; (b) misconduct that would be grounds for termination, suspension, or other disciplinary action; or (c) that he/she may not be qualified for continued employment with the Department.

The Bill of Rights shall provide, but not be limited to, the following:

1. Whenever a member is under internal investigation, for any reason which could lead to disciplinary action, demotion, or putting anything whatsoever into an Employee's file, such Employee shall be given a copy of the reprimand. Written reprimands will contain space for an Employee's acknowledgement of receipt of said copy. **All due process notification letters will, as a minimum, contain a summary of specific allegations, key evidence, statements, and such items as to enable the employee an opportunity to provide a sound, credible explanation of his/her actions with regard to the SPECIFIC allegations of misconduct.**
2. All disciplinary hearings shall be in strict conformity with the applicable law.
3. An Employee shall not unreasonably be suspended pending trial or appeal if such suspension will result in the loss of wages or any other economic benefit. Any suspension shall be for good cause only.
4. Where dismissal, disciplinary transfer, criminal action, or charges are contemplated, such internal investigation or interview shall be conducted under the following conditions:
 - a. The interview shall be conducted at a reasonable hour, preferably at a time when the Employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required, and if such interview does occur during off-duty time of the Employee being interviewed, he/she shall be compensated for such off-duty time in accordance with regular department procedures.
 - b. The interview shall take place either at the office of the Chief of Police or any other reasonable location.
 - c. The Employee under investigation shall be informed prior to such interview of the rank and name of the officer in charge of the investigation, the interviewing officers and all persons present during the interview. All questions directed to the Employee under investigation shall be asked by and through no more than two (2) interviewers.

- d. The Employee under investigation shall be informed of the nature of the investigation prior to any interview, and he/she shall be informed of the names and addresses of all complainants, provided however, that the investigating officer of the complaint may be the complainant. No employee of the Billings Police Department shall assume the role and/or name of the original complainant. This does not preclude any officer of the Department from filing the original complaint.
- e. Interviewing sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods of five (5) minutes duration, provided that no period of continuous questioning shall be longer than twenty (20) minutes of duration, without the Employee's consent.
- f. The Employee under investigation shall not be subjected to offensive language or threatened with transfer, or disciplinary action. No promise of reward shall be made as an inducement to answering any questions. He/she shall not be subjected by management to visits by the press or news media without his/her express consent.
- g. The complete interview of the Employee, including all recess periods, will be recorded at the request of either party. At the request of the Employee, a copy of the interview shall be furnished to him/her if transcribed and if any further proceedings are contemplated by the Department or any other agency. If a tape recording is made of the interview, the Employee shall have access to the tape if any further proceedings are contemplated.
- h. If the Employee about to be interviewed is under arrest, or is likely to be placed under arrest as a result of the interview, he/she shall be completely informed of his/her Miranda Rights prior to the commencement of the interview.
- i. The Employee shall be notified of the disciplinary action and the reason or reasons therefore prior to the effective date of such action.

L. Relieved from Duty: In cases where management chooses to relieve an Employee from duty pending an internal investigation, the following conditions shall prevail.

1. Officers will/shall/may be placed on administrative leave if there is reasonable cause to believe allegations of misconduct involve:
 - a. Criminal activity;
 - b. Use of excessive force;
 - c. Breach of civil rights;
 - d. Negligence;
 - e. Mis/Mal/Non-feasance;
 - f. Disparate treatment;
 - g. Sexual harassment;
 - h. Officer involved shootings;
 - i. Any situation that will adversely affect the public's trust in the department;
 - j. Any situation that exposes the officer and city to liability if left on duty;
 - k. Any situation where it is unsafe to leave the officer on duty.

Decision to place an officer on administrative leave will be at the Chief's discretion and will take the above listed factors into consideration. In some instances, consultation with MPEA leadership may be appropriate.

~~At the option of the Chief of Police, the employee will remain on full salary and allowances and shall not lose any benefits during this period of time. Should disciplinary action result from the investigation, that period of time in which the Employee was relieved from duty may be included in the disciplinary action. In the event that an Employee has been paid for any such relief from duty time and disciplinary action is taken, the Employee's accumulated annual leave or compensatory time may, at the Chiefs option, be charged in the amount equal to the paid relief time.~~

M. Arrest: In the event an Employee is arrested or indicted by a Grand Jury, no photo will be released by the Police Chief or his representative to any media without the express written consent of the Employee.

N. **Association Representation:** Employees, subject to investigation, may have an Association representative present, at his/her option, during interviews. If the Association representative is not available for the interview, the Employee shall select another Association officer or official to fill in for the absent Association representative.

O. **Legal Counsel Representation:** Employees may be represented by legal counsel of and at his/her choice. If counsel advises the Employee to answer no questions, this shall not be interpreted as a tacit admission to the allegations. Counsel shall have a participatory role; he need not remain silent during the interview(s). The Employee's legal counsel shall be at the employee's expense.

P. **Polygraph:** No Employee will be required to take a polygraph.

Association Management Committee

There shall be an Association/Management Committee established. The Association President and the Police Chief shall be permanent members. They shall have the flexibility to appoint members from their respective entities to carry out the function of the committee.

No Strikes

~~During the term of this Agreement, the Association, its officers, agents, or employees will not instigate, engage in or condone any strikes, slow downs, withdrawals of services or any other intentional interruption of the operations of the City. Employees shall not be entitled to any benefits or wages whatsoever while they are engaged in a strike, slow down or other interruption of work. Any or all employees who violate any of the provisions of this Article may be disciplined by the Employer up to and including discharge. The City will not lock out any employees during the term of this Agreement.~~

ARTICLE VIII

This Agreement shall become effective on the 1st day of July, 2003 2006, and shall continue in full force and effect through the 30th day of June, 2006 2009.

Both parties further agree to notify in writing, at least 120 days prior to the expiration date of this Agreement, that it1 desires to modify the Agreement. All other Articles, conditions and past practices in which modifications are not desired by either party herein, shall remain in

effect, subject to final ratification of the total Agreement. This section shall apply only to wages, fringe benefits, and working conditions.

The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that all the understandings and agreements arrived at by the parties after their exercise of that right and opportunity are set forth in this Agreement. Therefore, Employer and Association, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and releases the other from the obligation to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

The foregoing waiver shall not be binding if the parties mutually agree to engage in collective bargaining, with respect to a particular subject or matter covered or not covered in this Agreement.

Savings Clause

Should any Article, Section, or portion thereof of this Agreement be held unlawful or invalid by any court or board of competent jurisdiction, such decision shall apply only to the specified Article, Section or portion thereof directly specified in the decision. Upon issuance of such a decision, the Parties agree immediately to negotiate a substitute for the invalidated Article, Section or portion thereof. Any change in City Ordinance passed subsequent to the adoption of this Agreement that would contravene the terms of this Agreement shall not apply during the life of this Agreement.

IN WITNESS WHEREOF the parties hereto, acting by and through their respective and duly authorized officers and representatives, have hereto set their hands and seals on this _____ day of, 2003 2006.

THE CITY OF BILLINGS

RON TUSSING, MAYOR

ATTEST:

MARITA HEROLD, CITY CLERK

CITY ADMINISTRATIVE REVIEW

CHRISTINA F VOLEK

INTERIM CITY ADMINISTRATOR

THE BILLINGS POLICE UNIT

PRESIDENT

ATTEST:

SECRETARY

M.P.E.A. STAFF
REPRESENTATIVE

BOB CHATRIAND

FIELD REPRESENTATIVE

QUINTON E. NYMAN
EXECUTIVE DIRECTOR

ATTACHMENT A

Hourly Police Pay Schedule

Effective 7/1/06

<u>Beginning of Year</u>	<u>Hourly Rate</u>	<u>Certification Pay</u>					
		<u>FY 07</u>		<u>FY 08</u>		<u>FY 09</u>	
1	<u>\$18.24</u>	X	X	X	X	X	X
2	<u>\$18.59</u>	X	X	600	600	700	700
3	<u>\$18.97</u>	600	600	600	600	700	700
5	<u>\$20.11</u>	600	1200	600	1200	700	1350
6	<u>\$21.32</u>	600	1200	600	1200	700	1350
9	<u>\$21.96</u>	600	1200	600	1200	700	1350
12	<u>\$22.61</u>	600	1200	600	1200	700	1350
15	<u>\$23.29</u>	600	1200	600	1200	700	1350
17	<u>\$23.99</u>	600	1200	600	1200	700	1350

Step 20 will be added at 3% in FY07 and another 2% in FY 08 equal to 5% in addition to the CPIU.

Effective 7/01/06: **COLA = CPIU as of December 2005 (with a floor of 3% and a ceiling of 4%).**

Effective 7/01/07: **COLA = CPI-U as of December 2006 (with a floor of 3% and a ceiling of 4%).**

Effective 7/01/08: **COLA = CPIU as of December 2007 (with a floor of 3% and a ceiling of 4%).**

As used herein "CPIU" refers to the US City Average of the US Dept. of Labor Consumer Price Index - Urban non-seasonally adjusted as of December 31.

Shift Differential:

Those officers who work the majority of their regularly assigned shift within the following hours, shall be compensated in addition to their regular base rate accordingly.

FY 2007

<u>Shift Designated as Afternoon Shift</u>	<u>\$.60</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$1.10</u> per hour

FY 2008

<u>Shift Designated as Afternoon Shift</u>	<u>\$.80</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$1.50</u> per hour

FY 2009

<u>Shift Designated as Afternoon Shift</u>	<u>\$1.00</u> per hour
<u>Shift Designated as Night Shift</u>	<u>\$2.00</u> per hour

Officers working weekend shift (6:00 pm Friday to 6:00 am Monday) shall receive \$.25/hr weekend pay during FY 2008. In FY 2009 this will increase to \$.50/hr.

Longevity

Beginning July 1, 2003, longevity shall be added to each officer's hourly rate based upon the following formula:

.45 x .01 x the hourly rate of an officer from year 1 to 15 years of service.

.50 x .01 x the hourly rate of an officer after year 15.

Certification Pay

Effective July 1, 2001, the appropriate certification (Intermediate or Advanced) that is obtained by November 1 of each year will determine the certification pay amount, as noted above. The certification pay will be paid the first payday in December. **In order to receive certification**

pay, police officers must complete a minimum of 20 hours of continued education, excluding mandatory department training. It is the employer's responsibility to ensure that ample training opportunities are available to the police officers.

Pay for Performance

Beginning July 1, 2001 (or until the stipulations in paragraph 5 occur) in order for officers to progress to the next step (vertical step) and/or receive incentive pay for intermediate or advanced certificates, they must have received a satisfactory rating on their annual performance evaluation immediately preceding the date the raise would take effect.

A satisfactory evaluation shall refer to the overall final score or rating. An officer need not necessarily receive a satisfactory score in every area covered in the evaluation as long as the composite reflects a satisfactory score. The evaluation format will be determined by the committee currently working on this process (which has equal representation from labor and management). All officers will have the opportunity for input into the process and training/orientation will take place prior to the final vote. Supervisors will be responsible for advising an officer at least 90 days prior to their anniversary date if their rating may reflect unsatisfactory performance. A plan will be developed for improvement. If a supervisor fails to advise an officer of their unsatisfactory performance, the raise will go into effect as if the employee had a satisfactory evaluation. If the officer achieves a satisfactory evaluation at the end of this 90 period, their raise will be implemented at that time. If an officer fails to achieve satisfactory performance at the end of the 90 day performance enhancement/reevaluation period they will not be eligible for a raise and progressive discipline will commence. Whenever satisfactory performance is achieved, the appropriate raise will begin or progressive discipline will continue. If at any time the bargaining unit feels that evaluations are being unfairly administered, they may, at their expense, retain an auditor or monitor to assess the specific evaluation(s) they believe were unfairly administered in addition to the normal grievance process. The city shall turn over all relevant material to this independent auditor. The city agrees that all commanders will receive a minimum of 40 hours of training in evaluating employees and

related matters and the pay for performance aspect of the contract will not be implemented until such training has been completed.

Note: Pay for performance does not apply to horizontal steps that occur on July of each contract year.

Specialty Pay: All personnel who are assigned by the Chief of Police special duties to include: Bike Officers Motorcycle Officers, FTO, Detectives, Hostage Negotiators, Firearms/Range Officers and Active Instructors SWAT team members, and Bomb Squad members and School Resource Officers (SROs) will receive \$150 per specialty. If an officer is assigned more than one specialty, that officer receives no more than \$150 per contract year.

MEMORANDUM OF AGREEMENT

~~The City of Billings and the Montana Public Employees Association Billings Police Unit, enter into the following agreement concerning police officer physical fitness. This agreement is in effect for the life of the Collective Bargaining Agreement (CBA) and shall supersede Article VII, Section E, Physical Fitness Requirement unless otherwise indicated below:~~

- ~~1. Effective upon the signing of the contract physical fitness standards will become voluntary for those officers hired after July 1, 2000 if they achieve an overall score at or above the 40 percentile on the Cooper Test, in each testing category, in the Fall of 2003 physical training test and they continue to participate in the team fitness program beginning Spring 2004. If officers hired after July 1, 2000 cannot pass the initial test as detailed above, or they do not participate in the team fitness program, then they revert to the Physical Fitness Requirement under Article VII, Section E of the 2003 contract.~~
- ~~2. All officers hired prior to July 1, 2000, will, upon request, be given a comprehensive medical examination at the City's expense, if the exam is not covered by insurance. The results of this medical examination will not be used as a basis for an employment action. In addition, the union agrees that all officers covered by this agreement, who have not been medically restricted, must participate in good faith in the Spring 2004 physical fitness testing (Cooper Standards) to determine the overall fitness level for individuals and the Department. The City agrees to pay all officers who participate in the Spring 2004 test a minimum \$100.00 payment. Officers who are medically restricted from testing are exempt from the Spring 2004 testing. If an officer is given a conditional release to participate in a fitness program, but has a condition that precludes testing in certain events, then a substitute testing method, if approved by the Labor Management Committee, may be used. Officers who choose not to participate in the 2004 test could be progressively disciplined up to and including termination. The act of any officer who may refuse to participate in the testing will not jeopardize the continued success of the program.~~
- ~~3. Beginning with the Spring 2004 testing, the Billings Police Department will offer a voluntary physical fitness and testing program based on the shift team concept. Each participating team member will be eligible to receive annual cash incentives as well as compensatory time. Individual scores will be calculated by taking an average of the four scored events in the Cooper Test that is age and gender based. Team scores will be calculated by adding each team member's average score for their age and gender category and averaging them. Officers who have been medically restricted for testing will not be counted in the team averaging. The following compensatory time incentives will be awarded annually to each participating team member if the average team score falls within a range below:~~

10 hours compensatory time	80%	and above
8 hours compensatory time	60%	to
6 hours compensatory time	40%	to
3 hours compensatory time	30%	to
	39%	

4. An officer can request and will be provided the assistance of a Department fitness trainer to help them achieve and maintain an appropriate fitness level.
5. In a good faith effort to establish an improved fitness culture within the Billings Police Department, the union agrees to the following new fitness program:
 - Spring of 2005, 70% of officers not medically restricted from testing will participate in physical fitness testing; and
 - Spring of 2006, 80% of officers not medically restricted from testing will participate in physical fitness testing.

~~If any of the aforementioned participation standards are not met, then this Memorandum of Agreement is no longer valid and the provisions of Article VII, Section E, Physical Fitness Requirement become effective.~~

~~If the aforementioned participation standards are met, then this Memorandum of Agreement becomes the new language for Article VII, E. Physical Fitness Requirement in the spring of 2006.~~

6. All officers who participate in the fitness testing in the Spring of 2004, 2005, and 2006 will receive a minimum of \$100 for attaining a minimum score of 20% on the Cooper Test and officers who score 65% or higher shall receive \$300. All officers who score less than 65%, but who improve 20 percentage points or more will receive an extra \$100. In addition the City agrees to provide one hour for each team for workout time, during team overlap days every two weeks.
7. The union agrees to work in good faith with police management through the Labor Management process to encourage maximum officer participation and fine tune the program so it works to the benefit of everyone involved. It is the intention of this agreement that all officers who participate in this program do so in good faith.
8. It is the union's desire and intent that if the physical fitness agreement outlined above is successful that they will bargain for the replacement of the current contract language with the details of a comprehensive, but voluntary, physical fitness program in a subsequent collective bargaining agreement.

AGREED TO & ACKNOWLEDGED _____, 2003:

RICK HARDEN, SPHR
CHIEF SPOKESPERSON
CITY OF BILLINGS

TOM BIVINS
CHIEF SPOKESPERSON
MPEA

LETTER OF AGREEMENT

**Between the Montana Public Employees Association Billings Police Unit
and
The City of Billings, Montana**

The City of Billings agrees to include the School Resource Officers (SROs) in the category of those positions that receive Specialty Pay. This Letter of Agreement is valid through the end of the current contract, which expires _____.

Rick Harden

HR Manager

Tom Bivins

MPEA Field Representative

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