

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 24, 2006

6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Ed Ulledalen

ROLL CALL

MINUTES

- June 26, 2006 Special Meeting
- June 26, 2006 Regular Meeting
- July 10, 2006 Regular Meeting

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #2 and #14 thru #17 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. Bid Awards:

(1) Airport ARFF Vehicle Replacement. (Opened 7/11/06).

Recommend Rosenbauer Fire Fighting Technology, \$1,268,150.00.

[\(Corresponding Staff Memo A1\)](#)

(2) W.O. 05-12: Big Ditch Trail – Billings, Federal Aid No. STPE 1099(49), MDT CN5908. (Opened 7/11/06). Recommend CMG Construction, Inc., Base bid and Bid Alternate #2, \$105,730.00 and 30 calendar days, contingent on CTEP concurrence.

[\(Corresponding Staff Memo A2\)](#)

B. W.O. 04-18: Park II Expansion and Park I & II Repairs, Amendment #2, Professional Services Contract with Collaborative Design Architects, \$\$50,000.00.
[\(Corresponding Staff Memo B\)](#)

C. W. O. 05-20: Aronson Avenue 30% Design Study, Professional Services Contract with HKM Engineering, Inc, \$178,598.00.
[\(Corresponding Staff Memo C\)](#)

D. W.O. 06-07: Construction Materials Testing, Professional Services Contracts with Rimrock Engineering, Inc., and Terracon, Inc., each contract not to exceed \$75,000 and terminate on 12/31/08.
[\(Corresponding Staff Memo D\)](#)

E. Project Development and Construction Agreements with MDOT:

- (1) North Bench Boulevard Corridor – Billings
- (2) Zimmerman Trail -- Billings

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

F. Acknowledging receipt of petition to vacate portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision and setting a public hearing for 8/14/06.
[\(Corresponding Staff Memo F\)](#)

G. Acknowledging receipt of petition #06-11 to annex a 36-acre parcel described as Tract 1, C/S 3273, generally located on the west side of 46th St. W, south of Rimrock Rd., and setting a public hearing for 8/14/06.
[\(Corresponding Staff Memo G\)](#)

H. Acceptance of donations from the family and friends of Roger Stewart III to provide a memorial bench at the downtown Billings Skate Park in memory of Roger Stewart III, \$1,025.00.
[\(Corresponding Staff Memo H\)](#)

I. Resolution of Intent to create an expanded park maintenance district (PMD) #4025 in Rehberg Ranch Estates Subdivision, 2nd filing, and setting a public hearing date for 8/28/06.
[\(Corresponding Staff Memo I\)](#)

J. Resolution relating to \$380,000 Pooled Sidewalk Bonds, Series 2006, authorizing the issuance and calling for the public sale thereof.

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

K. Second/final 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.

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

L. Second/final 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.

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

M. Preliminary plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision, generally located on the west side of Monarch St. between Cecropia Ave. (north) and Bruce Ave. (south), conditional approval of the plat and adoption of the Findings of Fact.

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

N. Preliminary plat of Twin Oaks Subdivision, generally located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane, conditional approval of the plat and adoption of the Findings of Fact.

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

O. Final plat of Amended Lot 10, Block 3, Midland Subdivision, 5th filing.

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

P. Bills and payroll.

(1) June 23, 2006

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

(2) June 30, 2006

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

(3) June 1 – June 30, 2006 (Municipal Court)

[\(Corresponding Staff Memo P3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. **RESOLUTION** submitting the question of issuance of up to \$12,500,000 General Obligation Bonds for the design, construction and equipping of a new professional baseball stadium and related improvements in Athletic Park to City of Billings' voters. The Ballpark Steering Committee and the Parks, Recreation & Cemetery Board recommend approval. (Delayed from 6/26/06). (**Action:** approval or disapproval of the joint committee and board recommendation.)
[\(Corresponding Staff Memo 2\)](#)
3. **PUBLIC HEARING AND RESOLUTION FOR 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. Staff recommends conditional approval. (**Action:** approval or disapproval of Staff recommendation.)
[\(Corresponding Staff Memo 3\)](#)
4. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward II to included the recently annexed property in annexation #06-07: 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.)
[\(Corresponding Staff Memo 4\)](#)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward III to included the recently annexed property in annexation #06-09: 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.)
[\(Corresponding Staff Memo 5\)](#)
6. **PUBLIC HEARING AND SPECIAL REVIEW #818:** A special review to allow a drive through service in a Community Commercial zone adjacent to a Residential-6000 zone on Lots 19-24, Block 2, Evergreen Subdivision and located at 1447 Grand Ave. Ryan Hendrickson, owner; Engineering, Inc., agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)
[\(Corresponding Staff Memo 6\)](#)
7. **PUBLIC HEARING AND SPECIAL REVIEW #820:** A special review to allow an outdoor patio lounge in a Central Business District (CBD) zone on Lots 1 & 2, Block 111, O.T. and located at 2501 Montana Avenue. Computers Unlimited,

Michael Schaer, owner; A & E Architects, James Bos, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

8. **PUBLIC HEARING AND SPECIAL REVIEW #821:** A special review for a Church and Senior Retirement Home in a Residential-9,600 zone on Lot 1, Block 3 of High Sierra Subdivision, 2nd Filing and located at the intersection of West Wicks Lane and Sierra Granada Blvd. Atonement Lutheran Church, owner; CTA Architects & Engineers, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

9. **PUBLIC HEARING AND SPECIAL REVIEW #822:** A special review to locate a Beer and Wine license with gaming and an outdoor patio lounge in a Controlled Industrial zone on C/S 1551, and located at 1737 King Avenue West Unit #5, RSP Holdings, owner; Roger Tuhy, agent. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

10. **PUBLIC HEARING AND SPECIAL REVIEW #823:** A special review to locate a Beer and Wine license with gaming in a Entryway Light Industrial zone on Lot 10 (to be 10A), Block 1 of Montana Sapphire Subdivision, and located at 4121 Kari Lane. Montana Sapphire, LLC, owner; Roger Tuhy and Holly Jerke, agents. Zoning Commission recommends conditional approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

11. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #778:** A text amendment to BMCC Section 27-310(i), changing the size, height, and bulk for detached accessory structures within all residential zoning districts within the Billings city limits. Yellowstone County Board of Planning initiated the amendment on May 9, 2006. Zoning Commission recommends approval. (**Action:** approval or disapproval of Zoning Commission recommendation.)

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

12. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #783:** A zone change from Controlled Industrial to Residential-6,000 on Lots 17

& 18 of Block 32 of Highland Addition, and located at 109 South 39th Street. Dave Hagstrom, owner. Zoning Commission recommends approval and the adoption of the determination of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

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

13. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE

#784: A zone change from Residential-9,600 to Residential-6,000-Restricted on Lot 1, Block 1 and Lot 1, Block 2 of Arlene Subdivision, and located at 3410 and 3416 Poly Drive. City of Billings' Public Works Department, owner; David Mumford, agent. Zoning Commission makes no recommendation. (Action: approval or disapproval of Zoning Commission recommendation.)

[\(Corresponding Staff Memo 13\)](#)

14. 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. (Public hearing held 7/10/06; action delayed from 7/10/06). (Action: approval or disapproval of Planning Board recommendation.)

[\(Corresponding Staff Memo 14\)](#)

15. BID AWARD: W.O. 03-10: 6th STREET W AND CENTRAL TRAFFIC SIGNAL. (Opened 7/18/06). Staff will make a recommendation at the meeting. (Action: approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 15\)](#)

16. 4TH AND BROADWAY REDEVELOPMENT – 2005 Update (Delayed from 7/10/06). 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.)

[\(Corresponding Staff Memo 16\)](#)

17. NAVAL RESERVE CENTER DISPOSITION. Staff recommends: (a) approval of the Navy's offer to abate the visible and damaged asbestos, and (b) asking for Congressional assistance to abate the remaining materials and demolish the structures. (Action: approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 17\)](#)

18. 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:

7/24/2006	REGULAR Council Meeting	6:30 p.m.	Council Chambers
7/25/206	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

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Approval for the Award of Airport Improvement Program (AIP) 31 Project, Airport Airfield Rescue and Fire Fighting (ARFF) Vehicle Replacement

DEPARTMENT: Aviation and Transit

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

PROBLEM/ISSUE STATEMENT: This year's approved Equipment Replacement Program included the replacement of two 14-year-old ARFF vehicles. These ARFF trucks are the primary emergency response vehicles for the Airport. These units currently require an excessive amount of ongoing maintenance and repair resulting in an unacceptable amount of down time. Many of the truck's fire suppression and drive train components are not readily available and/or require a long lead time for ordering. These vehicles have also exceeded the National Fire Protection Association's recommended replacement criteria in both years of service and hours of use. This replacement program will provide two of the same model truck from one manufacturer, which will reduce the number of spare components required for the parts inventory, and also reduce the number of vehicles that the Airport mechanics must be familiar with. Because Federal requirements for emergency responses must be met, it is time to replace these two units with newer equipment that is more reliable. The estimated lead time for the new units to be built and delivered is approximately 300 days. We received three bids on Tuesday, July 11, 2006. The bid received from E-One, Inc., did not acknowledge receipt of Addenda Number Two and did not supply a price for alternate one, and was therefore rejected as nonresponsive. The bids were as follows:

<u>SUPPLIER</u>	<u>BID</u>
Rosenbauer Fire Fighting Technology	\$1,268,150
Oshkosh	\$1,322,770
E-One, Inc.	\$1,345,286 (Nonresponsive)
ESTIMATE	\$1,400,000

FINANCIAL IMPACT: The total cost of this project is \$1,268,150 and will be funded through a 95% Federal Aviation Administration (FAA) entitlement grant with a 5% local share match. The FAA portion will be \$1,204,742.50 and the City's match is \$63,407.50. This project is included in the current budget, and the local share is funded through the Department's Capital fund.

RECOMMENDATION

Staff recommends that City Council approve the award of AIP 31, Airport ARFF Vehicle Replacement project to the low bidder Rosenbauer Fire Fighting Technology in the amount of \$1,268,150.

Approved By: City Administrator City Attorney

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

A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 24, 2006

TITLE: W.O. 05-12 – Big Ditch Trail, Phase I, Federal Aid No. STPE 1099(49),
Construction Contract Award

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: This project will construct the Big Ditch Trail, Phase I, which extends a multi-use path from the Shiloh Road bike/ped underpass as far as Larchwood Lane (see the attached area map). Included in the base bid is a concrete path connecting the main trail with Rangeview Court, an alternate bid for a path extension to Larchwood Lane, and an alternate for trailhead signage. The bid structure includes a base bid and alternates for three main reasons: (1) Construction bid prices have far exceeded estimates locally, regionally and nationwide this year (e.g., Yellowstone River Road, Park II Expansion and 6th & Central Intersection); (2) It is important to end this path segment at a logical stopping place (which is either Rangeview or Larchwood); and (3) Federal contracting rules do not allow a negotiated reduction in scope after bid opening, so the bid is structured to ensure that some portion of trail will be built. Bids were opened for the project on July 10, 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 (86.58% of the total funds), and required local match funds (13.42% of the total funds) pledged by BIKENET, a local nonprofit group.

Location of Work: Platted park land between Shiloh Road and Larchwood Lane

Funding Sources: CTEP Grant (\$135,167), and required local match (\$20,950) pledged by BIKENET, a local non-profit group

Approved Dollar Amount for Project: \$156,117

Spent (and obligated) to date: \$ 33,356

Funding available: \$122,761

Bids were opened on July 10, 2006, with the following results:

Firm	Base Bid (Main Trail)	Bid Alternate No. 1	Bid Alternate No. 2	Total Base Bid Plus Bid Alt No. 1
CMG Construction, Inc.	\$101,730.00	\$43,495.00	\$4,000.00	\$105,730.00
JTL Group, Inc.	\$111,700.00	\$37,910.00	\$3,900.00	\$115,600.00
<i>Engineer's Estimate</i>	<i>\$104,995.00</i>	<i>\$43,495.00</i>	<i>\$4,250.00</i>	<i>\$109,245.00</i>

RECOMMENDATION

Staff recommends that Council award a construction contract for W.O. 05-12 – Big Ditch Trail, Phase I, Federal Aid No. STPE 1099(49), for the Base Bid (Main Trail) and Bid Alternate No. 2 to CMG Construction, Inc. for \$105,730.00 and 30 calendar days, contingent on CTEP concurrence.

ATTACHMENT

- A. Area Map of the Big Ditch Trail Phase I

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

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

B

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: W.O. 04-18—Park II Expansion and Park I & II Repairs,
Professional Services Contract with Collaborative Design Architects—
Amendment No. 2

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The City of Billings is recommending an amendment to the Professional Services Contract with Collaborative Design Architects. This contract, dated May 9, 2005, is for professional architectural and engineering design services for the expansion and renovation of Park II and repairs on Park I, III, and IV (W.O. 04-18).

The changes in Amendment No. 2 will add to the scope of work to include all materials testing (i.e. soil compaction tests, concrete strength tests, etc.) as stated in the project specifications. The need for materials testing is not a new requirement, but there was some misunderstanding as to who was responsible for soliciting the testing services. In a letter proposing their consultant fees for the project, Collaborative recommended the costs of materials testing be added to their professional services contract at a later date. A definitive scope of work and accurate cost for the testing could not be determined until after the final drawings and specifications were issued. The letter was sent to the Parking Supervisor March 17, 2005, and Public Works staff was not aware of its content until June 29, 2006. As part of the scope of the original contract, Collaborative is responsible for construction administration (CA). The CA includes, but is not limited to, on-site inspection of the project, but does not specifically include materials testing. Having the on-site inspector(s) responsible for coordinating the materials testing, processing the test reports, and communicating test results with the contractor should provide a smooth process throughout the project. Collaborative will sub-contract the work for Amendment No. 2 to an accredited testing lab/firm. A complete copy of Amendment No. 1 is on file in the City Clerk's office.

FINANCIAL IMPACT: The project is being funded by the Parking Division. The associated C.I.P. (FY 2006: PK-001, 003, 004, 005; FY 2007: PK-003, 005) was approved by the Mayor

and City Council February 28, 2005. These C.I.P funds include the repair work on all garages (Park I, II, III, IV) as well as the expansion of Park II.

Funding Sources: User Fees, Revenue Bonds, Parking Reserves

The actual amount of funds that will be drawn from each source is currently being determined by Finance, but there are adequate funds available for Amendment No. 2.

Collaborative Design will invoice the City for only the actual costs incurred for materials testing, with a not-to-exceed amount as listed in Amendment No. 2. Therefore, Amendment No. 2 represents an increase in the amount of the contract by a maximum of \$50,000. The work covered by the increase is necessary for successful completion of the Park II expansion and will be utilized very early in the construction process.

ORIGINAL PROFESSIONAL SERVICE CONTRACT: \$662,045.00

	Amount	% Of Contract	Cumulative % Of Contract
Amendment No. 1	\$ 24,416.00	3.69 %	
<u>Amendment No. 2</u>	<u>\$ 50,000.00</u>	<u>7.55 %</u>	
TOTALS to date:	\$ 74,416.00		11.24 %

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 2 to the Professional Services Contract with Collaborative Design Architects for materials testing, resulting in a maximum net increase of \$ 50,000.00.

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

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

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: WO 05-20 Aronson Avenue 30% Design Study Professional Services Contract

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: Aronson Avenue is classified as a minor arterial street within the Billings Urban Area Functional Classification Map. The City of Billings Transportation Plan shows Aronson Avenue traveling from Hilltop Road to Airport Road. Currently, the street is constructed from Hilltop Road to just north of the BBWA Canal. Work Order 05-20 will construct Aronson Avenue from just north of the BBWA Canal to Airport Road. Aronson Avenue was identified in the CIP in FY '10; however, a budget amendment was approved at the June 12, 2006, City Council Meeting, to add \$500,000.00 to this project for FY '07 for design and \$3,500,000.00 for FY '08 for construction. It is anticipated that this project could be completed by 2009. Request for Proposals were sent out in December of 2005. Five firms submitted proposals for the project, which included HKM Engineering, Inc., Interstate Engineering, Kadrmas, Lee & Jackson, HDR Engineering, and PBS & J. Through the selection process, the committee, which included councilmember Stevens, unanimously chose HKM Engineering, Inc. for the project. This contract with HKM Engineering, Inc. is for 30% design in which alternatives will be determined and evaluated. Also, included in this contract is full surveying, necessary hydraulics studies, and full right of way negotiation services. Once the alternatives have been decided on, Engineering will negotiate a full design contract with HKM Engineering, Inc.

FINANCIAL IMPACT: The professional services contract with HKM Engineering, Inc. is for the amount of \$178,598.00. This has been allocated with a budget amendment in FY'06 utilizing arterial fees.

RECOMMENDATION

Staff recommends that Council approve the professional services contract for WO 05-20 Aronson

Avenue with HKM Engineering, Inc. in the amount of \$178,598.00.

ATTACHMENT

A. WO 05-20 Aronson Avenue Professional Services Contract

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

Contract for Professional Engineering and Right-of-Way Acquisition Services

W.O. 05-20, Aronson Avenue, 30% Design Study

In consideration of the mutual promises herein, City of Billings and Morrison-Maierle, Inc. agree as follows. This Contract consists of:

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

**PART I
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" and "Engineer" means HKM Engineering, Inc. (HKM).

Section 2. Scope of Services.

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

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.

- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix C.
- C. This Contract shall terminate at midnight on December 31, 2009.

Section 4. Compensation; Method of Payment.

- A. Subject to the Contractor's satisfactory performance, Billings shall pay the Contractor no more than One hundred seventy-eight thousand, five hundred ninety-eight and 00/100 dollars (\$178,598) in accordance with this Section.
- B. Billings shall pay the Contractor in accordance with the progress payment schedule attached hereto as Appendix B and incorporated herein by reference.
- C. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- D. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- E. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.

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

Section 7. Insurance.

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

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: City Engineer (Vern Heisler, P.E.)
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101 FAX: (406) 657-8252

Contractor: Karen Fagg, President
HKM Engineering, Inc.
222 N. 32nd Street
Billings, MT 59101 FAX: (406) 656-6399

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II

GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: President (Karen Fagg)
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

- A. The Contractor shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Contractor, the Contractor shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Contractor's or any subcontractor's wrongful or negligent acts occurring as a result from the Contractor's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Contractor

Mayor

Date: _____

Print Name: _____
Title: _____
Date: _____

ATTEST:

Marita Herold, CMC/AAE
City Clerk

Date: _____

STATE OF MONTANA)
)
County of Yellowstone)

On this ___ day of _____, 2005, before
me, the undersigned, A Notary Public for the
State of Montana, personally appeared
, known to me to be the person whose name is
subscribed to the within instrument, and
acknowledged to me that he executed the same.

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

APPROVED AS TO FORM:

City Attorney

Printed Name: _____
Notary Public in and for the State of Montana
Residing at _____
My Commission Expires: _____

Note: Final contract documents will require the Contractor's signature to be notarized.

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

D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: W.O. 06-07 - Construction Materials Testing, Professional Services Contract

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: For the past several years, the City of Billings has retained the services of a construction materials testing firm to perform routine construction materials tests. The previous materials testing contract, for two construction seasons in duration, expired on May 31, 2006. With the expiration of the previous contract, Staff developed and advertised a Request for Proposals to retain two firms for construction materials testing. Proposals were received and evaluated by Engineering Division staff. Staff selected Rimrock Engineering, Inc. and Terracon, Inc. as the best firms from the proposals received. Staff developed a scope of work for the project and created a professional services contract with each selected firm. Council must approve these Professional Services Contracts in order for the materials testing to proceed. A copy of each contract is on file with the City Clerk.

FINANCIAL IMPACT: Funding for these professional services contracts is available from the approved project budget allocation for the individual construction projects that utilize these testing services.

RECOMMENDATION

Staff recommends that Council award Contracts for Professional Engineering Services to Rimrock Engineering, Inc. and to Terracon, Inc., each contract not to exceed \$75,000, for construction materials testing, with a contract termination date of December 31, 2008.

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

INTRODUCTION

These contracts represent routine construction materials testing services to ensure compliance with contract specifications for the various construction contracts administered by Staff. These testing services include sampling and testing asphalt, concrete, crushed base material, and native soils utilized in construction projects.

PROCEDURAL HISTORY

- Completed Items
 - Requests for Proposals advertised
 - Proposals reviewed by Engineering Division staff
 - Selection committee selected two firms to perform testing services
- Future Items
 - Council award of the Professional Services Contracts – July 24, 2006 (this memo)
 - Materials testing – Contract award date through December 31, 2008

BACKGROUND

The Engineering Division evaluates construction materials on a variety of construction projects for compliance with contract specifications. The City does not possess all of the necessary laboratory equipment nor personnel to perform all of the required testing. Therefore, it is necessary to hire consultants to perform these tests. Staff has found construction materials testing to be a cost effective means to ensure that what is built is in compliance with the performance standards found in construction contracts. The adage “you get what you test” is true for construction materials. These contracts are for the remainder of the 2006 construction season and the entire 2007 and 2008 construction seasons. The contract amount will not exceed \$75,000 for each firm.

A Request for Proposals for construction materials testing was advertised to obtain the services of two firms for the next two construction seasons. Proposals to provide the requested testing services were received from Rimrock Engineering, Inc., and Terracon, Inc. Each of the proposals were reviewed by the selection committee members (three members total) and scored in the following categories: Personnel Qualifications and Experience (30 points available), Firm Experience (20 points available), Timeliness of Response and Report Generation (30 points available), and Previous Work Experience with the City of Billings (20 points available).

The selection committee reviewed each proposal and found both firms to be well qualified. Therefore, staff negotiated scope and fee with both Rimrock and Terracon and presents these contracts for Council’s approval.

The consultant selection committee comprised of Pat Wessel, Randy Kujat, and Nick Bailey of the Engineering Division reviewed each submitted proposal and found both firms to be well qualified.

Following the reviews, the committee selected both Rimrock Engineering, Inc. and Terracon, Inc.

With award of these Professional Services Contracts, staff will have the ability to have the necessary testing performed during the remainder of the 2006, the 2007, and the 2008 construction seasons

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

It is necessary to perform tests on the various construction materials to ensure the finished products meet specifications. Testing also ensures that the City “gets what it paid for”.

RECOMMENDATION

Staff recommends that Council award Contracts for Professional Engineering Services to Rimrock Engineering, Inc. and to Terracon, Inc., each contract not to exceed \$75,000 for construction materials testing, with a contract termination date of December 31, 2008.

Contract for Professional Engineering Services

Work Order 06-07, Construction Materials Testing

In consideration of the mutual promises herein, City of Billings and Rimrock Engineering, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 4 pages (Basic Services of Engineer);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Consultant);
- Appendix D consisting of 1 page (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule); and
- Appendix F consisting of Certificate(s) of Insurance

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Consultant" means Rimrock Engineering, Inc.

Section 2. Scope of Services.

- A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Consultant in accordance with the fees found in Appendix B and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Consultant may provide, at its own expense, any other services that are consistent with this Contract.
- ~~D. The Consultant shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the~~

project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.

E. The Consultant shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Consultant shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2008.

Section 4. Compensation; Method of Payment.

- A. Subject to the Consultant's satisfactory performance, Billings shall pay the Consultant no more than SEVENTY FIVE THOUSAND DOLLARS (\$75,000) in accordance with this Section.
- B. At the conclusion of each task for which payment is due, as negotiated on a per-task basis, the Consultant shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Consultant's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Consultant of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- C. The Consultant is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- D. As a condition of payment, the Consultant shall have paid all City taxes currently due and owing by the Consultant.

Section 5. Termination of the Consultant's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Consultant's services for convenience, Billings shall pay the Consultant for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total

compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Consultant shall become the property of Billings.

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

Section 7. Insurance.

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

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

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings:	Vern Heisler, PE City of Billings Department Public Works 510 North Broadway – 4 th Floor Billings, Montana 59101	FAX: (406) 657-8252
Consultant:	Paul R. Reynolds, SET, Principal Rimrock Engineering, Inc. 5440 Holiday Avenue Billings, MT 59101	FAX: (406) 294-8405

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Consultant: Paul R. Reynolds, SET, Principal
(title of position)

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the contract or the performance of its terms.

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

- A. The Consultant shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Consultant, the Consultant shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Consultant's or any subconsultant's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Consultant

Mayor

Date:

Print Name: _____

Title:

Date:

ATTEST:

STATE OF MONTANA)

)

Marita Herold, CMC/AAE
City Clerk

Date:

On this _____ day of _____, 2006,
before me, the undersigned, A Notary Public
for the State of Montana, personally
appeared _____, known
to me to be the person whose name is
subscribed to the within instrument, and
acknowledged to me that he executed the
same.

APPROVED AS TO FORM:

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

City Attorney

Printed Name: _____
Notary Public in and for the State of Montana
Residing at _____
My Commission Expires: _____

The Consultant's signature must be notarized.

Appendix A

Basic Services of Consultant

Section 1. Consultant's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Consultant's portion of the project as defined in the scope of work and to prepare and deliver to Billings all test results, reports, plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Consultant shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Consultant's work shall be in accordance with the standards of sound engineering and present City, State, and National (e.g. ASTM or AASHTO) standards and policies currently in use.
- E. ~~Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.~~
- F. ~~The Consultant shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.~~
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be compiled with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include

any problems, potential problems, and delays as foreseen by the Consultant. Reports will be submitted in a timely manner to permit prompt resolution of problems.

J. Name a Task Director who shall be the liaison between Billings and the Consultant. For this project the Task Director designated for the Consultant is Paul R. Reynolds, SET.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Consultant and Billings. For this project, the Task Director designated is Patrick Wessel, Engineering Inspector II.

Section 3. Scope of Work.

The Consultant shall perform the work tasks outlined within this agreement for construction materials testing for the remainder of the 2006, the 2007 and the 2008 construction seasons.

Verbal test results will be provided to the City upon completion of the test. Written results shall be provided in accordance with the schedule found in Appendix E of this contract.

- A. Concrete Cylinder Testing: Travel to local site; cast cylinders in accordance with ACI Guidelines, store and cure the cylinders, strength test cylinders at 7 days and 28 days. Provide written documentation of the results to the City Engineer's Office.
- B. Concrete Beam Testing: Travel to local site; cast beams in accordance with ASTM Guidelines, store and cure beams, and flexural strength test the beams at time(s) specified. Provide written documentation of the results to the City Engineer's Office.
- C. Standard Proctor: Travel to local site; obtain sample of material and determine the moisture/density curve using the standard proctor test. Provide written documentation of the results to the City Engineer's Office.
- D. Modified Proctor: Travel to local site; obtain sample of material and determine the moisture/density curve using the modified proctor test. Provide written documentation of the results to the City Engineer's Office.
- E. Sieve Analysis of Crushed Base: Travel to local site; obtain sample of material, and sieve material to compare with the requirements contained in the Montana Public Works Standard Specifications (MPWSS), Fifth Edition, as modified by City of Billings. Provide written documentation of the results to the City Engineer's Office.

- F. Sieve Analysis and Moisture Content of Chip Seal Material: Travel to local site; obtain sample of chips, sieve and inspect material to compare with the requirements of the (MPWSS), Fifth Edition, *as modified by City of Billings*, and determine the moisture content of the sample. Provide written documentation of the results to the City Engineer's Office.
- G. Marshall Density: Travel to local site; obtain sample of material, and determine Marshall Density, flow, stability, and voids. Provide written documentation of the results to the City Engineer's Office.
- H. Rice Density: Travel to local site; obtain sample of material, and determine Rice Density, flow, stability, and voids. Provide written documentation of the results to the City Engineer's Office.
- I. Extraction Gradation of Asphalt Material: Travel to local site; obtain sample of asphalt material, extract the oil from the aggregate, sieve and inspect the aggregate to compare with the requirements contained in the (MPWSS), Fifth Edition, *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.
- J. Asphalt Core Analysis: Travel to local site; obtain three (3) cores of new asphalt mat, and test for compliance with contract specifications. Provide written documentation of the results to the City Engineer's Office.
- K. Atterberg limits: Travel to local site, obtain samples of material, and determine the liquid limit, the plastic limit, and the plasticity index. Provide written documentation of the results to the City Engineer's Office.
- L. Density Testing: Travel to local site, test either compacted subgrade or base material, or compacted asphalt overlay/mat materials. All testing shall be completed using a Troxler nuclear density gauge, or similar nuclear gauge. Provide written documentation of the results to the City Engineer's Office.
- M. Concrete Batch Plant Inspection: Travel to area plant; inspect plant facilities and operational procedures, plant equipment, and concrete mixer tracks for compliance with the Montana Public Works Standard Specifications and the "National Ready-Mix Concrete Association" checklist. Sample and sieve the concrete aggregates used for compliance with the (MPWSS), Fifth Edition, *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.
- N. Asphalt Batch Plant Inspection: Travel to area plant; inspect plant facilities and operational procedures, plant equipment, and scales for compliance with the Montana Public Works Standard Specifications and the "Asphalt Institute's Manual (MS-22)" checklist. Personnel responsible for asphalt plant inspection must familiarize themselves with this manual. Sample and sieve the aggregates used for compliance with the (MPWSS), Fifth Edition *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.

- O. Standard Test Method for CBR: Travel to local site; obtain samples of material, perform tests in accordance with ASTM D1883-05. Provide written documentation of the results to the City Engineer's Office.
- P. Mortar Bar Expansion Test: Travel to local site; obtain samples of material, cast at least four (4) bars in accordance with ASTM Guidelines, store, cure, and test bars in accordance with ASTM C 227. Provide written documentation of the results to the City Engineer's Office.
- Q. Geophysical Investigations. Develop specific scope of work and fee with City personnel. Travel to test site, obtain samples as agreed, sample and perform tests as found in the scope of work. Provide written test results, summary or report as agreed to the City Engineer's Office.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Consultant for testing services performed under Appendix A of this Agreement. Payment shall be due the Consultant upon receipt of the Consultant's invoice, said invoice being proportioned to the tests completed by the Consultant.

A. For testing services rendered, Appendix A, the Consultant shall be paid the following amounts:

Item	Unit	Rimrock Engineering, Inc. Unit Price (\$)
1. Concrete Cylinder Testing	Each	160.00
2. Concrete Beam Testing	Each	300.00
3. Standard Proctor	Each	140.00
4. Modified Proctor	Each	160.00
5. Sieve Analysis of Crushed Base	Each	100.00
6. Sieve Analysis and Moisture Content of Chip Seal Material	Each	125.00
7. Marshall Density	Each	135.00
8. Rice Density	Each	85.00
9. Extraction-Gradation of Asphalt Material	Each	135.00
10. Asphalt Core Analysis	Each	110.00
11. Atterberg Limits	Each	80.00
12. Density Testing	Hour	50.00
13. Concrete Batch Plan Inspection	Per plant/facility	1,250.00
14. Asphalt Batch Plant Inspection	Per plant/facility	1,250.00
15. Standard Test Method for CBR	Each	400.00
16. Mortar Bar Expansion Test		n/a
17. Geophysical Investigations	Each	Negotiated price as mutually agreed based on specific services provided

The cost of Professional Liability Insurance coverage is to be included in the Consultant's rates listed in the table above.

Materials, subconsultants and other out-of-pocket expenses will be reimbursed at cost. No mark up or "handling fee" is allowed for reimbursement.

Section 2. Payments for Extra Services when Authorized by Billings.

- A. It is understood that the Consultant will not perform any work that the Consultant deems outside the scope found in Appendix A prior to receiving written approval from Billings. Any such work performed, even if requested by Billings, shall not be paid by Billings and any claims for such work shall be denied. In the event scope of work issues arise, the Consultant shall immediately discuss them with the Project Manager for Billings.

Section 3. Corrections.

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

Appendix C

Additional Services of Consultant

Extra Services of the Consultant will be paid only with written prior authorization by Billings.

- A. Testing services beyond the scope and intent of this Agreement may be done under a negotiated fee based on the specific scope of testing services performed.

Appendix D

Schedule of Professional Fees

Not used. Appendix B contains a table of fees to be used for this contract.

Appendix E

Project Schedule

Based on a notice to proceed by Billings for each test, the completion time and verbal reporting shall be completed as follows:

A. Routine Test Results

1. Fresh Concrete Tests - Within 15 minutes of sampling.
2. Compressive Strength Tests – Formal test data mailed on the day of the 7-day break.
3. Standard Proctor – 4 to 24 hours after sampling, depending on soil type, and as sampled moisture content.
4. Sieve Analysis of Road Material – 2 to 4 hours after sampling.
5. Sieve Analysis and Moisture Content of Chip Seal Material – 2 to 4 hours after sampling.
6. Marshall Density
 - a) Marshall density and voids – 2 to 4 hours after sampling.
 - b) Marshall stability and flow – 12 to 24 hours after sampling.
7. Extraction-Gradation – 2 to 4 hours after sampling.
8. Asphalt Core Analysis
 - a) 1 to 2 hours to core and patch holes.
 - b) 1 to 2 hours for density and voids determination.
9. Atterberg Limits – 12 to 24 hours after sampling.
10. Density Testing – Immediate results at site, formal results next business day.
11. Concrete and Asphalt Batch Plant Inspection – 1 day to inspect each plant and perform tests, 1 day for report of findings.
12. Rice Specific Gravity
 - a) Marshall density and voids – 2 to 4 hours after sampling.
 - b) Marshall stability and flow – 12 to 24 hours after sampling.
13. Flexural Strength Tests – Formal test data mailed on the day of the 7-day break.
14. CBR Tests -
15. Geophysical Investigations – Completion and reporting times per the specific scope and agreement

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

Appendix F
Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

Contract for Professional Engineering Services

Work Order 06-07, Construction Materials Testing

In consideration of the mutual promises herein, City of Billings and Terracon Consultants, Inc. agree as follows. This Contract consists of:

- Part I, consisting of 15 Sections of Special Provisions;
- Part II, consisting of 11 Sections of General Provisions;
- Appendix A consisting of 4 pages (Basic Services of Engineer);
- Appendix B consisting of 2 pages (Methods and Times of Payment);
- Appendix C consisting of 1 page (Additional Services of Consultant);
- Appendix D consisting of 1 page (Schedule of Professional Fees);
- Appendix E consisting of 1 page (Project Schedule); and
- Appendix F consisting of Certificate(s) of Insurance

PART I SPECIAL PROVISIONS

Section 1. Definitions.

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Consultant" means Terracon Consultants, Inc.

Section 2. Scope of Services.

- A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.
- B. Billings shall pay the Consultant in accordance with the fees found in Appendix B and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Consultant may provide, at its own expense, any other services that are consistent with this Contract.
- ~~D. The Consultant shall provide as-built drawings on mylar and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the~~

~~project completion date. Final payment will be withheld until the as built drawings are received by the City of Billings.~~

~~E. The Consultant shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.~~

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Consultant shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2008.

Section 4. Compensation; Method of Payment.

- A. Subject to the Consultant's satisfactory performance, Billings shall pay the Consultant no more than SEVENTY FIVE THOUSAND DOLLARS (\$75,000) in accordance with this Section.
- B. At the conclusion of each task for which payment is due, as negotiated on a per-task basis, the Consultant shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Consultant's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Consultant of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why.
- C. The Consultant is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- D. As a condition of payment, the Consultant shall have paid all City taxes currently due and owing by the Consultant.

Section 5. Termination of the Consultant's Services.

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

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

Section 6. Duties Upon Termination

- A. If Billings terminates the Consultant's services for convenience, Billings shall pay the Consultant for its actual costs reasonably incurred in performing before termination. Payment under this Subsection shall never exceed the total

compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Consultant shall become the property of Billings.

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

Section 7. Insurance.

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

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

Section 8. Assignments.

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

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

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

Section 10. Notices.

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

Billings: Vern Heisler, PE
City of Billings
Department Public Works
510 North Broadway – 4th Floor
Billings, Montana 59101 FAX: (406) 657-8252

Consultant: Dan Nebel
Terracon Consultants, Inc.
2110 Overland Avenue
Billings, MT 59102 FAX: (406) 656-3072

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

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

Section 13. Financial Management System.

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

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

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

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

PART II GENERAL CONTRACT PROVISIONS

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

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

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Consultant: Dan Nebel

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

The parties agree that this Agreement shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the contract or the performance of its terms.

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

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

- A. The Consultant shall not indemnify, defend, save and hold Billings harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of Billings occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both Billings and the Consultant, the Consultant shall indemnify, defend, save, and hold Billings harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the Consultant's or any subconsultant's wrongful or negligent acts occurring as a result from the Consultant's performance pursuant to this Contract.

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

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

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

City of Billings

Mayor

Date: _____

ATTEST:

Marita Herold, CMC/AAE
City Clerk

Date: _____

APPROVED AS TO FORM:

City Attorney

Consultant

Print Name: _____
Title: _____
Date: _____

STATE OF MONTANA)
)
County of Yellowstone)

On this _____ day of _____, 2006,
before me, the undersigned, A Notary Public
for the State of Montana, personally
appeared _____, known
to me to be the person whose name is
subscribed to the within instrument, and
acknowledged to me that he executed the
same.

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

Printed Name: _____
Notary Public in and for the State of Montana
Residing at _____
My Commission Expires: _____

The Consultant's signature must be notarized.

Appendix A

Basic Services of Consultant

Section 1. Consultant's Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Consultant's portion of the project as defined in the scope of work and to prepare and deliver to Billings all test results, reports, ~~plans, specifications, bid documents~~, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Consultant shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Consultant's work shall be in accordance with the standards of sound engineering and present City, State, and National (e.g. ASTM or AASHTO) standards and policies currently in use.
- ~~E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.~~
- ~~F. The Consultant shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.~~
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be compiled with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include

any problems, potential problems, and delays as foreseen by the Consultant. Reports will be submitted in a timely manner to permit prompt resolution of problems.

J. Name a Task Director who shall be the liaison between Billings and the Consultant. For this project the Task Director designated for the Consultant is Dan Nebel.

Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Consultant and Billings. For this project, the Task Director designated is Patrick Wessel, Engineering Inspector II.

Section 3. Scope of Work.

The Consultant shall perform the work tasks outlined within this agreement for construction materials testing for the remainder of the 2006, the 2007 and the 2008 construction seasons.

Verbal test results will be provided to the City upon completion of the test. Written results shall be provided in accordance with the schedule found in Appendix E of this contract.

- A. Concrete Cylinder Testing: Travel to local site; cast cylinders in accordance with ACI Guidelines, store and cure the cylinders, strength test cylinders at 7 days and 28 days. Provide written documentation of the results to the City Engineer's Office.
- B. Concrete Beam Testing: Travel to local site; cast beams in accordance with ASTM Guidelines, store and cure beams, and flexural strength test the beams at time(s) specified. Provide written documentation of the results to the City Engineer's Office.
- C. Standard Proctor: Travel to local site; obtain sample of material and determine the moisture/density curve using the standard proctor test. Provide written documentation of the results to the City Engineer's Office.
- D. Modified Proctor: Travel to local site; obtain sample of material and determine the moisture/density curve using the modified proctor test. Provide written documentation of the results to the City Engineer's Office.
- E. Sieve Analysis of Crushed Base: Travel to local site; obtain sample of material, and sieve material to compare with the requirements contained in the Montana Public Works Standard Specifications (MPWSS), Fifth Edition, *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.

- F. Sieve Analysis and Moisture Content of Chip Seal Material: Travel to local site; obtain sample of chips, sieve and inspect material to compare with the requirements of the (MPWSS), Fifth Edition, *as modified by City of Billings*, and determine the moisture content of the sample. Provide written documentation of the results to the City Engineer's Office.
- G. Marshall Density: Travel to local site; obtain sample of material, and determine Marshall Density, flow, stability, and voids. Provide written documentation of the results to the City Engineer's Office.
- H. Rice Density: Travel to local site; obtain sample of material, and determine Rice Density, flow, stability, and voids. Provide written documentation of the results to the City Engineer's Office.
- I. Extraction Gradation of Asphalt Material: Travel to local site; obtain sample of asphalt material, extract the oil from the aggregate, sieve and inspect the aggregate to compare with the requirements contained in the (MPWSS), Fifth Edition, *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.
- J. Asphalt Core Analysis: Travel to local site; obtain three (3) cores of new asphalt mat, and test for compliance with contract specifications. Provide written documentation of the results to the City Engineer's Office.
- K. Atterberg limits: Travel to local site, obtain samples of material, and determine the liquid limit, the plastic limit, and the plasticity index. Provide written documentation of the results to the City Engineer's Office.
- L. Density Testing: Travel to local site, test either compacted subgrade or base material, or compacted asphalt overlay/mat materials. All testing shall be completed using a Troxler nuclear density gauge, or similar nuclear gauge. Provide written documentation of the results to the City Engineer's Office.
- M. Concrete Batch Plant Inspection: Travel to area plant; inspect plant facilities and operational procedures, plant equipment, and concrete mixer tracks for compliance with the Montana Public Works Standard Specifications and the "National Ready-Mix Concrete Association" checklist. Sample and sieve the concrete aggregates used for compliance with the (MPWSS), Fifth Edition, *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.
- N. Asphalt Batch Plant Inspection: Travel to area plant; inspect plant facilities and operational procedures, plant equipment, and scales for compliance with the Montana Public Works Standard Specifications and the "Asphalt Institute's Manual (MS-22)" checklist. Personnel responsible for asphalt plant inspection must familiarize themselves with this manual. Sample and sieve the aggregates used for compliance with the (MPWSS), Fifth Edition *as modified by City of Billings*. Provide written documentation of the results to the City Engineer's Office.

- O. Standard Test Method for CBR: Travel to local site; obtain samples of material, perform tests in accordance with ASTM D1883-05. Provide written documentation of the results to the City Engineer's Office.
- P. Mortar Bar Expansion Test: Travel to local site; obtain samples of material, cast at least four (4) bars in accordance with ASTM Guidelines, store, cure, and test bars in accordance with ASTM C 227. Provide written documentation of the results to the City Engineer's Office.
- Q. Geophysical Investigations. Develop specific scope of work and fee with City personnel. Travel to test site, obtain samples as agreed, sample and perform tests as found in the scope of work. Provide written test results, summary or report as agreed to the City Engineer's Office.

Appendix B

Methods and Times of Payment

Section 1. Payments for Basic Services.

Billings shall authorize payment to the Consultant for testing services performed under Appendix A of this Agreement. Payment shall be due the Consultant upon receipt of the Consultant's invoice, said invoice being proportioned to the tests completed by the Consultant.

A. For testing services rendered, Appendix A, the Consultant shall be paid the following amounts:

Item	Unit	Terracon, Inc. Unit Price
1. Concrete Cylinder Testing	Each	155.00
2. Concrete Beam Testing	Each	290.00
3. Standard Proctor	Each	125.00
4. Modified Proctor	Each	155.00
5. Sieve Analysis of Crushed Base	Each	78.00
6. Sieve Analysis and Moisture Content of Chip Seal Material	Each	85.00
7. Marshall Density w/Rice	Each	200.00
8. Rice Density	Each	90.00
9. Extraction-Gradation of Asphalt Material	Each	190.00
10. Asphalt Core Analysis	Each	240.00
11. Atterberg Limits	Each	72.50
12. Density Testing	Hour	48.00
13. Concrete Batch Plan Inspection	Per plant/facility	2000.00*
14. Asphalt Batch Plant Inspection	Per plant/facility	2000.00*
15. Standard Test Method for CBR	Each	325.00
16. Mortar Bar Expansion Test	Each	900.00
17. Geophysical Investigations	Each	Negotiated price as mutually agreed based on specific services provided

* Assumes truck inspection to be included with plant inspection

The cost of Professional Liability Insurance coverage is to be included in the Consultant's rates listed in the table above.

Materials, sub-consultants and other out-of-pocket expenses will be reimbursed at cost. No mark up or "handling fee" is allowed for reimbursement.

Section 2. Payments for Extra Services when Authorized by Billings.

A. It is understood that the Consultant will not perform any work that the Consultant deems outside the scope found in Appendix A prior to receiving written approval from Billings. Any such work performed, even if requested by Billings, shall not be paid by Billings and any claims for such work shall be denied. In the event scope of work issues arise, the Consultant shall immediately discuss them with the Project Manager for Billings.

Section 3. Corrections.

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

Appendix C

Additional Services of Consultant

Extra Services of the Consultant will be paid only with written prior authorization by Billings.

- A. Testing services beyond the scope and intent of this Agreement may be done under a negotiated fee based on the specific scope of testing services performed.

Appendix D

Schedule of Professional Fees

Not used. Appendix B contains a table of fees to be used for this contract.

Appendix E

Project Schedule

Based on a notice to proceed by Billings for each test, the completion time and verbal reporting shall be completed as follows:

A. Routine Test Results

1. Fresh Concrete Tests - Within 15 minutes of sampling.
2. Compressive Strength Tests – Formal test data mailed on the day of the 7-day break.
3. Standard Proctor – 4 hours after sampling, depending on soil type, and as sampled moisture content.
4. Sieve Analysis of Road Material – 3 hours after sampling.
5. Sieve Analysis and Moisture Content of Chip Seal Material – 3 hours after sampling.
6. Marshall Density
 - a) Marshall density and voids – 3 hours after sampling.
 - b) Marshall stability and flow – 4 hours after sampling.
7. Extraction-Gradation – 4 hours after sampling.
8. Asphalt Core Analysis
 - a) 2 hours to core and patch holes.
 - b) 1 hour for density and voids determination.
9. Atterberg Limits – 6 hours after sampling.
10. Density Testing – Immediate results at site, formal results next business day.
11. Concrete and Asphalt Batch Plant Inspection – 1 day to inspect each plant and perform tests, 2 day for report of findings.
12. Rice Specific Gravity – 1 1/2 hours
13. Flexural Strength Tests – Formal test data mailed on the day of the 7-day break.
14. CBR Tests – 1 week minimum
15. Geophysical Investigations – Completion and reporting times per the specific scope and agreement

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

Appendix F
Certificate(s) of Insurance

(Attach Certificate(s) of Insurance)

Page 1 of 1

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

E

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Project Development and Construction Agreements between Montana Department of Transportation and City of Billings for the North Bench Boulevard Corridor-Billings and the Zimmerman Trail-Billings Urban System Roadway Projects

DEPARTMENT: Public Works

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

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation is requesting that the City approve two (2) Project Development and Construction Agreements between the State of Montana and the City of Billings. The first Agreement is for construction of the North Bench Boulevard Corridor-Billings urban system roadway, which begins at Lake Elmo Drive and extends north to Main Street/Highway 312. The second Agreement is for construction of the Zimmerman Trail-Billings urban system roadway, which begins at Rimrock Road and extends north to Montana Highway 3. Both of these Project Development and Construction Agreements are standard form agreements from MDT and are required before Federal Highway Funds can be expended on the projects. Once the City has approved these agreements, selection of an engineer will take place, and the design of the projects will begin. Construction of both projects is not expected to begin any earlier than summer of 2009.

FINANCIAL IMPACT: The improvements being made under the Bench Boulevard Corridor project will be paid for by the State of Montana at no cost to the City. The City is responsible for 13.42% of the \$7,000,000 (\$939,400) for the improvements being made under the Zimmerman Trail Project. The Zimmerman Trail Project was approved in the current CIP, and will be funded through City Arterial Fees, Gas Tax Funds, and Storm Drain Funds.

RECOMMENDATION

Staff recommends that Council approve both Project Development and Construction Agreements between the State of Montana and the City of Billings for construction of the North Bench

Boulevard Corridor-Billings urban system roadway and the Zimmerman Trail-Billings urban system roadway.

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

ATTACHMENTS

- A. Project Development & Construction Agreement for N. Bench Boulevard Corridor
- B. Project Development & Construction Agreement for Zimmerman Trail

Attach A

PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into, by and between the State of Montana, acting by and through its Department of Transportation (MDT), hereinafter called the State, and the City of Billings, a Montana municipal corporation, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, the City proposes to develop and construct an urban system roadway project, titled N BENCH BLVD CORRIDOR - BLGS. The project location is illustrated in Exhibit "A". The scope of work includes widening and reconstructing this urban collector to 3 lanes to incorporate a center turn lane and wider shoulders. Sidewalk, curb and gutter, bicycle accommodations, landscaping, lighting, and intersection improvements may also be done. The project is located on State Urban Route U-1036 beginning at Lake Elmo Drive (Reference Post 0.000) and extending north to Main Street/Highway 312 (Reference Post 3.090); and,

WHEREAS, the State and the City recognize the need to develop and construct such project, and are willing to share in the costs of the proposed project in accordance with this agreement; and,

WHEREAS, the project has been selected in accordance with the metropolitan planning procedures contained in 23 U.S.C. 134; and

WHEREAS, it is understood that all of the planned improvements are located on the Bench Boulevard Corridor, State Urban Highway System (U-1036), for which Transportation Improvements-Section 1934 funds have been provided through the federal transportation bill- SAFETEA LU; improvements occurring outside of this corridor are not eligible for these Transportation Improvements-Section 1934 funds based on this agreement; and

WHEREAS, the State is responsible for assuring that the planning, design, approvals and clearances, construction and maintenance of state and federally-designated highway system facilities provide for the benefit of the traveling public in a safe and efficient manner in accordance with Title 23 and Title 60 Montana Code Annotated (MCA); and,

WHEREAS, the Federal Highway Administration of the U.S. Department of Transportation (FHWA) will not participate in the development and construction of said project until and unless the City will agree to certain conditions, hereinafter set forth; and

WHEREAS, the City will develop the project, including engineering analysis, public involvement, design, environmental documentation, clearances, plans preparation, acquisition of all appropriate permits and the provision of other services required to complete the preconstruction and right-of-way phases; and,

WHEREAS, the financial participation for the improvements will be financed in part with Federal Funds. The matching fund percentages will be 86.58% Federal Transportation Improvements-Section 1934 funds and 13.42% State funds. The applicable federal-aid participation rate for this project is 86.58% for all eligible phases; and

WHEREAS, any expenditures occurring after July 1, 2007, will be subject to an indirect cost rate established by MDT and the Federal Highway Administration through a federally approved indirect cost plan; and

WHEREAS, it is understood that \$17,000,000 in Transportation Improvements – Section 1934 funds have been made available for projects on Bench Boulevard, specifically CM 1099 (32) – 6th Avenue North-Bench and the project covered by this agreement, North Bench Boulevard Corridor – Billings, it is further understood that the Federal share in the total cost of both projects will not exceed 86.58% of the low bid, up to a maximum of \$17,000,000, less any congressionally approved adjustments, indirect costs, or project development costs without prior approval of the State. The City will pay all project development costs. The State will reimburse the City 86.58% of eligible costs and the applicable 13.42% of required federal-aid match. The City is responsible for 100% of all costs associated with the project which are not reimbursed by the federal government; and

WHEREAS, it is anticipated the State may incur some in-house preliminary engineering costs associated with the project development, plan review and construction bid package review (estimated at \$150,000) to be funded with Transportation Improvements-Section 1934 funds; and

WHEREAS, it is mutually agreed that a cooperative delineation and identification of duties and responsibilities of the parties is essential to the overall development and long-term maintenance of this project; and

WHEREAS, this document must be duly executed and on record with the State and Federal Highway Administration before the work contemplated can begin.

NOW, THEREFORE, the parties agree as follows:

A. PLANNING

Compatibility with Planning Documents/Processes

The City is responsible for assuring compatibility of the proposed project with the Urban area's local transportation process and local land use plan.

B. CONTACT

The MDT Billings District Administrator or his assignee will be the State's contact person for project coordination. The MDT Consultant Design Engineer or his assignee will be the State's contact person for project development, consultant selection, submission of correspondence and work products, invoicing, and contractual issues. Coordination between the City and the Consultant Design Engineer will be through the Billings District Administrator.

C. INVOICING

The City will submit reimbursement claims for project development costs to the State monthly for work completed during that period for which costs were incurred. The request will be accompanied by documentation substantiating the amount requested. The request will be sent in triplicate to:

MDT Consultant Design Engineer
Montana Department of Transportation
P O Box 201001
Helena, MT 59620-1001

D. ENVIRONMENTAL REVIEW

1. It is understood by all parties that in accordance with the Clean Air Act and the Transportation Conformity Rule (40 CFR 93.104) individual projects proposed for construction as a result of the environmental review and design work undertaken in this agreement must conform to the State (Air Quality) Implementation Plan (SIP) before they are adopted, accepted, approved, or funded by FHWA. This requirement necessitates that the project be in a fiscally constrained Transportation Plan and TIP. Before FHWA can sign the Record of Decision, which permits a project sponsor to proceed to further actions such as final design or construction, the revenues for the completion of the project through construction need to be identified in the fiscally constrained Plan and TIP.
2. It is further understood, that if a selected alternative cannot be fiscally constrained within the planning horizon, a logical subset can be selected and FHWA can sign a Record of Decision for that subset only, provided: it still meets the purpose and need statement; logical termini are selected; and the project provides independent utility. The FEIS will provide full disclosure of the preferred alternative and the partial, subset alternative if one exists. Preservation of corridors within Metropolitan Areas is not eligible for Federal aid funds if the construction project within the preserved corridor cannot be completed within the planning horizon.
3. The City will provide such documentation as necessary to comply with the National Environmental Policy Act (NEPA), 23 CFR 771, FHWA Technical Advisory T6630.8A, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the DOT Act, and all other applicable federal and state laws and regulations. The City is also responsible for obtaining all necessary permits in connection with the actions contemplated in this agreement and will submit all documents and analyses to the appropriate regulatory agencies for approvals. If 106 clearance is required, the City will provide the cultural report to the State and the State will obtain actual 106 clearance from the State Historic Preservation Office (SHPO).

4. FHWA, the State and City will cooperatively determine the necessary level of Environmental documentation for compliance with NEPA and other applicable state and federal laws.
5. The City will draft and provide an environmental document for this project in an electronic format. This document will be submitted by the City to the State for review and comment prior to sending the document to the Federal Highway Administration for approval.
6. The environmental analysis must address all required environmental concerns (cultural, biological, historical, hazardous materials, environmental justice, endangered species, etc.) and must demonstrate project level conformity where applicable. The environmental review must also include a hazardous waste audit on all anticipated right-of-way acquisitions.
7. The City will be solely responsible for any mitigation identified during the environmental review process and analyses, including any necessary cleanup of hazardous material problem sites revealed by the audit.
8. The State will review and provide guidance to the City in the development of the environmental documents and permit applications. The State will also support and seek an approval from FHWA after MDT approves the environmental document.
9. The City acknowledges that the environmental/NEPA process must be completed and approvals obtained prior to initiation of final design and right-of-way activities.

E. **DESIGN**

1. The City shall, in consultation with the State, be solely responsible for completing the design including final right-of-way and construction plans for the proposed project according to the provisions of this section.
2. The City will select the consultant for this project, with involvement and assistance from the State throughout the process, and in accordance with the Montana Department of Transportation's Consultant Services Procedures for Federal Aid Projects dated April 27, 1999. The City will allow the State to review and approve its consultant selection plan before executing the plan. The City will obtain the States final approval of its consultant selection process before negotiating and executing any contracts with the consultant.
3. The City will prepare and administer all consultant contracts in accordance with the Montana Department of Transportation's Consultant Services Procedures for Federal Aid Projects dated April 27, 1999. The City will obtain the State's review and approval of all consultant contracts and amendments before they are

executed. The State's standard consultant contract should be referred to as a guide. The State will provide assistance to the City upon request.

4. The City and any consultant(s) and/or contractor(s) it may employ will design the project in US Customary units to the State's urban standards and to serve design-year traffic. Specific project geometrics (including ADA requirements) and detailed design will be in accordance with the MDT geometric Design Standards (AASHTO), MDT Road Design Manual, and other applicable MDT manuals and guidelines.
5. The City and any consultant(s) and/or contractor(s) it may employ will create all design on a CADD system using the State's current version of GeoPak and Microstation software. No conversion or translations will be allowed.
6. The City and any consultant(s) and/or contractor(s) it may employ will utilize the State's guidelines for level assignments in CADD. All information on the plans will be placed on the assigned levels. Production of the Roadway and Right-of-Way plans will follow the State's standard CADD operations procedure. All material generated on the CADD system is required with the final submittal. All plan submittals at all stages of project development will consist of seven sets of hard copies of the plans accompanied by a disk containing the appropriate GeoPak and Microstation computer files for the submitted plan information.
7. The City will be responsible for establishing a project development schedule compatible with the State's OPX2 project development software that provides for State oversight and review. The State's Consultant Project Flow Chart and activities will be used as a guideline. The City will obtain the State's approval of the project schedule prior to initiating development of the project. The City will provide status reports on the schedule and project development on a monthly basis so the State can monitor the project on its OPX2 project development software. If in the opinion of the State the project gets behind schedule, the City will hold a project schedule meeting with its consultant and the State to address the issues and re-develop a mutually agreed upon project development schedule.
8. The State will review the plan package and, if found acceptable, approve individual submissions and the overall project, to assure all appropriate design standards are met. The following deliverable (submissions), where appropriate based upon scope of project, must be included in the schedule: Scoping Meeting Document, Preliminary Field Review and Report, Environmental Document with supporting studies, Scope of Work Report, Alignment & Grade Review and Report, Plan-in-hand Review and Report, Final Plan Review and Report, Right-of-Way and Utility Plans, Contract Plans Submittal, and/or other elements as appropriate.
9. The City will provide to the State for approval an original signed and stamped set of design, detailed plans, specification and estimates that are in final approvable

form. The plans and specifications for construction of the project will be in accordance with the applicable State accepted highway design standards and specifications. The City will provide the original set of project plans in packages appropriately prepared to allow for tracking the funding sources herein identified.

10. The City will provide the actual reports but the State will provide information that is normally provided for project development purposes such as existing data currently in its possession, technical requirements and assistance necessary for the development, completion and approval of the following design elements:
 - a. Traffic Studies
 - b. Hydraulic Studies
 - c. Geotechnical/Surfacing Studies
 - d. Design exceptions,and/or other appropriate elements dependent upon the complexity of the project.
11. The State will assist in obtaining the necessary written approvals from FHWA and concurrence as needed from the Transportation Commission.

F. RIGHT-OF-WAY ACQUISITION

1. The City is solely responsible to independently acquire good and sufficient title to, in the name of the State of Montana, all right-of-way needed for the overall project. The State will provide appraisal review service. In acquiring right-of-way the City must follow all requirements of the Uniform Relocation Assistance and Real Property Acquisition Act and all procedures found in the MDT Right-of-Way Manual.
2. If the Consultant selected by the City is not experienced with MDT's CADD procedures for right-of-way plans, MDT's Right-of-Way Bureau will provide a four-hour class on those procedures. The City will ensure that any consultant personnel working on the project's right-of-way plans that are not familiar with MDT's procedures attend the class. New English CADD procedures have been developed for preparation of Right-of-Way plans.
3. The City will strive to acquire a fee simple interest in the right-of-way for this project. If the City cannot acquire fee simple interest, the City may pursue a permanent right-of-way easement under applicable state and federal laws and with consent of the State.
4. If condemnation is required to obtain right-of-way, the City is solely responsible for condemnation of property interest. The State will neither initiate nor participate voluntarily in any condemnation of property interest nor exercise its right of eminent domain.
5. The City also acknowledges that according to federal regulations, if right-of-way is donated to a project, the value of the right-of-way can only be credited after the

project is programmed. Donated Right-of-Way must be appraised to determine value of credit. Right-of-Way or easement must be donated by private entities into public ownership or purchased from private entities with non-federal funds and placed in public ownership by deed or a public easement. No other contributions or services will be credited.

6. If new Right-of-Way is acquired, the City will certify, in writing, to MDT, prior to bid letting, that the Right-of-Way has been secured in conformance with the Uniform Act. The certification shall also state that the City has the right to remove or demolish any improvements which remain on the Right-of-Way and which are in conflict with the contemplated construction.

G. UTILITIES

1. The city will be responsible for performing subsurface utility engineering and preparing utility relocation plans.
2. The State will be responsible for negotiating and preparing the necessary agreements with utility companies and insuring that all conflicting utilities are relocated or adjusted as needed. The State will pay for all utility relocation costs. The State will advise the City as to the status of negotiations regarding utilities.
3. The City acknowledges that project costs associated with drainage facilities will be paid for in accordance with MDT's Storm Drain Policy which states that only the highway portion of storm water drainage systems associated with the transportation improvement is eligible for state and federal funding.
4. The City will examine its long-range plans for the area traversed by the project with respect to water and sanitary sewer conditions and needs. Prior to project construction, the City will replace those facilities that are located under the proposed project and are in such a condition that they could be expected to leak or require replacement within twenty years after the estimated completion date of the proposed project. Prior to project construction, the City will provide water and sewer service, including "stubs", to all areas that will be serviced from beneath the project in the foreseeable future.
5. The City will advise the utility companies responsible for water, power, gas, phone, etc., of the future plans for the area and will encourage the utility companies to provide any underground utility additions, adjustment, or replacements anticipated to be needed within twenty years after the estimated completion date of the proposed project.

H. BIDS AND CONSTRUCTION ADMINISTRATION

1. Once all approvals, clearances and permits are obtained, the State will bid, award and administer the construction contract in accordance with normal MDT procedures including obtaining concurrence in the award from FHWA.
2. The State will not let the project to contract without the City's concurrence if the bid price exceeds the available funds or exceeds the engineer's estimate by more than 10%. Additionally the State will obtain the City's concurrence before approving change orders over \$50,000 or for any amount that would negatively impact a designated City fund balance.

I. MAINTENANCE

The City will be responsible for routine and long-term maintenance of this project as defined in Title 60, Montana Code Annotated (MCA).

J. OTHER

1. **Nondiscrimination.** The City and any consultant(s) and/or contractor(s) it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) requirements and Americans with Disabilities Act (ADA) as more fully stated in the attached EXHIBIT B.
2. **Access to Records.** That the City will retain project related records and documents for a period of three years after the closing of the project and will allow inspection of all work and project related records by the personnel or agents of the State and FHWA.
3. **Governing Law.** This agreement shall be governed by laws of the State of Montana. Venue for any litigation will be in Lewis and Clark County, State of Montana except for litigation necessary for Right-of-Way Acquisition pursuant to paragraph E 4 by the City, when venue shall be Yellowstone County, Montana. In case of conflict between the obligation imposed by this agreement and Montana law, then Montana law will control.
4. **Modification and Amendment.** This agreement may be modified or amended, in writing, by the mutual agreement of the parties involved up until award of the contracts for the associated roadway projects. Such changes may develop from engineering analysis, public input or federal statutory/regulatory changes. The state funding commitments cannot be changed without Transportation Commission approval.

5. Complementary Agreements. The signatories of the agreement may enter into separate agreements during the development of the proposed project. Any such agreements will not supersede this agreement.
6. Termination. Both the State and the City agree to move in an efficient and expeditious manner towards development of the proposed project. Either party may terminate this agreement and all obligations hereunder, with 30-day notice in writing to the other party of the intention to do so. This agreement may not be terminated once contract or contracts have been awarded for construction of the associated roadway projects. If the City terminates project development at any time, it will reimburse the State for any and all costs incurred by the state up to the date of stoppage.
7. Hold Harmless. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of Department employees, the City agrees to protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them as a result of errors or omissions in design and/or plans and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its design, maintenance and use.

This agreement shall be binding on both parties, the heirs, successors, personal representatives and assigns of either party.

IN WITNESS WHEREOF, the Director of Transportation or his authorized representative has signed on behalf of the State of Montana and the Mayor of the City of Billings on behalf of the City of Billings has signed and affixed hereto the seal of the City.

DATED this _____ day of _____, 2006

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

Jim Lynch
Director of Transportation

By 
Loran Frazier, P.E., Administrator-Engineering Division

APPROVED AS TO FORM

Local Agency Official

BY

City Attorney

Mayor Charles F. Tooley

I, _____, Clerk of the City of Billings, hereby certify that the above agreement was regularly adopted by the City Council of the City of Billings at a meeting held on the _____ day of _____, 2006; and that the City Council of the City of Billings authorized the _____ to sign this agreement on behalf of the Council

(Signature)

APPROVED FOR LEGAL CONTENT



MDT Legal Counsel

APPROVED FOR CIVIL RIGHTS CONTENT



MDT Civil Rights Bureau

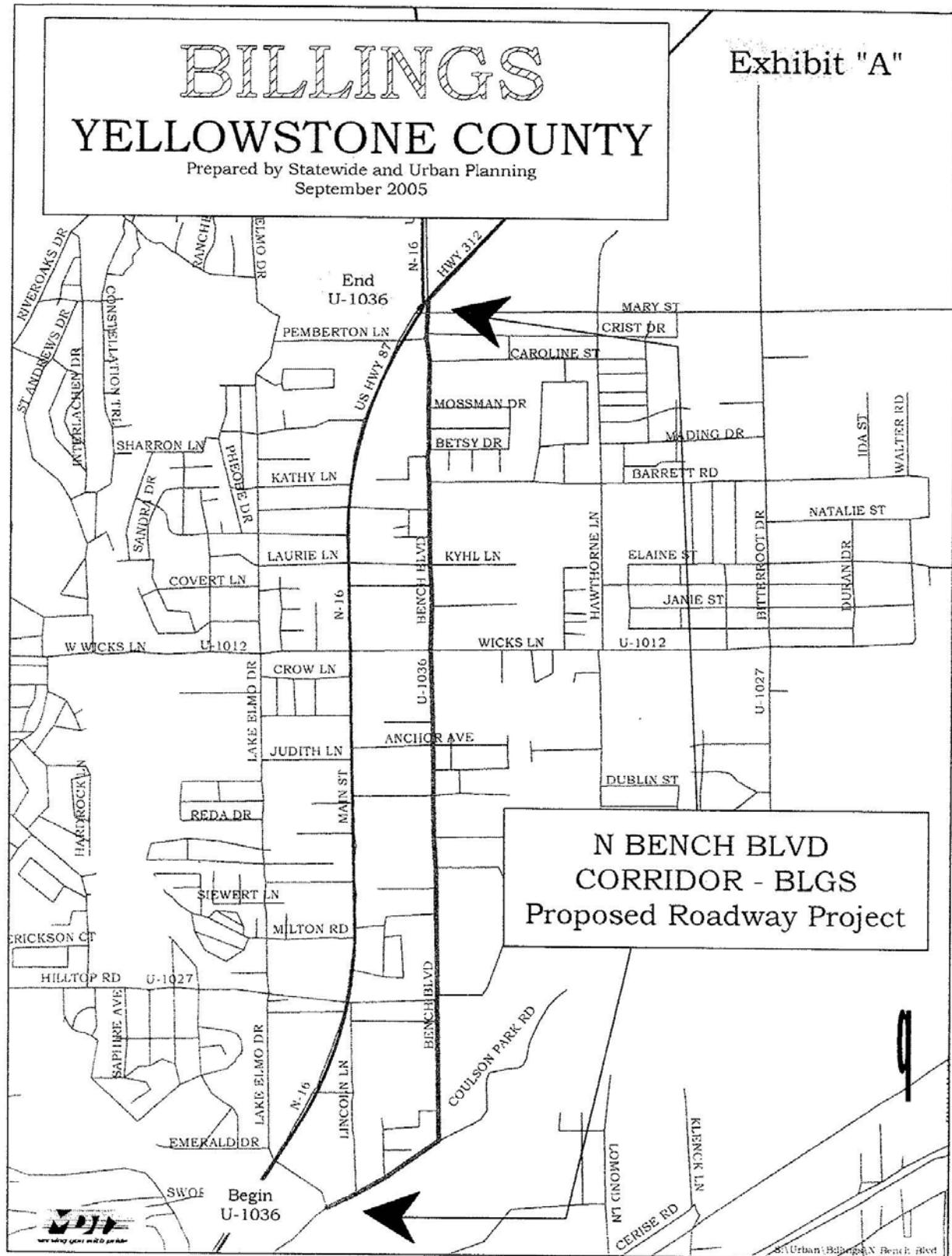


EXHIBIT B

During the performance of this Agreement, the LOCAL AUTHORITIES (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) **Compliance with Regulations:** The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) **Nondiscrimination:** The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) **Information and Reports:** The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a

result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "**The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party.**"
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

Attach B

PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT, made and entered into, by and between the State of Montana, acting by and through its Department of Transportation (MDT), hereinafter called the State, and the City of Billings, a Montana municipal corporation, hereinafter called the City.

WITNESSETH:

THAT, WHEREAS, the City proposes to develop and construct an urban system roadway project, titled ZIMMERMAN TRAIL-BLGS. The project location is illustrated in Exhibit "A". The scope of work includes widening and reconstructing this urban collector to 3 lanes to incorporate an additional ascending lane and wider shoulders. Bicycle and pedestrian accommodations may also be done. The project is located on State Urban Route U-1001 beginning at Rimrock Road (Reference Post 0.000) and extending north to Montana 3 (National Highway System Route 53) (Reference Post 0.990); and,

WHEREAS, the State and the City recognize the need to develop and construct such project, and are willing to share in the costs of the proposed project in accordance with this agreement; and,

WHEREAS, the project has been selected in accordance with the metropolitan planning procedures contained in 23 U.S.C. 134; and

WHEREAS, it is understood that all of the planned improvements are located on Zimmerman Trail, State Urban Highway System (U-1001), for which High Priority Projects-Section 1702 funds have been provided through the federal transportation bill-SAFETEA LU; improvements off of this roadway are not eligible for these High Priority Projects-Section 1702 funds based on this agreement; and

WHEREAS, the State is responsible for assuring that the planning, design, approvals and clearances, construction and maintenance of state and federally-designated highway system facilities provide for the benefit of the traveling public in a safe and efficient manner in accordance with Title 23 United States Code (USC) and related federal regulations and guidance and Title 60 Montana Code Annotated (MCA); and,

WHEREAS, the Federal Highway Administration of the U.S. Department of Transportation (FHWA) will not participate in the development and construction of said project until and unless the City will agree to certain conditions, hereinafter set forth; and

WHEREAS, the City will develop the project, including engineering analysis, public involvement, design, environmental documentation, clearances, plans preparation, acquisition of all appropriate permits and the provision of other services required to complete the preconstruction and right-of-way phases; and,

WHEREAS, the financial participation for the improvements will be financed in part with Federal Funds, the matching fund percentages will be 86.58% Federal High Priority Projects- Section 1702 funds and 13.42% City funds. The applicable federal-aid participation rate for this project is 86.58% for all eligible phases; and

WHEREAS, any expenditures occurring after July 1, 2007, will be subject to an indirect cost rate established by MDT and the Federal Highway Administration through a federally approved indirect cost plan; and

WHEREAS, it is understood that the Federal share in the costs will not exceed 86.58% of the low bid, up to a maximum of \$7,000,000, less any congressionally approved adjustments, indirect costs, and project development costs without prior approval of the State. The City will pay all project development costs. The State will reimburse the City 86.58% of eligible federal-aid costs and the City is responsible for the 13.42% of required federal-aid match. The City is responsible for 100% of all costs associated with the project which are not reimbursed by the federal government; and

WHEREAS, it is anticipated that State will incur approximately \$100,000 (estimated) in-house preliminary engineering costs associated with the project development, plan review, and construction bid package review, it is agreed that these preliminary engineering costs will be funded with 86.58% Federal High Priority Projects – Section 1702 funds and 13.42% City funds; and,

WHEREAS, it is mutually agreed that a cooperative delineation and identification of duties and responsibilities of the parties is essential to the overall development and long-term maintenance of this project; and

WHEREAS, this document must be duly executed and on record with the State and Federal Highway Administration before the work contemplated can begin;

NOW, THEREFORE, the parties agree as follows:

A. PLANNING

Compatibility with Planning Documents/Processes

The City is responsible for assuring compatibility of the proposed project with the Urban area's local transportation process and local land use plan.

B. CONTACT

The MDT Billings District Administrator or his assignee will be the State's contact person for project coordination. The MDT Consultant Design Engineer or his assignee will be the State's contact person for project development, consultant selection, submission of correspondence and work products, invoicing, and contractual issues. Coordination between the City and the Consultant Design Engineer will be through the Billings District Administrator.

C. INVOICING

The City will submit reimbursement claims for project development costs to the State monthly for work completed during the period for which costs were incurred. The request will be accompanied by documentation substantiating the amount requested. The request will be sent in triplicate to:

MDT Consultant Design Engineer
Montana Department of Transportation
P O Box 201001
Helena, MT 59620-1001

D. ENVIRONMENTAL REVIEW

1. It is understood by all parties that in accordance with the Clean Air Act and the Transportation Conformity Rule (40 CFR 93.104) individual projects proposed for construction as a result of the environmental review and design work undertaken in this agreement must conform to the State (Air Quality) Implementation Plan (SIP) before they are adopted, accepted, approved, or funded by FHWA. This requirement necessitates that the project be in a fiscally constrained Transportation Plan and TIP. Before FHWA can sign the Record of Decision, which permits a project sponsor to proceed to further actions such as final design or construction, the revenues for the completion of the project through construction need to be identified in the fiscally constrained Plan and TIP.
2. It is further understood, that if a selected alternative cannot be fiscally constrained within the planning horizon, a logical subset can be selected and FHWA can sign the Record of Decision for that subset only, provided: it still meets the purpose and need statement; logical termini are selected; and the project provides independent utility. The FEIS will provide full disclosure of the preferred alternative and the partial subset alternative if one exists. Preservation of corridors within Metropolitan Areas is not eligible for Federal Aid funds if the construction project within the preserved corridor cannot be completed within the planning horizon.
3. The City will provide such documentation as necessary to comply with the National Environmental Policy Act (NEPA), 23 CFR 771, FHWA Technical Advisory T6630.8A, Section 106 of the National Historic Preservation Act (NHPA), Section 4(f) of the DOT Act, and all other applicable federal and state laws and regulations. The City is also responsible for obtaining all necessary permits in connection with the actions contemplated in this agreement and will submit all documents and analyses to the appropriate regulatory agencies for approvals. If 106 clearance is required, the City will provide the cultural report to the State and the State will obtain actual 106 clearance from the State Historic Preservation Office (SHPO).

4. FHWA, the State and City will cooperatively determine the necessary level of Environmental documentation for compliance with NEPA and other applicable state and federal laws.
5. The City will draft and provide an environmental document for this project in an electronic format. This document will be submitted by the City to the State for review and comment prior to sending the document to the Federal Highway Administration for approval.
6. The environmental analysis must address all required environmental concerns (cultural, biological, historical, hazardous materials, environmental justice, endangered species, etc.) and must demonstrate project level conformity where applicable. The environmental review must also include a hazardous waste audit on all anticipated right-of-way acquisitions.
7. The City will be solely responsible for any mitigation identified during the environmental review process and analyses, including any necessary cleanup of hazardous material problem sites revealed by the audit.
8. The State will review and provide guidance to the City in the development of the environmental documents and permit applications. The State will also support and seek an approval from FHWA after MDT approves the environmental document.
9. The City acknowledges that the environmental/NEPA process must be completed and approvals obtained prior to initiation of final design and right-of-way activities.

E. DESIGN

1. The City shall, in consultation with the State, be solely responsible for completing the design including final right-of-way and construction plans for the proposed project according to the provisions of this section.
2. The City will select the consultant for this project, with involvement and assistance from the State throughout the process, in accordance with the Montana Department of Transportation's Consultant Services Procedures for Federal Aid Projects dated April 27, 1999. The City will prepare and administer all consultant contracts. The State will review and approve the City's consultant selection procedures and agreements and provide assistance to the City upon request.
3. The City will prepare and administer all consultant contracts in accordance with the Montana Department of Transportation's Consultant Services Procedures for Federal Aid Projects dated April 27, 1999. The City will obtain the State's review and approval of all consultant contracts and amendments before they are

executed. The State's standard consultant contract should be referred to as a guide. The State will provide assistance to the City upon request.

4. The City and any consultant(s) and/or contractor(s) it may employ will design the project in US Customary units to the State's urban standards and to serve design-year traffic. Specific project geometrics (including ADA requirements) and detailed design will be in accordance with the MDT geometric Design Standards (AASHTO), MDT Road Design Manual, and other applicable MDT manuals and guidelines.
5. The City and any consultant(s) and/or contractor(s) it may employ will create all design on a CADD system using the State's current version of GeoPak and Microstation software. No conversion or translations will be allowed.
6. The City and any consultant(s) and/or contractor(s) it may employ will utilize the State's guidelines for level assignments in CADD. All information on the plans will be placed on the assigned levels. Production of the Roadway and Right-of-Way plans will follow the State's standard CADD operations procedure. All material generated on the CADD system is required with the final submittal. All plan submittals at all stages of project development will consist of seven sets of hard copies of the plans accompanied by a disk containing the appropriate GeoPak and Microstation computer files for the submitted plan information.
7. The City will be responsible for establishing a project development schedule compatible with the State's OPX2 project development software that provides for State oversight and review. The State's Consultant Project Flow Chart and activities will be used as a guideline. The City will obtain the State's approval the project schedule prior to initiating development of the project. The City will provide status reports on the schedule and project development on a monthly basis so the State can monitor the project on its OPX2 project development software. If in the opinion of the State the project gets behind schedule, the City will hold a project schedule meeting with the consultant and the State to address the issues and re-develop a mutually agreed upon project development schedule.
8. The State will review the plan package and, if found acceptable, approve individual submissions and the overall project, to assure all appropriate design standards are met. The following deliverable (submissions), where appropriate based upon scope of project, must be included in the schedule: Scoping Meeting Document, Preliminary Field Review and Report, Environmental Document with supporting studies, Scope of Work Report, Alignment & Grade Review and Report, Plan-in-hand Review and Report, Final Plan Review and Report, Right-of-Way and Utility Plans, Contract Plans Submittal, and/or other elements as appropriate.
9. The City will provide to the State for approval an original signed and stamped set of design, detailed plans, specification and estimates that are in final approvable

form. The plans and specifications for construction of the project will be in accordance with the applicable State accepted highway design standards and specifications. The City will provide the original set of project plans in packages appropriately prepared to allow for tracking the funding sources herein identified.

10. The City will provide the actual reports but the State will provide information that is normally provided for project development purposes such as existing data currently in its possession, technical requirements and assistance necessary for the development, completion and approval of the following design elements:
 - a. Traffic Studies
 - b. Hydraulic Studies
 - c. Geotechnical/Surfacing Studies
 - d. Design exceptions,and/or other appropriate elements dependent upon the complexity of the project.

11. The State will assist in obtaining the necessary written approvals from FHWA and concurrence as needed from the Transportation Commission.

F. RIGHT-OF-WAY ACQUISITION

1. The City is solely responsible to independently acquire good and sufficient title to, in the name of the State of Montana, all right-of-way needed for the overall project. The State will provide appraisal review service. In acquiring right-of-way the City must follow all requirements of the Uniform Relocation Assistance and Real Property Acquisition Act and all procedures found in the MDT Right-of-Way Manual.
2. If the Consultant selected by the City is not experienced with MDT's CADD procedures for right-of-way plans, MDT's Right-of-Way Bureau will provide a four-hour class on those procedures. The City will ensure that any consultant personnel working on the project's right-of-way plans that are not familiar with MDT's procedures attend the class. New English CADD procedures have been developed for preparation of Right-of-Way plans.
3. The City will strive to acquire a fee simple interest in the right-of-way for this project. If the City cannot acquire fee simple interest, the City may pursue a permanent right-of-way easement under applicable state and federal laws and with consent of the State.
4. If condemnation is required to obtain right-of-way, the City is solely responsible for condemnation of property interest. The State will neither initiate nor participate voluntarily in any condemnation of property interest nor exercise its right of eminent domain.
5. The City also acknowledges that according to federal regulations, if right-of-way is donated to a project, the value of the right-of-way can only be credited after the

project is programmed. Donated Right-of-Way must be appraised to determine value of credit. Right-of-Way or easement must be donated by private entities into public ownership or purchased from private entities with non-federal funds and placed in public ownership by deed or a public easement. No other contributions or services will be credited.

6. If new Right-of-Way is acquired, the City will certify, in writing, to MDT, prior to bid letting that the Right-of-Way has been secured in conformance with the Uniform Act. The certification shall also state that the City has the right to remove or demolish any improvements which remain on the Right-of-Way and which are in conflict with the contemplated construction.

G. UTILITIES

1. The city will be responsible for performing subsurface utility engineering and preparing utility relocation plans.
2. The State will be responsible for negotiating and preparing the necessary agreements with utility companies and insuring that all conflicting utilities are relocated or adjusted as needed. The State will pay for all Utility relocation costs. The State will advise the City as to the status of negotiations regarding utilities.
3. The City acknowledges that project costs associated with drainage facilities will be paid for in accordance with MDT's Storm Drain Policy which states that only the highway portion of storm water drainage systems associated with the transportation improvement is eligible for state and federal funding.
4. The City will examine its long-range plans for the area traversed by the project with respect to water and sanitary sewer conditions and needs. Prior to project construction, the City will replace those facilities that are located under the proposed project and are in such a condition that they could be expected to leak or require replacement within twenty years after the estimated completion date of the proposed project. Prior to project construction, the City will provide water and sewer service, including "stubs", to all areas that will be serviced from beneath the project in the foreseeable future.
5. The City will advise the utility companies responsible for water, power, gas, phone, etc., of the future plans for the area and will encourage the utility companies to provide any underground utility additions, adjustment, or replacements anticipated to be needed within twenty years after the estimated completion date of the proposed project.

H. BIDS AND CONSTRUCTION ADMINISTRATION

1. Once all approvals, clearances and permits are obtained, the State will bid, award and administer the construction contract in accordance with normal MDT procedures including obtaining concurrence in the award from FHWA.
2. The State will not let the project to contract without the City's concurrence if the bid price exceeds the available funds or exceeds the engineer's estimate by more than 10%. Additionally, the State will obtain the City's concurrence before approving change orders over \$50,000 or for any amount that would negatively impact a designated City fund balance.

I. MAINTENANCE

The City will be responsible for routine and long-term maintenance of this project as defined in Title 60, Montana Code Annotated (MCA). This provision does not preclude the City from performing maintenance through an exchange or other method.

J. OTHER

1. Nondiscrimination. The City and any consultant(s) and/or contractor(s) it may employ in pursuit of project completion will comply with applicable Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise (DBE) requirements and Americans with Disabilities Act (ADA) as more fully stated in the attached EXHIBIT B.
2. Access to Records. That the City will retain project related records and documents for a period of three years after the closing of the project and will allow inspection of all work and project related records by the personnel or agents of the State and FHWA.
3. Governing Law. This agreement shall be governed by laws of the State of Montana. Venue for any litigation will be in Lewis and Clark County, State of Montana except for litigation necessary for Right-of-Way Acquisition pursuant to paragraph E 4 by the City, when venue shall be Yellowstone County, Montana. In case of conflict between the obligation imposed by this agreement and Montana law, then Montana law will control.
4. Modification and Amendment. This agreement may be modified or amended, in writing, by the mutual agreement of the parties involved up until award of the contracts for the associated roadway projects. Such changes may develop from engineering analysis, public input or federal statutory/regulatory changes. The state funding commitments cannot be changed without Transportation Commission approval.

5. Complementary Agreements. The signatories of the agreement may enter into separate agreements during the development of the proposed project. Any such agreements will not supersede this agreement.
6. Termination. Both the State and the City agree to move in an efficient and expeditious manner towards development of the proposed project. Either party may terminate this agreement and all obligations hereunder, with 30-day notice in writing to the other party of the intention to do so. This agreement may not be terminated once contract or contracts have been awarded for construction of the associated roadway projects. If the City terminates project development at any time, it will reimburse the State for any and all costs incurred by the state up to the date of stoppage.
7. Hold Harmless. Except for any suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts or omissions or misconduct of Department employees, the City agrees to protect, indemnify, and save harmless the State and Department of Transportation against and from all claims, liabilities, demands, causes of action, judgments (with any costs and fees that might be awarded), and losses to them as a result of errors or omissions in design and/or plans and including any suits, claims, actions, losses, costs or damages of any kind, including the State and Department's legal expenses made against the State or Department by anyone arising out of, in connection with, or incidental to the project and its design, maintenance and use.

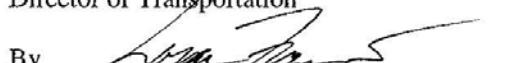
This agreement shall be binding on both parties, the heirs, successors, personal representatives and assigns of either party.

IN WITNESS WHEREOF, the Director of Transportation or his authorized representative has signed on behalf of the State of Montana and the Mayor of the City of Billings on behalf of the City of Billings has signed and affixed hereto the seal of the City.

DATED this _____ day of _____, 2006

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

Jim Lynch
Director of Transportation

By 
Loran Frazier, P.E., Administrator-Engineering Division

APPROVED AS TO FORM

Local Agency Official

City Attorney

BY _____
Mayor Ron Tussing

I, _____, Clerk of the City of Billings, hereby
certify that the above agreement was regularly adopted by the City Council of the
City of Billings at a meeting held on the _____ day of _____, 2006; and
that the City Council of the City of Billings authorized the _____ to
sign this agreement on behalf of the Council

(Signature)

APPROVED FOR LEGAL CONTENT



MDT Legal Counsel

APPROVED FOR CIVIL RIGHTS CONTENT



MDT Civil Rights Bureau

Exhibit "A"

BILLINGS

YELLOWSTONE COUNTY

Prepared by Statewide and Urban Planning Section
September 2005

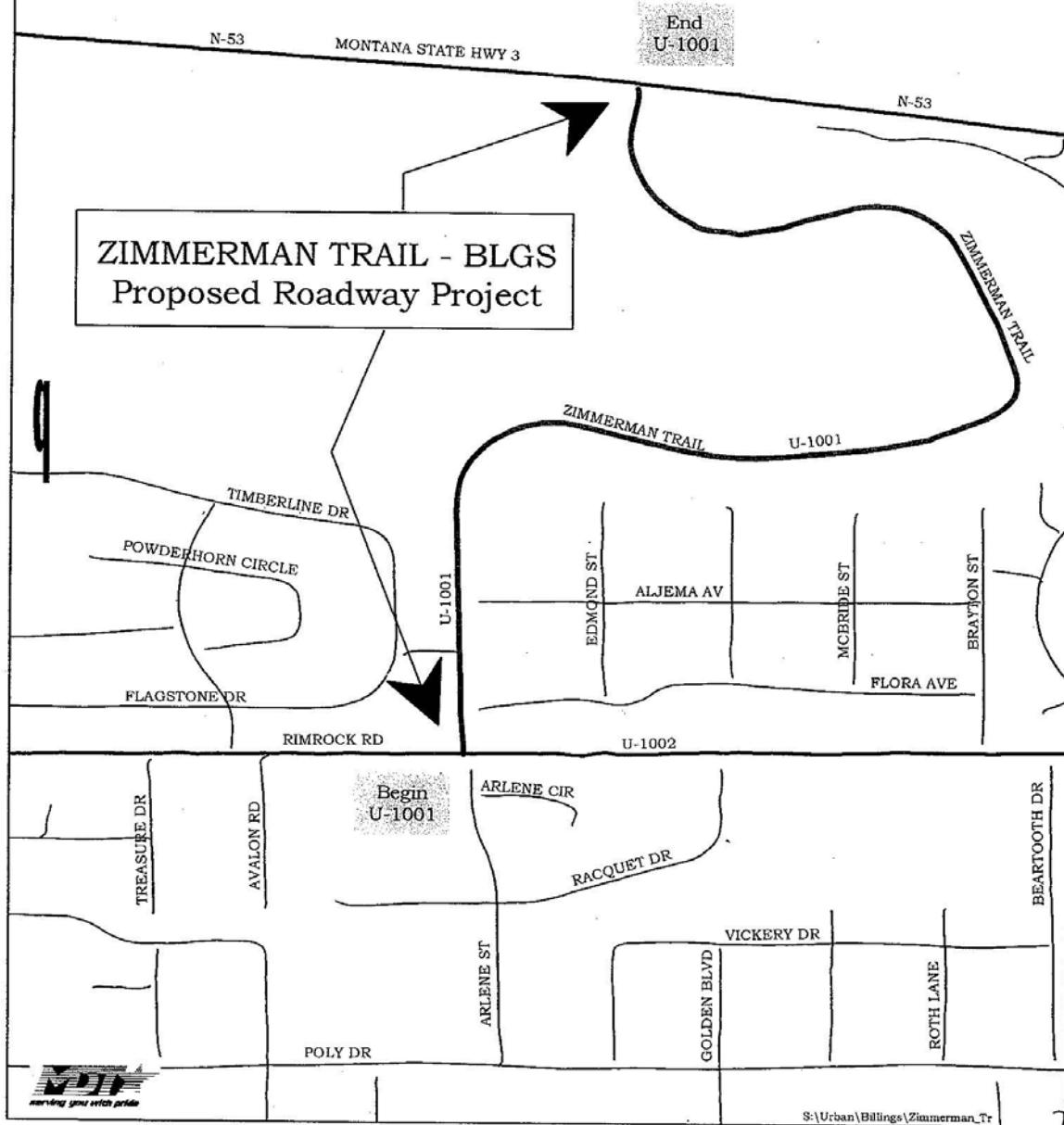


EXHIBIT B

During the performance of this Agreement, the LOCAL AUTHORITIES (hereafter in this Section "the Party"), for itself, its assignees and successors in interest, agrees as follows:

A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) **Compliance with Regulations:** The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) **Nondiscrimination:** The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) **Information and Reports:** The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
 - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
 - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a

result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

F

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Vacation of portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision

DEPARTMENT: Public Works/Engineering

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

PROBLEM/ISSUE STATEMENT: The City of Billings recently platted Arlene Subdivision out of the parcels purchased for Zimmerman Trail just south of Poly Drive. The subdivision plat dedicated the necessary right of way for Zimmerman Trail and split the remaining land into three developable parcels. The final plat was approved at the June 26, 2006, City Council Meeting. The City purchased the land for \$0.82 per square foot. The city has offered to sell the parcels and any unnecessary right of way to adjacent land owners at the same price the land was purchased (\$0.82 per square foot). The property owners of Lots 1, 2, and 4, Scott Subdivision have agreed to purchase the unnecessary right of way abutting their properties. This will put the property back on the tax rolls and relieve the city of its maintenance.

ALTERNATIVES ANALYZED:

1. Approve acknowledgement of petition to vacate the above-mentioned right-of-way and set a public hearing for August 14, 2006.
2. Do not approve acknowledgement of petition to vacate the right-of-way.

FINANCIAL IMPACT: The property owners of Lot 1, Mr. and Mrs. Nelson, are proposing to purchase 3,255 sf of right of way for \$2,669.10. The property owners of Lot 2, Mr. and Mrs. Reyes, are proposing to purchase 3,193 sf of right of way for \$2,618.26. The property owners of Lot 4, Mr. and Mrs. Sawatzke, are proposing to purchase 3,680 sf of right of way for \$3,017.60. The total value of the proposed vacated property to be paid to the city from the lot owners within Scott Subdivision is \$8,304.96.

RECOMMENDATION

Staff recommends that Council acknowledge the receipt of petitions to vacate portions of Zimmerman Trail abutting Lots 1, 2, and 4, Scott Subdivision and set a public hearing for August

14, 2006.

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

ATTACHMENT

A. Map Depicting Area to be Vacated

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

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Annexation Petition #06-11: Acknowledge receipt of Petition and Set a Public Hearing Date

DEPARTMENT: Planning and Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: Owners and petitioners, Jim Boyer and Paul Bromenshenk, are petitioning to annex a 36-acre parcel legally described as Tract 1 of Certificate of Survey 3273, into the City of Billings pursuant to Section 7-2-4600 of the Montana Code Annotated (MCA). The subject property is located on the west side of 46th Street West, south of Rimrock Road. 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 irrigated agricultural land and zoned Agricultural-Open Space. Upon annexation the property will convert to R-9600 zoning. At this meeting, the Council acknowledges receipt of the petition and sets a public hearing date for August 14, 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 by properties within the City limits to the east and north 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 August 14, 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

Petitioners: Jim Boyer & Paul Bromenshenk

Purpose of annexation: To Obtain City Services

Property included: Tract 1, Certificate of Survey 3273

Location: On the west side of 46th St. West, south of Rimrock Road

Total area: 36 acres

Current zoning: Agricultural Open Space

Current land use: Irrigated crop land

Future zoning: Residential (multiple zones)

Future land use: 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

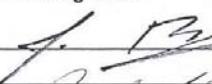
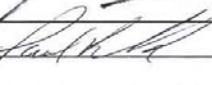
1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.
2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

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
_____	Jim Boyer		2810 Central Avenue Billings, MT 59102
_____	Paul Bromenshenk		4715 Grand Avenue Billings, MT 59106
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(continued on separate page)

Revised 6/99

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

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

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
River Rock Estates Subdivision being Tract 1 as shown on the attached Agricultural Exemption Exhibit.	D04709	West of 46 th Street between the Big Ditch and Hi-line Ditch	West Agricultural	Jim Boyer	2810 Central Avenue Billings, MT 59102	406/256-5454
River Rock Estates Subdivision being Tract 1 as shown on the attached Agricultural Exemption Exhibit.	D04709	West of 46 th Street between the Big Ditch and Hi-line Ditch	West Agricultural	Paul Bromenshenk	4715 Grand Avenue Billings, MT 59106	406/656-7173

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: _____ Received By: _____

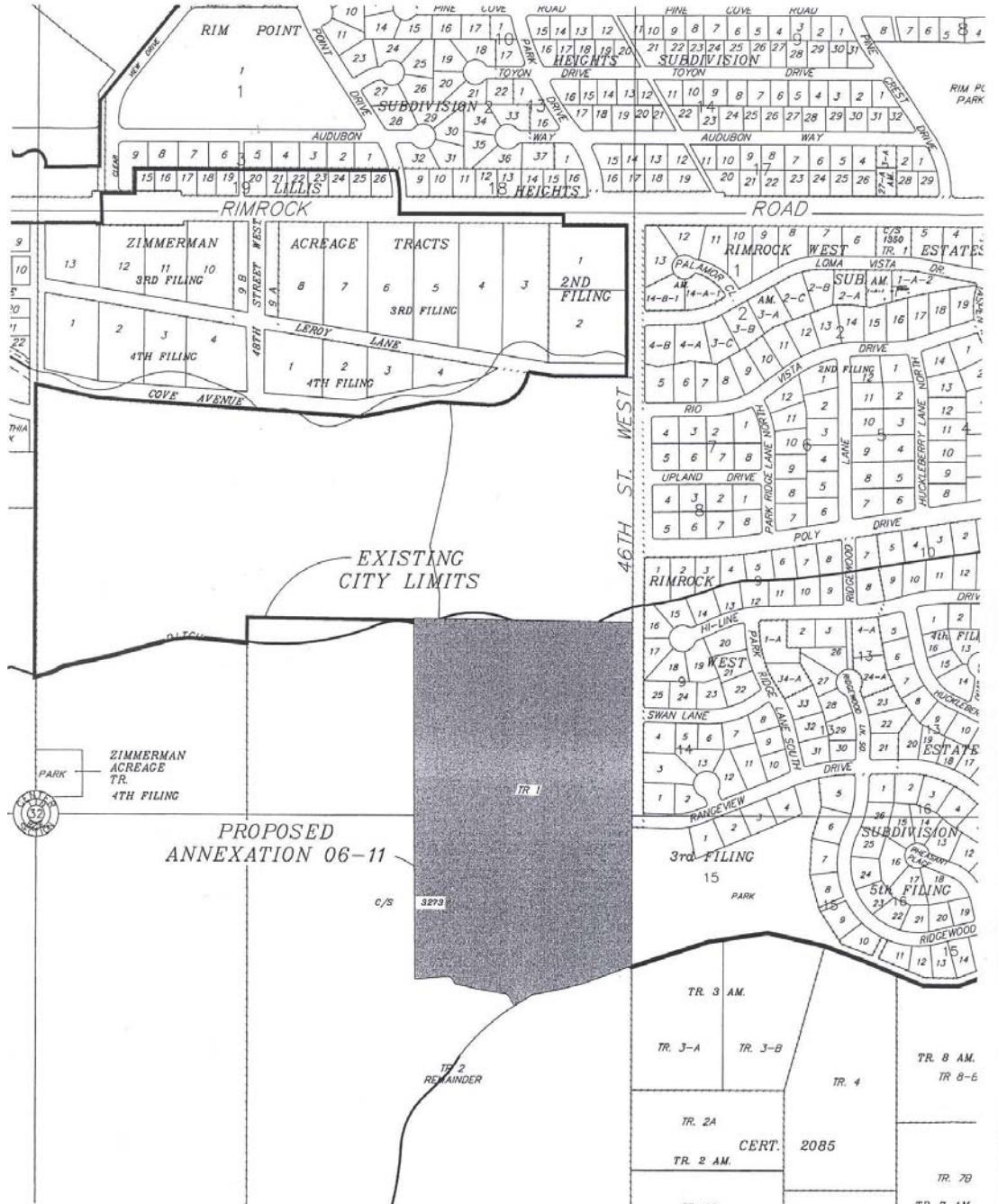
Received By: _____

Fee Paid: _____

Revised 6/99

ATTACHMENT C
Annexation Map

EXHIBIT A



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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Donations to Provide a Memorial Bench at the Downtown Billings Skate Park in Memory of Roger Stewart III

DEPARTMENT: Park, Recreation, and Public Lands

PRESENTED BY: Gene Blackwell, Interim Director, PRPL Department

PROBLEM/ISSUE STATEMENT:

The City of Billings Park, Recreation, and Public Lands has received donations from the family and friends (see attachment A) of Roger Stewart III who was tragically killed in an accident while on active duty with the Army in California. The donors' desire is to provide funds to establish a memorial bench at the Downtown Billings Skate Park in honor of Roger. Roger was an avid skateboarder and enjoyed spending time riding and being with his friends at the Skate Park. To date \$1,025.00 has been donated. The family of Roger has provided a bronze plaque to be mounted on the bench (see attachment B).

ALTERNATIVES ANALYZED:

- There is a strong need to provide seating for the participants and visitors at the Skate Park. A bench would be a fitting memorial to Roger and help to meet this need.
- Direct the donations to an alternative use.
- Decline the donation.

FINANCIAL IMPACT:

There will be no financial impact to the City. The funds available will be used to purchase and install the bench.

RECOMMENDATION

Staff recommends that Council graciously accept this generous donation to provide a memorial bench at the Downtown Billings Skate Park to recognize Roger Stewart III and publicly acknowledge this gift to the community.

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

ATTACHMENTS:

- A. Donor List**
- B. Plaque Wording**

Attachment A

Attachment B

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Resolution of Intent to Create Expanded Park Maint. District No. 4025, Rehberg Ranch Estates Subdivision, First Filing and Second Filings

DEPARTMENT: Department Of Parks, Recreation, & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: The Rehberg Ranch Estates Subdivision Park Maintenance District No. 4025 currently includes only the First Filing park area and properties. This action will expand the PMD to include the recently approved Second Filing in the Park Maintenance District. The Second Filing adds approximately 22.47 acres of dedicated park and public open space to the area to be maintained, and 705,138 square feet of assessable property to the district. Development and improvement of the park areas will be by the developer through private contract. The Park Maintenance District needs to be expanded at this time to provide for the maintenance of the public area and improvements in the Second Filing. As a condition of the Rehberg Ranch Estates Subdivision, Second Filing final plat approvals, the Subdivision Second Filing must be included in the subdivision park maintenance district. The Resolution of Intent to Create the District is the first step in the process to include all lots of Rehberg Ranch Estates Subdivision Second Filing in Park Maintenance District No. 4025.

ALTERNATIVES ANALYZED:

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

FINANCIAL IMPACT: The maintenance costs for the maintenance of the public area and improvements are estimated to be \$22,149.00 for the expanded district. The assessment rate for this amount is \$00.00713 per square foot in District 4025. The first year assessment for the 2nd Filing lots is shown in "Exhibit D" of the attached PMD documents for the coming year, and ranges from \$72 to \$130 for the single family residential lots.

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the August 28, 2006, City Council meeting.

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

ATTACHMENT

A: Resolution of Intent to Create Park Maintenance District No. 4025; and Exhibits A-D thereto attached.

INTRODUCTION

Approval of the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 for the maintenance of Rehberg Ranch Estates, First Filing and Second Filing public areas is the first step in creating the expanded Park Maintenance District by setting a date for the Public Hearing, considering the Resolution to Create the district, and to notifying the property owners included within the district of the intended action.

PROCEDURAL HISTORY

- The Rehberg Ranch Estates Subdivision, Second Filing plat has been approved and filed.
- The Resolution of Intent To Create the Park Maintenance District provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures and protest period and setting a date for a Public Hearing and Council consideration of the Resolution to Create the district at the August 28th, 2006, regular City Council meeting.

BACKGROUND

To provide the funding needed to develop and to maintain park areas in new subdivisions, subdivisions annexed and platted since 1982 have been required to develop parks and to create a Park Maintenance District to maintain them. It assures that there are well maintained parks in new areas of Billings without increasing the demand on the expenditures of the city general fund and to relieve the pressures on existing developed parks that adding new subdivisions to the city results in. The Rehberg Ranch Estates Subdivision Improvement Agreements call for the park improvements to be made and the Park Maintenance District to be created. The proposed expanded maintenance district will include all lots and blocks of Rehberg Ranch Estates, First Filing and Second Filing. Said lots shall eligible for assessment by square foot. All filings have or will have on file Waivers of Protest for the formation of the park maintenance district for all lots within Rehberg Ranch Estates, First Filing and Second Filing.

Approval of the Resolution of Intent to Create Expanded Park Maintenance District No. 4025 for Rehberg Ranch Estates, First Filing and Falcon Ridge Subdivision, First Filing, is the first step in

the creation process. The Resolution of Intent to Create the district provides for advertisement and mailing of a public notice to affected property owners explaining the protest and comment procedures. The Public Hearing and consideration of the Resolution to Create the district will take place at the August 28th, 2006, City Council Meeting.

ALTERNATIVES ANALYSIS

- Create the Park Maintenance District now to assure assessments can be collected in November 2006, to pay costs of maintenance for the spring and summer of 2006 as the public area development commences. The approved Subdivision Improvements Agreements for the Second Filing requires that it be included within the Park Maintenance District for maintaining it. This is the staff recommendation.
- Do not create the Park Maintenance District at this time.

STAKEHOLDERS

- The developers have agreed to the development and maintenance of the public areas in Rehberg Ranch Estates, First Filing and Second Filing.
- Billings residents would see increasingly heavy use of the existing developed parks and park facilities if not for the requirement that new subdivisions provide parks and improvements for their residents to mitigate that problem.

CONSISTENCY WITH ADOPTED POLICIES AND PLANS

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

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

RECOMMENDATION

Staff recommends Council approve the Resolution of Intent to Create the Expanded Park Maintenance District No. 4025 to provide a date for the Public Hearing and consideration of the Resolution to Create the District at the August 28, 2006, City Council meeting.

ATTACHMENT

A: Resolution of Intent to Create Park Maintenance District No. 4025; and Exhibits A-D thereto attached.

RESOLUTION NUMBER 06-

***A RESOLUTION DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO
EXPAND THE BOUNDARIES OF THE EXISTING SPECIAL
IMPROVEMENT MAINTENANCE DISTRICT NO. 4025 FOR THE
PURPOSE OF MAINTAINING THE EXISTING AND FUTURE PARK
IMPROVEMENTS IN REHBERG RANCH ESTATES SUBDIVISION,
FIRST FILING, TO INCLUDE REHBERG RANCH ESTATES
SUBDIVISION, SECOND FILING.***

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

Section 1. Proposed Expansion Of Extended Special Improvement Maintenance District
No. 4025: Intention to Expand the Boundaries of Existing Special Improvement Maintenance District.
The City proposes to maintain certain improvements to benefit certain property located in the City of Billings, Montana. The improvements consist of **the existing and future public area improvements located in Rehberg Ranch Estates Subdivision, First Filing plus any public area improvements located in Rehberg Ranch Estates Subdivision, Second Filing, installed by the developer, Parks Department and/or as part of a future Special Improvement District**, as more particularly described in Section 5. It is the intention of the Billings City Council to expand the boundaries of the existing Special Improvement Maintenance District No. 4025, created and established in the City under Montana Code annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, for the purpose of financing the maintenance costs for the landscaping and other public area improvements. The estimated annual costs for the maintenance of the improvements to be set by the Resolution of the Council each year.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as the Extended Special Improvement Maintenance District No. 4025 of the City of Billings, Montana.

Section 3. Boundaries of District. The boundaries of the District are to be extended to include the property depicted on a map attached as "Exhibit A" hereto (which is hereby incorporated herein and made a part hereof). The boundary of the extended District is more particularly described on "Exhibit B" hereto (which is hereby incorporated herein and made a part hereof), which boundary is designated and confirmed as the boundary of the District. A listing of each property to be added to the District is shown on "Exhibit C" hereto.

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits "A", "B" and "C" are hereby declared to be the Extended Special Improvement Maintenance District and the territory which will benefit and be benefited by the maintenance of the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, and will be assessed for a portion of the costs of the maintenance as described in Section 1.

Section 5. General Character of the Improvements to be Maintained. The general character of the Improvements to be maintained is as follows: native grasses, trees, shrubs, trails, irrigation system, irrigation system water services, drainageways, storm detention facilities, street lighting and signage, weed control, pest control, and other park equipment and public area improvements installed by the developer, Parks Department and/or as part of a future Special Improvement District.

Section 6. Assessment Methods: Property To Be Assessed. All properties within the District are to be assessed for a portion of the costs of maintaining the existing and future public area

improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, as specified herein. The costs of maintaining the Improvements shall be assessed against the benefiting property, based on the assessable area method of assessment described in Section 7-12-4162 through 7-12-4165, M.C.A., as particularly applied and set forth herein.

Section 7. Assessable Area. All properties in the District will be assessed for their proportionate share of the costs of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing. The total assessable area to be added to the District is **705,138** square feet bringing the total assessment area within the District to **3,108,220** square feet. The costs of maintaining the Improvements per square foot of assessable area for the current year shall be **\$0.00713** per square foot as shown in Exhibit "D" (which is hereby incorporated herein and made a part hereof).

Section 8. Payment of Assessments. The assessments for the costs of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing, shall be payable, as prescribed in Section 7-12-4162 through 7-12-4165, M.C.A.

Section 9. Public Hearing: Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property being added to Extended Special Improvement Maintenance District No. 4025 subject to assessment and taxation for the cost and expense of maintaining the existing and future public area improvements in Rehberg Ranch Estates Subdivision, First Filing to include Rehberg Ranch Estates Subdivision, Second Filing may make and file with the City Clerk until **5:00 p.m. M.D.T.**, on the expiration date of said 15-day period, **August 11th, 2006**, written protest against being included in Extended Special Improvement Maintenance District No. 4025, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on **Monday, August 28th, 2006, at 6:30 p.m., M.D.T.** in the Council Chambers, located on the Second Floor of the Police Facility at 220 North 27th Street, in Billings, Montana.

Section 10. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a Notice of the passage of the Resolution in the Billings Times, a newspaper of general circulation in the county on **July 27th and August 3rd, 2006** in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said Notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property that is being added to Extended Special Improvement Maintenance District No. 4025 listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

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

day of _____, 2006.

THE CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST:

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

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 24, 2006

TITLE: Resolution Relating to \$380,000 Pooled Sidewalk Series 2006 Bond, Authorizing the Issuance and Calling for the Public Sale Thereof

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City Council has previously approved sidewalk projects and has awarded construction contracts for WO 03-02, WO 02-14 and WO 04-02. The following resolution authorizes the sale of \$380,000 in bonds for financing of the above stated projects. The three sidewalk projects are located in numerous areas throughout the city.

FINANCIAL IMPACT:

WO 03-02	Developer-Related Improvements	\$171,518.85
WO 04-02	Miscellaneous Improvements	148,743.01
WO 02-14	School Route Improvements	59,738.14

RECOMMENDATION

Staff recommends City Council approve the attached resolution.

Approved By: City Administrator City Attorney

ATTACHMENT

A - Resolution prepared by Dorsey & Whitney

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “**RESOLUTION RELATING TO \$380,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2006; AUTHORIZING THE ISSUANCE AND CALLING FOR THE PUBLIC SALE THEREOF**” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on July 24, 2006, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

_____;

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

WITNESS my hand and seal officially this ____ day of July, 2006.

(SEAL)

City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO \$380,000 POOLED SPECIAL
SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS,
SERIES 2006; AUTHORIZING THE ISSUANCE AND CALLING FOR
THE PUBLIC SALE THEREOF

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

Section 1. Recitals.

(a) This Council has duly and validly created and established in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”), special improvement projects, designated as the Miscellaneous and Developer-Related Improvement Project (the “Miscellaneous/Developer-Related Improvements (03-02)”), the Miscellaneous Improvement Project (the “Miscellaneous/Developer-Related Improvements (04-02)”), and the School Route Improvements (the “School Route Improvements”) (collectively, the “Projects”), for the purpose of financing costs of certain public improvements of special benefit to the properties within the Projects (the “Improvements”) and paying costs incidental thereto, including costs associated with the sale and the security of special sidewalk, curb, gutter and alley approach bonds of the City drawn on the Projects (the “Bonds”), the creation and administration of the Projects and the funding of a deposit to the City’s Special Improvement Project Revolving Fund (the “Revolving Fund”). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Project is \$380,000. The costs of the Improvements are to be paid from the proceeds of the Bonds, which are to be payable primarily from special assessments to be levied against property in each of the Project areas, which property will be specially benefited by the Improvements in an amount not less than \$380,000.

(b) The costs of the Improvements are currently estimated, as follows:

	Miscellaneous/Developer-Related Improvements (03-02)	Miscellaneous/Developer-Related Improvements (04-02)	School Route Improvements
Construction and	\$137,949.43	\$119,631.24	\$48,046.28
Engineering and	16,831.12	14,596.13	5,862.09
Revolving Fund Deposit	8,575.94	7,437.15	2,986.91
Bond Discount	3,210.11	2,783.84	1,118.05
Costs of Issuance	2,663.45	2,309.78	927.65
Finance	2,288.80	1,984.87	797.16

Total	\$171,518.85	\$148,743.01	\$59,738.14
-------	--------------	--------------	-------------

(c) It is necessary that Bonds be issued and sold in an aggregate principal amount of \$380,000 to finance the costs of the Improvements within each of the Project areas, including incidental costs, described in Subsection (a).

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

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

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

<u>Project</u>	<u>Principal Amount</u>
Miscellaneous/Developer-Related Improvements (03-02)	\$171,518.85
Miscellaneous/Developer-Related Improvements (04-02)	\$148,743.01
School Route Improvements	\$ 59,738.14

is in the best interest of each of the Projects and the City and will facilitate the sale of the Bonds because the size of the issue will attract more interest in the marketplace and thus help to lower interest rates on the Bonds and because a single issue will reduce the costs of issuance. This Council further determines to fix the minimum price for the Bonds at \$373,916 (98.13% of par), plus interest accrued thereon to the date of delivery. Such minimum bid will enable bidders to bid more efficiently for the Bonds by permitting them to submit their bids based on actual market conditions without adjusting the interest rates thereon to provide compensation for their purchase of the Bonds. This procedure will facilitate the sale of the Bonds at the lowest interest rates, which is in the best interests of each of the Projects and the City.

Section 3. Findings and Determination To Pledge the Revolving Fund. In the Resolutions of Intention To Order in the Programs for the Miscellaneous/Developer-Related Improvements (03-02), the Miscellaneous/Developer-Related Improvements (04-02), and the School Route Improvements, adopted on March 10, 2003, July 26, 2004, and September 23, 2002 respectively, this Council found it to be in the public interest, and in the best interest of the City and the Projects, to secure payment of principal of and interest on the Bonds by the Revolving Fund and authorized the City to enter into the undertakings and agreements

authorized in the Act in respect of the Bonds, based on the factors required to be considered under Section 7-12-4225(4) of the Act. Those findings and determinations were ratified and confirmed in the resolutions ordering the programs adopted by this Council on April 28, 2003, August 23, 2004, and October 28, 2002, respectively, and are hereby ratified and confirmed. It is hereby covenanted and recited that the City has the power under the Act to pledge the Revolving Fund to payment of the principal of and interest on the Bonds.

Section 4. Terms of the Bonds. This Council hereby authorizes the issuance and sale of Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2006 of the City in the aggregate principal amount of \$380,000 (the "Bonds") for the purpose of financing the Improvements. The Bonds shall be dated, as originally issued, as of September 1, 2006, and shall bear interest payable semiannually on January 1 and July 1 of each year, commencing January 1, 2007, at a rate or rates designated by the successful bidder at public sale and approved by this Council. If issued as serial bonds, the Bonds shall mature on July 1 in each of the following years and amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2007	\$ 20,000	2013	\$30,000
2008	25,000	2014	35,000
2009	30,000	2015	35,000
2010	30,000	2016	35,000
2011	30,000	2017	40,000
2012	30,000	2018	40,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine at the time of the sale, and the principal of and interest on the Bonds shall be payable semiannually in equal payments on each January 1 and July 1, commencing January 1, 2007, and concluding July 1, 2018, unless the Bonds are earlier redeemed. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

Bidders will have the option of combining the Bonds maturing on and after 2007 through and including 2012 and on and after 2013 through and including 2018 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

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

Section 5. Public Sale. The Bonds shall be sold at a public competitive sale which is hereby called and shall be held at a regular meeting of this Council on August 14, 2006, at 12:00 P.M., M.T. The City will receive sealed bids for the Bonds in accordance with the notice of sale hereinafter prescribed. The City Clerk is authorized and directed to cause notice of the sale to be

published, as required by Montana Code Annotated, Sections 7-12-4204, 7-7-4252 and 17-5-106, in *The Billings Times* once each week for two successive weeks preceding the week which contains the date of sale. The notice of sale shall be published and mailed in substantially the form set forth as Exhibit A to this resolution and this Council hereby adopts the terms and conditions set forth in such notice of sale as the terms and conditions of the sale of the Bonds.

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

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

Passed by the City Council of the City of Billings, Montana, this 24th day of July, 2006.

Mayor

Attest: _____
City Clerk

EXHIBIT A

NOTICE OF BOND SALE

\$380,000 Special Sidewalk, Curb, Gutter and
Alley Approach Bonds, Series 2006
(Miscellaneous/Developer-Related Improvements (03-02),
Miscellaneous/Developer-Related Improvements (04-02), and School Route Improvements)

CITY OF BILLINGS, MONTANA

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

<u>Project</u>	<u>Principal Amount</u>
Miscellaneous/Developer-Related Improvements (03-02)	\$171,518.85
Miscellaneous/Developer-Related Improvements (04-02)	\$148,743.01
School Route Improvements	\$ 59,738.14

Sealed bids for the purchase of the Bonds will be received in the City Clerk's office, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, or bids for the purchase of the Bonds will be received by the City by electronic transmission through Parity™, in either case until 12:00 noon, M.T., on Monday, August 14, 2006, at which time the bids will be opened and tabulated. The City Council of the City will meet at their regular meeting at 6:30 P.M., M.T., on the same day in the Council Chambers, 2nd Floor of the Police Facility, 220 North 27th Street, Billings, Montana, to consider the bids and to award the sale of the Bonds.

Bids may be submitted by facsimile to the City Clerk at (406) 657-8390 or to Springsted Incorporated at (651) 223-3046 until 12:00 noon, M.T., on Monday, August 14, 2006.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of the Developer-Related Project, the Miscellaneous Project, and the School Route Project (collectively, the "Projects"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended. The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special assessment which is a lien against the assessable real property within the respective Projects benefited by the Improvements to be undertaken therein or therefore. The special assessments are payable in equal, semiannual installments over a 12-year term, with unpaid installments of the special

assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The Bonds are further secured by the Special Improvement Project Revolving Fund of the City (the “Revolving Fund”). The City will agree to make a loan from the Revolving Fund to the Sinking Fund established for the Projects to make good any deficiency then existing in the principal and interest subaccounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City’s general fund to the extent authorized by law.

Date and Type

The Bonds will be dated, as originally issued, as of September 1, 2006, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Redemption

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

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2007	\$ 20,000	2013	\$30,000
2008	25,000	2014	35,000
2009	30,000	2015	35,000
2010	30,000	2016	35,000
2011	30,000	2017	40,000
2012	30,000	2018	40,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine, and the principal of the Bonds shall be payable semiannually on each January 1 and July 1, commencing January 1, 2007, and continuing through July 1, 2018, subject to prior redemption. Serial bonds shall be in the denomination of \$5,000 each or any integral multiple thereof of single maturities.

Bidders will have the option of combining the Bonds maturing on and after 2007 through and including 2012 and on and after 2013 through and including 2018 into one or more term bonds. If any Bonds are issued as term bonds, such term bonds will be subject to annual mandatory sinking fund redemption in the principal amounts shown in the debt service schedule shown above.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the Sinking Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Projects or from the transfer of surplus money from the Construction Subaccount to the Principal Subaccount, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest

payment date, will equal the amount of such funds on deposit in the Sinking Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

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

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

Interest Payment Dates, Rates

Interest will be payable each January 1 and July 1, commencing January 1, 2007, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 5/100 of 1% and shall be bid in level or ascending rates. No supplemental or "B" coupons or additional interest certificates are permitted. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent and Paying Agent

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

Delivery

Within 45 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the authorized denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations

corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of bond counsel hereinafter described, an arbitration certification and a certificate verifying that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing. As a condition of delivery, the purchaser must certify to the City in writing the initial reoffering prices of the Bonds.

Qualified Tax-Exempt Obligations

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

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion from gross income for federal income tax purposes and Montana individual income tax purposes of the interest thereon will be furnished by Dorsey & Whitney LLP, of Missoula, Montana, and Minneapolis, Minnesota, as Bond Counsel. The legal opinion will be provided at closing. The legal opinion will state that the Bonds are valid and binding special obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights; however, Dorsey & Whitney LLP will not express an opinion as to the enforceability of the agreement of the City to make loans or advances from the Revolving Fund to the Sinking Fund as may be required to pay principal and interest on the Bonds.

Type of Bid and Good Faith Deposit

Sealed bids for not less than \$373,916.00 (98.13% of par) and accrued interest on the principal sum of \$380,000 must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional. Bids may be transmitted electronically through Parity™ in accordance with these terms and conditions.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith deposit (the “Deposit”) in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of \$7,620.00 payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the Financial Services Manager. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond

in the State of Montana and such bond must be submitted to the Financial Services Manager prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City) not later than 1:00 P.M., M.T., on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's Financial Services Manager, Pat Weber, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8209.

Award

The bid authorizing the lowest net interest cost (total interest on all Bonds from September 1, 2006, to their maturities, less any premium or plus any discount) will be deemed the most favorable. In the event that two or more bids state the lowest net interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The Council will consider sealed bids or bids transmitted electronically through the ParityTM system. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

Electronic Transmission

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

Official Statement

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

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

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

Continuing Disclosure

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

CUSIP Numbers

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

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

Dated: July 24, 2006.

BY ORDER OF THE CITY COUNCIL

City Clerk
City of Billings, Montana

Publish: July 31, 2006
August 7, 2006

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Second Reading of an Ordinance Expanding Ward IV

DEPARTMENT: Planning and Community Services Department

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. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward IV on July 10, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD 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.

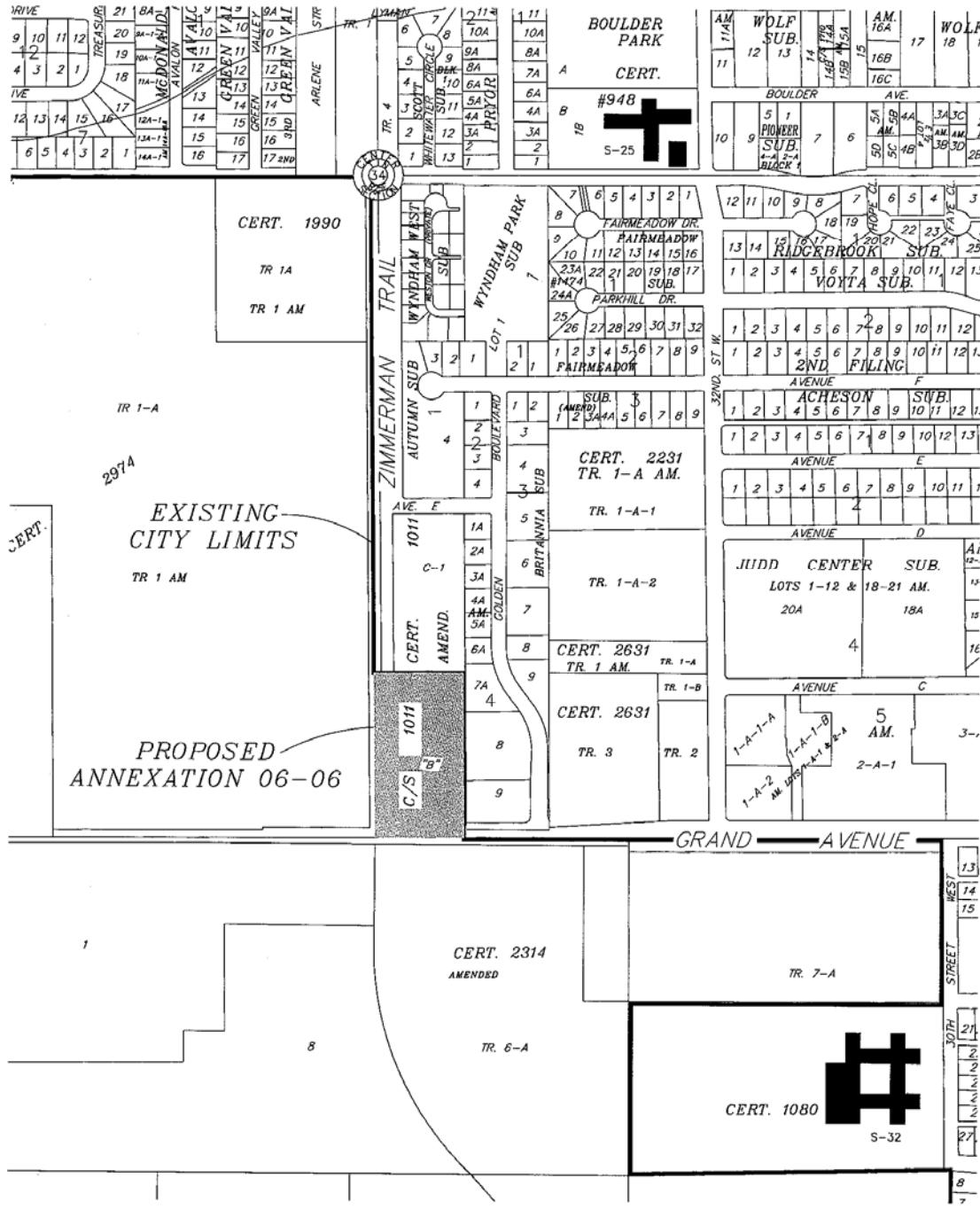
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Second Reading of an Ordinance Expanding Ward IV

DEPARTMENT: Planning and Community Services Department

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. Council held a public hearing and approved on first reading, the ordinance to add the property to Ward IV on July 10, 2006. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

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

RECOMMENDATION

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

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

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD 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.

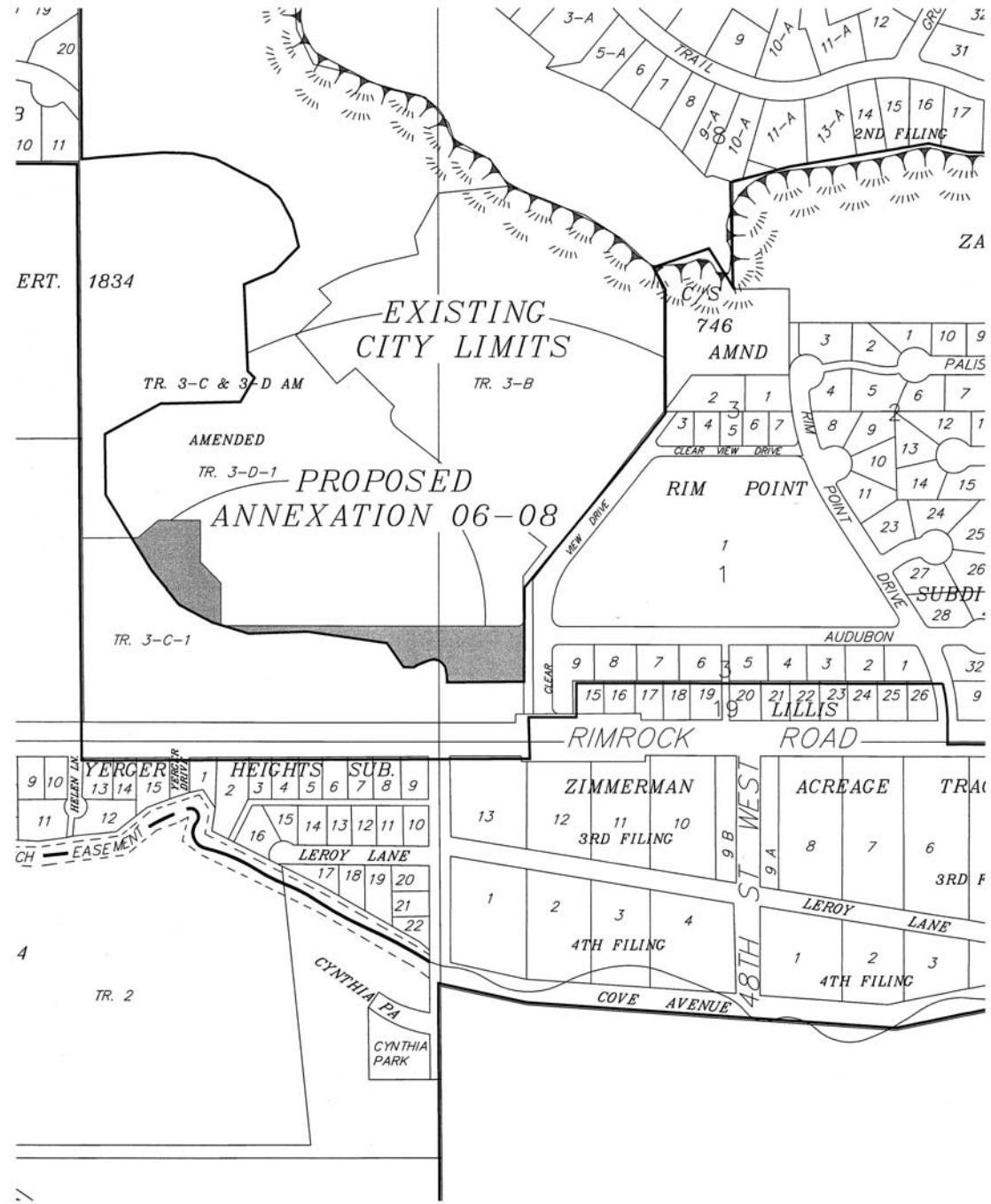
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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

M

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 24, 2006

TITLE: Preliminary Plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision

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

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On June 15, 2006, Community Leadership Development, Inc. applied for preliminary subsequent minor plat approval for Amended Lot 14, Block 1, Chrysalis Acres Subdivision, which contains two (2) lots on approximately 14,003 square feet (.32 acres) of land for residential development. The proposed subdivision is located on the west side of Monarch Street between Cecropia Avenue (north) and Bruce Avenue (south). The owner and representing agent is the Community Leadership Development, Inc.

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

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property may further develop under private ownership, resulting in additional tax revenues.

RECOMMENDATION

Staff recommends conditional approval of the preliminary plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENTS

A. Preliminary Plat

- B. Site Photographs
- C. Findings of Fact
- D. Mayor's Approval Letter

INTRODUCTION

On June 15, 2006, Community Leadership Development, Inc. applied for preliminary plat approval for a subsequent minor subdivision of amended Lot 14, Block 1, Chrysalis Acres Subdivision. The subject property contains 14,003 square feet (.32 acres) of land for residential development. The subject property is surrounded by single-family residences located within the Residential 7000 zoning district.

PROCEDURAL HISTORY

- The preliminary plat application was submitted to the Planning Department on June 15, 2006.
- Chrysalis Acres Subdivision original final plat was approved on March 20, 2003.
- The City Council will consider the preliminary plat application on July 24, 2006.

BACKGROUND

General location:	On the west side of Monarch Street between Cecropia Avenue (north) and Bruce Avenue (south).
Legal Description:	Lot 14, Block 1, Chrysalis Acres
Subdivider:	Community Leadership Development, Inc.
Owner:	Same
Engineer and Surveyor:	D & J Surveying
Existing Zoning:	Residential 7000
Existing land use:	Vacant Land
Proposed land use:	Residential
Gross area:	14,003 square feet
Net area:	14,003 square feet
Proposed number of lots:	2
Lot size:	Max: 7,001 square feet (0.16 acres) Min.: 7,001 square feet (0.16 acres)

Parkland requirements:	A parkland dedication is not required, as this is a subsequent minor subdivision.
------------------------	---

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

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

1. To ensure the final plat complies with state and local regulations, the title on the plat shall be amended to read "Preliminary Plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision, Located in the Northeast 1/4 of section 9, T1S, R26E, P.M.M. City of Billings, Yellowstone County, Montana." (recommended by City County Planning).
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

None

STAKEHOLDERS

A public hearing is not scheduled for the City Council meeting; however nearby property/business owners may attend the City Council meeting. The Planning Department has received no public comments or questions regarding the proposed subdivision.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

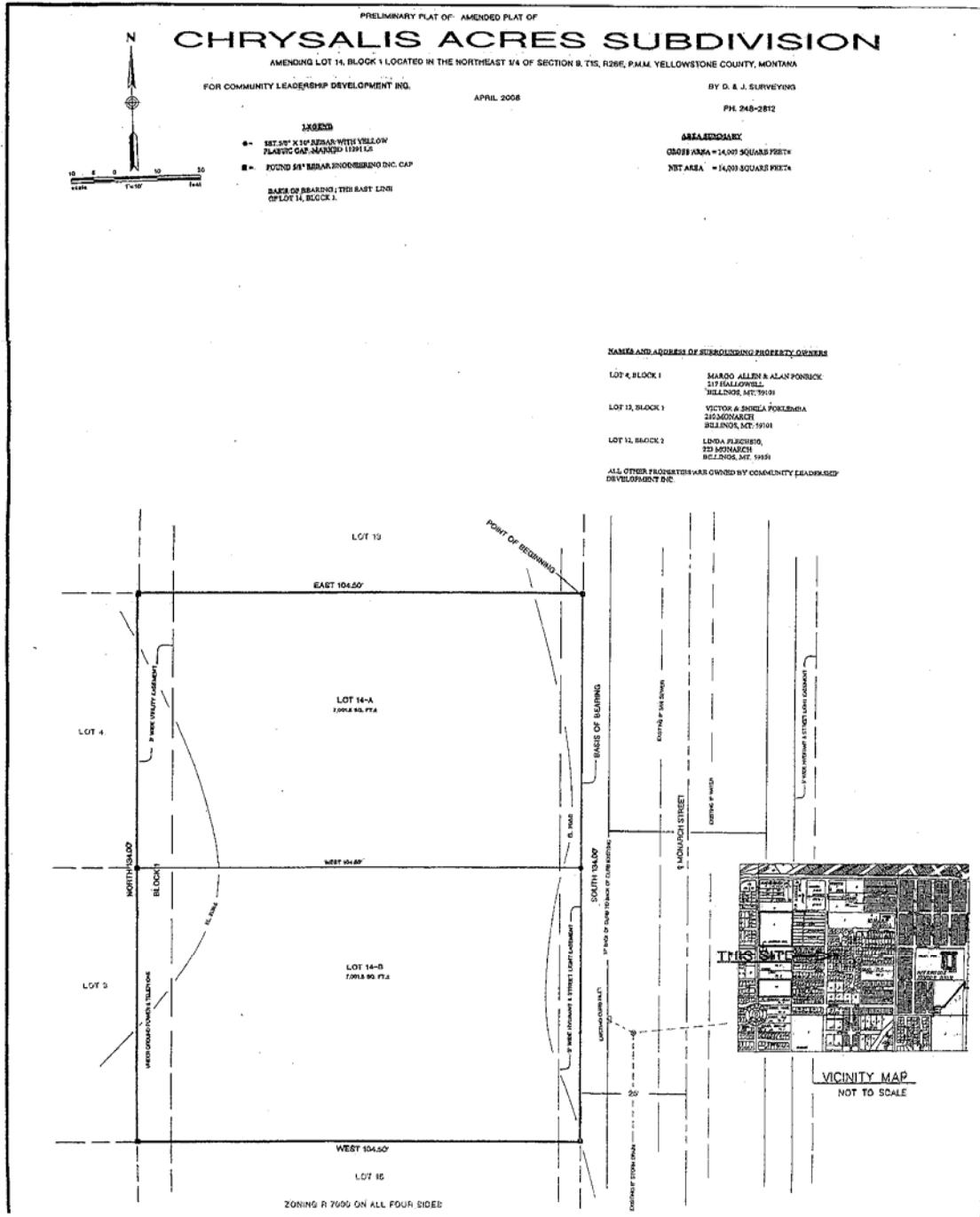
Staff recommends conditional approval of the preliminary plat of amended Lot 14, Block 1, Chrysalis Acres Subdivision and adoption of the Findings of Fact as presented in the staff report to the City Council.

ATTACHMENTS

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

ATTACHMENT A

Preliminary Plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision



ATTACHMENT B

Site Photographs



Figure 1: View west across the property from Monarch Street toward the subject property.



Figure 2: View north along Monarch Street (northern end of subject property.)



Figure 3: View south of the subject property along Monarch Street.



Figure 4: View east from the subject property across Monarch Street.

ATTACHMENT C

Findings of Fact

Staff is forwarding the recommended Findings of Fact for Amended Lot 14, Block 1, Chrysalis Acres for review and approval by the City Council. These findings are based on the preliminary plat application and supplemental documents and address the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the City of Billings Subdivision Regulations (Sections 23-304(c), BMCC).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health, safety and welfare? [MCA 76-3-608 (3) (a) and (23-302(H)(2), BMCC)]

1. Effect on agriculture and agricultural water user facilities

There are no agricultural uses on this land or surrounding land, so no affect in agricultural and agricultural water user facilities.

2. Effect on local services

- a. **Utilities** – There is an existing 8 inch water line and an existing 8 inch sanitary sewer line located within Monarch Street.
- b. **Stormwater** – As specified in the submitted Subdivision Improvements Agreement (SIA), storm sewers are in place on Monarch Street. Any drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** - The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to proposed Lot 14A and 14B, Block 1, will be via Monarch Street, which is an existing 50-foot right-of-way, built to city standards.
- e. **Emergency services** - The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 501 South 28th Street (Station #2). The subdivision is located within the ambulance service area of American Medical Response.
- f. **Schools** - The subdivision is located within School District #2. Comments were received from West High, stating they are overcrowded at this time. Riverside stated there is additional capacity for 88 students. While this is only a two lot minor, future subdivisions in this area could overburden the school system, as indicated by the received reviews.
- g. **Parks and Recreation** - There is no parkland dedication requirement, as this is a subsequent minor plat.

3. Effect on the natural environment

The proposed subdivision should have only minor effects on the natural environment, as there will be short term air and noise pollution associated with construction on the property. However, the property is within an urbanized portion of the city and these effects should be minimal.

4. Effect on wildlife and wildlife habitat

The proposed subdivision should not affect wildlife or habitat. There are no known endangered or threatened species on the property.

5. Effect on the public health, safety and welfare

The subdivision should not negatively affect public health or safety. The subject property is not within a mapped floodway or flood zone. There are no obvious threats to public health, safety or welfare.

B. Was an Environmental Assessment required? [(MCA 76-3-603 and 23-901, BMCC]

An Environmental Assessment is not required, as this is a subsequent minor plat.

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the Urban Area 2000 Transportation Plan and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

- a. Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, Page 6)

The proposed subdivision is consistent with the surrounding neighborhood, as single-family residences are proposed.

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

The subject property is surrounded on all sides by single-family residential uses within the Residential 7000 zoning district; the proposed single-family residential uses are compatible.

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

The subdivision may be considered infill and does not contribute to urban sprawl.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

The Heritage Trail Master Plan shows that there are no bikeways proposed on this property.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? [MCA 76-3-608 (3) (b) and (23-301, BMCC)]

The proposed subdivision, with the proposed condition, satisfies the requirements of the Montana Subdivision and Platting Act and conforms to the design standards specified in the local subdivision regulations. The sub-divider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations. In order to comply with state regulations, Condition #1 requires the title to be revised to state "Preliminary Plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision, Located in the Northeast 1/4 of section 9, T1S, R26E, P.M.M. City of Billings, Yellowstone County, Montana."

E. Does the subdivision conform to sanitary requirements? [(23-408, BMCC)]

The property is served by municipal water, sewer, storm drain and solid waste services.

F. Does the proposed subdivision conform to all requirements of the zoning in effect? [(23-402, BMCC)]

The subject property is located within the R-7000 zoning district and shall comply with the standards set forth in Section 27-308, BMCC.

G. Does the proposed plat provide easements for the location and installation of any utilities? [MCA 76-3-608 (3) (c) and (23-410(A)(1), BMCC)]

There are existing 8 foot wide utility easements located on the rear property lines, which are acceptable to the city.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? [MCA 76-3-608 (3) (d) and (23-406, BMCC)]

Access to the proposed lots will be via private driveways from Monarch Street.

CONCLUSIONS OF FINDING OF FACT

- The preliminary plat of amended plat of Amended lot 14, Block 1, Chrysalis Acres Subdivision does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several goals and policies of the 2003 Growth Policy and does not conflict with the 2005 Transportation Plan Update or the Heritage Trail Plan.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

Approved by the Billings City Council, July 24, 2006

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

July 24, 2006

City of Billings
Engineering Department
510 North Broadway, 4th Floor
Billings, Montana 59101

Dear Applicant:

On July 24, 2006, the Billings City Council conditionally approved the preliminary plat of Amended lot 14, Block 1, Chrysalis Acres, subject to the following conditions of approval:

1. To ensure the final plat complies with state and local regulations, the title on the plat shall be amended to read "Preliminary Plat of Amended Lot 14, Block 1, Chrysalis Acres Subdivision, Located in the Northeast 1/4 of section 9, T1S, R26E, P.M.M. City of Billings, Yellowstone County, Montana." (recommended by City County Planning).
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Engineering Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of City of Billings, and the laws and Administrative Rules of the State of Montana.

Should you have questions please contact Dave Green with the Planning Division at 247-8654 or by email at greend@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

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

N

AGENDA ITEM:



TITLE: Preliminary Plat of Twin Oaks Subdivision

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On May 1, 2006, the subdivider applied for preliminary major plat approval for Twin Oaks Subdivision, which contains 132 lots on approximately 33.71 acres of land. This is a replat of the previously approved Twin Oaks Subdivision, which was granted preliminary plat approval by the City Council on November 28, 2005. The original approval was for 91-lots for twinhomes (duplexes); the subdivider is now proposing 132 single-family residential lots. The proposed replat will create an additional 41 lots and is therefore, required to be processed as a major preliminary plat application. The subject property is addressed as 120 Wicks Lane and is located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane. The north half of the subject property is located within the Residential 5000 (R-5000) zoning district and the southern half is located within the Residential 6000 (R-6000) zoning district. The owner is Twin Oaks Development, LLC and the representing agent is Engineering, Inc.

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

FINANCIAL IMPACT: Should the City Council approve the preliminary plat, the subject property may further develop, resulting in additional tax revenues for the City. However, it is unknown if the value of these proposed homes will generate sufficient taxes and fees to pay for the required services.

RECOMMENDATION

The Yellowstone County Board of Planning recommends conditional approval by a 9-0 vote of the preliminary plat of Twin Oaks Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report, to the City Council.

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

ATTACHMENTS

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

INTRODUCTION

On May 1, 2006, the subdivider applied for preliminary major plat approval for Twin Oaks Subdivision, which contains 132 lots on approximately 33.71 acres of land. This is a replat of the previously approved Twin Oaks Subdivision, which was granted preliminary plat approval by the City Council on November 28, 2005. The original approval was for 91-lots for twinhomes (duplexes); the subdivider is now proposing 132 single-family residential lots. The proposed replat will create an additional 41 lots and is therefore, required to be processed as a major preliminary plat application. The subject property is addressed as 120 Wicks Lane and is located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane.

PROCEDURAL HISTORY

- The subject property was annexed into the city on September 12, 2005. A zone change from Residential 7000 to Residential 5000 on the northern portion of the property was also approved at this meeting.
- The original preliminary plat was approved by the City Council on November 28, 2005.
- On May 1, 2006, the preliminary plat application was submitted to the Planning Department.
- A departmental review meeting was conducted with the subdivider and representative on May 18, 2006.
- The Planning Board reviewed the plat on June 13, 2006.
- The Planning Board conducted a public hearing on June 27, 2006, and forwarded recommendation of approval to the City Council by a 9-0 vote.
- The City Council will consider the preliminary plat on July 24, 2006.

BACKGROUND

The subject property is bordered on the north by single-family residences adjacent to Wicks Lane and on the south by single-family residences within Uinta Park Subdivision; on the east by a church and multi-family residential units; and on the west by medical offices within the Neighborhood Commercial (NC) zoning district and single-family residences within Eagle's Nest Subdivision.

General location:	Directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane
Legal Description:	Tracts 1 and 2, Certificate of Survey Number 3190 located in the NW $\frac{1}{4}$, Section 22, T1N, R26E
Subdivider:	Twin Oaks Development, LLC
Owner:	Same
Engineer and Surveyor:	Engineering Inc.
Existing Zoning:	R-5000 and R-6000

Existing land use:	Vacant Land
Proposed land use:	Single-Family Residences
Gross area:	33.71
Net area:	25.91 acres
Proposed number of lots:	132
Lot size:	Max: 11,055 square feet Min.: 5,198 square feet
Parkland requirements:	Subdivider is proposing to provide onsite parkland dedication.

ALTERNATIVES ANALYSIS

One of the purposes of the City's subdivision review process is to identify potential negative effects of property subdivision. When negative effects are identified it is the subdivider's responsibility to mitigate those effects. Various City departments have reviewed this application and provided input on effects and mitigation. The Planning Board develops and recommends conditions of approval that are based on departmental comments. The Findings of Fact, which are presented as an attachment, discuss the potential negative impacts of the subdivision and the following conditions of approval are recommended as measures to further mitigate any impacts.

RECOMMENDED CONDITIONS OF APPROVAL

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

4. To minimize the effects on local services, the small section of Broadview Drive to its intersection with Twin Oaks Drive at the southeast corner of the property shall be renamed in order to provide a contiguous street. The City Council shall approve a Resolution renaming the street prior to final plat approval. (*Recommended by City Engineering*)
5. To ensure the provision of easements and minimize effects on public health and safety, utility easements shall be provided on the plat in accordance with City Engineering specifications that easements be located along the rear and side lot lines. (*Recommended by Planning Division*)
6. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. (*Recommended by the United States Postal Service*)

7. To minimize effects on local services, the Park Maintenance District (PMD) for Uinta Park Subdivision shall be expanded to include the parks within Twin Oaks Subdivision. *(Recommended by the City Parks and Recreation Department)*
8. To minimize effects on local services, the subject property shall be annexed into the Heights Water District prior to final plat approval. *(Recommended by the County Water District of Billings Heights)*
9. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
10. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

VARIANCES REQUESTED

A variance to permit 50-feet of right-of-way for Twin Oaks Drive, Shaw Circle, and Watson Peak Road, where Section 23-406.B.1, BMCC, requires 56-feet of right-of-way for local residential streets. Engineering staff is supportive of this variance, as a 50-foot width is adequate to accommodate the proposed traffic generation for the subdivision. Similar variances have been approved by the City Council, provided that 5-foot easements for sidewalks, street lights, and fire hydrants are provided on both sides of the right-of-way. These easements have been depicted on the plat. The proposed variance will not be detrimental to the public, will not cause an increase in public costs, and will not create any nonconformities with the zoning regulations.

A variance from Section 23-406.A.6, BMCC, which specifies that dead-end residential streets shall not be longer than 600 feet in length. As proposed, the subdivider is requesting a cul-de-sac length of 645 feet for Shaw Circle. The Billings Fire Department has reviewed the requested cul-de-sac length and finds it acceptable due to additional accesses provided via Watson Peak Road and Uinta Park Drive through Uinta Park Subdivision to the south. The proposed variances will not be detrimental to the public and will not cause an increase in public costs.

These variances were originally granted with the previous Twin Oaks Subdivision preliminarily approved by the City Council on November 28, 2006. Since the road configuration within the subdivision did not change as part of the replat, Engineering, Fire, and Planning staff are supportive of the proposed road widths and the cul-de-sac length.

STAKEHOLDERS

A public hearing was conducted by the Planning Board on June 27, 2006. No public comments were received and there was no further discussion by the Planning Board.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with the Growth Policy, the 2005 Transportation Plan Update, and Heritage Trail Plan are discussed within the Findings of Fact.

RECOMMENDATION

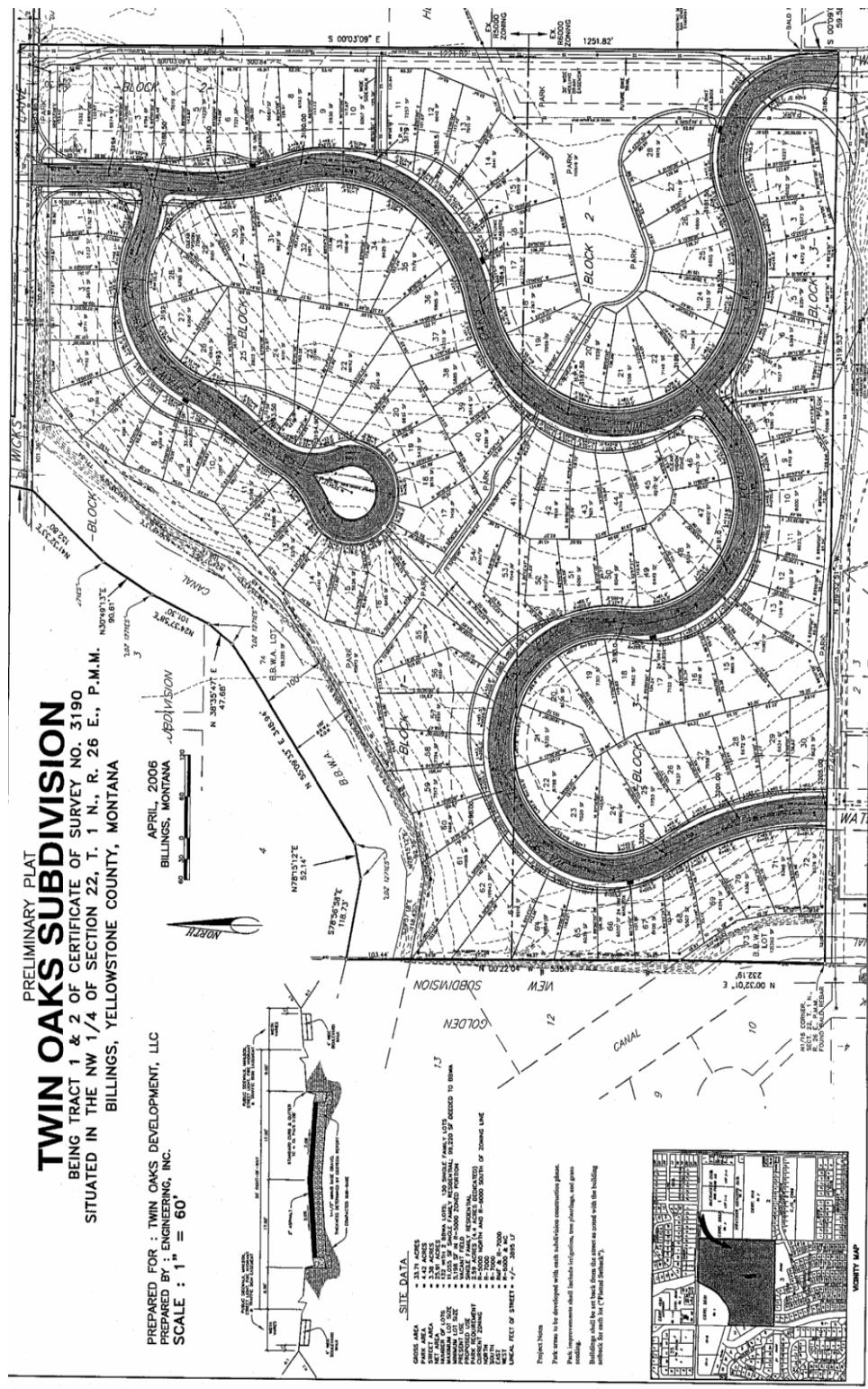
The Yellowstone County Board of Planning recommends conditional approval by a 9-0 vote of the preliminary plat of Twin Oaks Subdivision, approval of the variances, and adoption of the Findings of Fact as presented in the staff report, to the City Council.

ATTACHMENTS

- E. Preliminary Plat
- F. Site Photographs
- G. Findings of Fact
- H. Mayor's Approval Letter

ATTACHMENT A

Preliminary Plat of Twin Oaks Subdivision



ATTACHMENT B
Site Photographs



Figure 1: View from the adjacent property to the west, southeast across the subject property. The BBWA Canal is pictured and borders the subject property on the northwest.



Figure 2: View west across adjacent property toward the existing medical facility on the neighboring property.



Figure 3: View south across the subject property toward single-family residences within Uinta Park Subdivision.



Figure 4: View from the northeast corner of the subject property, east along Wicks Lane. The adjacent church parking lot is pictured.

ATTACHMENT C
Findings of Fact

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

A. What are the effects on agriculture and agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat and public health and safety? (76-3-608 (3)(a), MCA) (23-302(H)(2), BMCC)

1. Effect on agriculture and agricultural water user facilities

The land to be subdivided has historically been utilized for pasture land and crop production due to the close proximity of the Billings Bench Water Association (BBWA) canal that courses along the northwest and southwest portion of the property. By virtue of the subdivision being annexed into the City, the conversion of this agricultural land to residential development is appropriate. The subject property is wholly surrounded on all sides by developed properties within the City Limits.

The BBWA is located along the northwest border of the property and a small portion along the southwest corner of the property. As depicted on the plat, the subdivider is proposing to deed Lots 73 and 74, containing a total of approximately 2.56 acres to the BBWA for the canal for maintenance purposes. This is consistent with property that was deeded within Uinta Park Subdivision for the BBWA.

There is a portion of the Holling Drain located along the southeast corner of the property, which is to be relocated into the proposed park as part of this subdivision. As specified within the Subdivision Improvements Agreement (SIA), the Holling Drain will remain in its current location and a 30-foot easement shall be provided, as depicted on the plat.

2. Effect on local services

- a. **Utilities** – Water to the subject property will be extended through an 8-inch diameter main line within Twin Oaks Drive and Watson Peak Road from the water main located within Wicks Lane. The subject property is located within the County Water District of Billings Heights and will be subject to their review and approval during the time of construction. As proposed, the Heights Water District finds that the water mains are acceptable, however as required by Condition #5, the property will need to be annexed into the district prior to connecting to the services.

Sanitary sewer will be extended from the existing 12-inch diameter main within the 30-foot easement (proposed parkland dedication) along the eastern border of the subject property and within the interior streets; 8-inch lateral lines will be extended from the main lines.

- b. **Stormwater** – As specified in the submitted SIA, stormwater discharge will be provided through a combination of surface drainage, curb and gutters and storm drain piping to the trunk storm drain within Wicks Lane. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.
- d. **Streets** - Access to the proposed subdivision will be via internal roads from Wicks Lane, a principal arterial bordering the northern boundary of the property, and Watson Peak Road and Broadview Drive within Uinta Park Subdivision to the south. The small section of Broadview Drive that connects from Uinta Park Subdivision to the southeast is required to be renamed through a City Council Resolution prior to final plat approval, as required by Condition #1.

The subdivider is proposing three (3) internal streets as part of this subdivision, including Shaw Circle, which is a 645 foot long cul-de-sac off of Twin Oaks Drive and Watson Peak Road. A variance has been requested for the length of the cul-de-sac and the Fire Department finds the proposed length acceptable, as there are two (2) alternative routes into the subdivision via existing City streets. The proposed streets will include a 50-foot right-of-way with a 34-foot wide paved surface from the back of curb to back of curb. Though the proposed pavement widths satisfy the standards necessary for emergency vehicle access and traffic circulation, the subdivider has requested a variance to permit 50-feet of right-of-way where 56-feet is required. Engineering staff is supportive of this variance, as 5-foot easements have been depicted on each side of the street to accommodate sidewalks, street lights, and fire hydrants.

The subject property is to be developed in three (3) phases. The first phase includes lots located on the eastern portion of the property and will include street improvements for Twin Oaks Drive from Wicks Lane to Broadview Drive (street name to be changed). Phase 2 will include the lots located on the northwestern portion of the property and the construction of Shaw Circle. Phase 3 will include the construction of Watson Peak Road with a connection to Uinta Park Subdivision. At this time Watson Peak Road has not been constructed within Uinta Park Subdivision. Therefore, as stated within the SIA, if at the time of Phase 3 development, the road has not been constructed, a 20-foot wide gravel emergency access shall be provided through Lots 1 and 12, Block 3 and the park along the southern portion of the property until such time that the improvements are completed for Uinta Park's portion of Watson Peak Road. This emergency access road shall be reviewed and approved by the Billings Fire Department.

A Traffic Accessibility Study (TAS) update was submitted to the Engineering Department for review and approval. The TAS update determined that there will not be an increase in traffic, as 182 units were originally proposed and 130 are now proposed. A

stop sign is required at the intersection of Wicks Lane and Twin Oaks Drive. All internal streets will be uncontrolled. The design section for the proposed streets will be reviewed and approved by the Engineering Department.

- e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 1601 St. Andrews Drive (Station #6). The subdivision is located within the ambulance service area of American Medical Response (AMR). In their review AMR stated that there are no necessary changes required for staffing at this time, however, as the City expands additional staff will be required.
- f. **Schools** – The subdivision is located within School District #2. No comments were received from the School District; however the subdivision was submitted for review by the local schools that will be affected by this subdivision. Students from the proposed subdivision will attend Bench Elementary School, Castle Rock Middle School and Skyview High School. Castle Rock Middle School responded and stated that the subdivision is located along an existing bus route and that they have the ability to accommodate 42 additional students.
- g. **Parks and Recreation** – As part of this major plat, the subdivider is required to provide 2.41 acres of dedicated parkland. The subdivider is proposing to dedicate 4.32 acres of parkland, which is interspersed throughout the subdivision.

As stated within the SIA, a Park Master Plan will be developed and approved by the City Parks and Recreation Department prior to final plat approval. Furthermore, Condition #4 requires that the Park Maintenance District previously created for Uinta Park Subdivision be expanded to include the parks within Twin Oaks Subdivision.

- h. **Mail Delivery** - The United States Postal Service is requesting that the applicant provide centralized delivery for the proposed subdivision. The mailboxes should have adequate room for a mail carrier to pull off for mail distribution and access, as required by Condition #4. The location of the mail box shall be reviewed and approved by the post office.

3. Effect on the natural environment

The Soil Survey of Yellowstone County indicates that the soils in this area consist of predominately silty clays, which with the high water table in this area have a potential for flooding, shrinking, and swelling. The movement of these layers can cause shifting in footings and structural damage to foundations if not properly designed. A note has been added to the SIA that basements are not recommended within this subdivision and that the assessment and mitigation of any soil conditions shall be the responsibility of the lot owner.

The Billings Bench Water User's Association (BBWA) expressed concerns within their review regarding the seepage of the main canal onto the subject property. As stated within the SIA, in order to mitigate groundwater seepage along the canal, the subdivider is proposing an interceptor

drain to relocate the water to the storm drain located within Wicks Lane. The design of this drain shall be reviewed and approved by the Engineering Department. A preliminary geotechnical report has been submitted to the Engineering Department for review.

4. Effect on wildlife and wildlife habitat

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

5. Effect on the public health, safety and welfare

There are three (3) conditions that exist on the subject property that may potentially create problems for future landowners: the BBWA canal, expandable clay soil, and wildlife. These conditions are noted within the “Conditions that Run with the Land” section of the submitted SIA.

B. Was an Environmental Assessment required? (76-3-210, MCA) (23-901, BMCC)

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

C. Does the subdivision conform to the Yellowstone County-City of Billings 2003 Growth Policy, the 2005 Transportation Plan Update, and the Heritage Trail Plan? (23-301, BMCC)

1. Yellowstone County-City of Billings 2003 Growth Policy

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

d. Goal: More housing and business choices within each neighborhood (p. 6).

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

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

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

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

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

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

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

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

The subdivider has proposed a Heritage Trail easement along the eastern portion of the property.

2. Urban Area 2005 Transportation Plan Update

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

3. Heritage Trail Plan

The proposed subdivision lies within the jurisdiction of the Heritage Trail Plan. The BBWA canal is depicted as a multi-use trail area. Due to the grade where the path would intersect with Wicks Lane, the subdivider is instead proposing a 20-foot easement along the southern boundary of the property to Twin Oaks Drive and north to Wicks Lane within the linear park along the eastern border of the property. In addition, with each phase of development, 4-foot wide boulevard sidewalks will be constructed within the park areas as connections to the future trail. The Alternative Modes Coordinator, as well as the Parks and Recreation Department find that the easement location is acceptable.

D. Does the subdivision conform to the Montana Subdivision and Platting Act and to local subdivision regulations? (76-3-608 (3)(b), MCA) (23-301, BMCC)

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

E. Does the subdivision conform to sanitary requirements? (23-408, BMCC)

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

F. Does the proposed subdivision conform to all requirements of the zoning in effect? (23-402, BMCC)

The subject property is located within the Residential 6000 (R-6000) and Residential 5000 (R-5000) zoning districts and shall comply with the standards set forth in Section 27-308, BMCC. The proposed density of the plat complies with the minimum lot size for duplexes, which is 8,000 square feet for the R-5000 zoning district and 7,000 square feet for the R-6000 zoning district.

G Does the proposed plat provide easements for the location and installation of any utilities? (76-3-608 (3)(c), MCA) (23-410(A)(1), BMCC)

As required by Conditions #2, the subdivider shall provide utility easements along side a rear property lines in accordance with the City Engineering Department specifications.

H. Does the proposed plat provide legal and physical access to each parcel within the subdivision and notation of that access on the plat? (76-3-608 (3)(d), MCA) (23-406, BMCC)

Legal and physical access to the proposed subdivision will be provided through internal dedicated right-of-ways from Wicks Lane to the north and Broadview Drive and Watson Peak Road to the South. Internal access is provided by three (3) streets to be dedicated to the public.

CONCLUSIONS OF FINDING OF FACT

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

Approved by the Billings City Council on July 24, 2006

Ron Tussing, Mayor

ATTACHMENT D
Mayor's Approval Letter

July 24, 2006

Twin Oaks Development, LLC
Wells Fargo Center
175 North 27th Street, Suite 940
Billings, Montana 59101

Dear Applicant:

On July 24, 2006, the Billings City Council conditionally approved the preliminary plat of Twin Oaks Subdivision. The conditions of approval are as follows:

1. To minimize the effects on local services, the small section of Broadview Drive to its intersection with Twin Oaks Drive at the southeast corner of the property shall be renamed in order to provide a contiguous street. The City Council shall approve a Resolution renaming the street prior to final plat approval. (*Recommended by City Engineering*)
2. To ensure the provision of easements and minimize effects on public health and safety, utility easements shall be provided on the plat in accordance with City Engineering specifications that easements be located along the rear and side lot lines. (*Recommended by Planning Division*)
3. To minimize effects on local services, the applicant shall provide centralized delivery boxes with sufficient pullouts to accommodate a mailbox carrier vehicle. The location of the boxes shall be reviewed and approved by the post office. (*Recommended by the United States Postal Service*)
4. To minimize effects on local services, the Park Maintenance District (PMD) for Uinta Park Subdivision shall be expanded to include the parks within Twin Oaks Subdivision. (*Recommended by the City Parks and Recreation Department*)
5. To minimize effects on local services, the subject property shall be annexed into the Heights Water District prior to final plat approval. (*Recommended by the County Water District of Billings Heights*)
6. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.

7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

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

- A variance to permit 50-feet of right-of-way, where Section 23-406.B.1, BMCC, requires 56-feet of right-of-way for local residential streets.
- A variance from Section 23-406.A.6, BMCC, which specifies that dead-end residential streets shall not be longer than 600 feet in length.

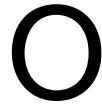
Should you have questions please contact Aura Lindstrand with the Planning Division at 247-8663 or by email at lindstranda@ci.billings.mt.us.

Sincerely,

Ron Tussing, Mayor

Pc: Mac Fogelsong, Engineering, Inc.

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



AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Final Plat of Amended Lot 10, Block 3, Midland Subdivision, 5th Filing
DEPARTMENT: Planning and Community Services
PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: The final plat for Amended Lot 10, Block 3, Midland Subdivision, 5th Filing is being presented to the City Council for approval. This plat is creating a .121-acre tract that will be transferred to the City for the trail network south of the Home Depot site off of King Avenue West. HD Development of America is the owner of the property. Because the tract being created (Lot 10B) is for future utility/right-of-way purposes, this amended plat is exempt from subdivision review, pursuant to 76-3-201(1)(h), MCA. The City Attorney has reviewed and approved the amended 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: Approval of this amended plat should not have a financial impact to the City.

RECOMMENDATION

Staff recommends that the City Council approve the final plat of the Amended Lot 10, Block 3, Midland Subdivision, 5th Filing.

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

ATTACHMENT

A: Final Plat

ATTACHMENT A
Final Plat



P1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 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 \$2,924,993.50 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 23, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

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

P2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 24, 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 \$1,022,652.46 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 30, 2006, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

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



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 24, 2006

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Nikki R. Schaubel, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$202,880.16 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 1, 2006 to June 30, 2006 is on file in the Municipal Court. Claims include payments to individual victims and businesses for restitution, disbursement of surcharges and revenues and return of bonds posted to ensure court appearance.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A – Check register 06/01/2006 – 06/30/2006

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: A resolution submitting the question to the City of Billings voters of the issuance of general obligation bonds for the design and construction of a new baseball stadium in Billings, Montana.

DEPARTMENT: Parks, Recreation & Public Lands

PRESENTED BY: Gene Blackwell, Acting Director

PROBLEM/ISSUE STATEMENT: A steering committee appointed by the Mayor in August of 2005 consisting of 3 City Council members and 4 members of the city staff and baseball community recommends that the council approve a bond issue proposal in the amount of \$12,500,000 for a ballpark construction project that will meet all current National Association of Professional Baseball Leagues standards for Advanced Rookie league team play, have fixed seating for 3,500 and berm seating for 500+ persons, have shade structures over the home plate and 3rd baseline seating areas, and a children's play area. The Steering Committee contracted with HNTB of Montana to review the history of Cobb Field, its current condition, and study the current economic and community interest and ability to build a new ballpark, conduct extensive individual interviews, extensive user surveys, and a series of public forums to determine the feasibility and support for replacing the ballpark, and to determine the ballpark configuration needed and most desired by the community. A telephone poll by Harstad Strategic Studies was conducted and determined that there already was strong public support for a bond issue to build a new ballpark. The final results of the feasibility study and Public Forums was presented to the Steering Committee on May 23, 2006, with a recommendation that a Fifteen Million Dollar ballpark construction proposal should be submitted to the voters of the City of Billings on November 7, 2006, and it was approved. Their recommendation to the city council was presented to the Billings Parks, Recreation, and Cemetery Advisory Board at a special meeting on May 24, 2006, and the Board recommends to the City Council that the recommendation of the Steering Committee be amended to remove the amount for the box seating and community room construction, for a total project amount of \$14 Million and that the box seating be included only if privately funded. On June 6th and again on June 12th, 2006, the Steering Committee met and reviewed all parts of the preliminary plan and the projected costs for the proposed Ballpark, and approved a recommendation to the City Council for a Bond Issue amount of \$12,500,000. On June 14, 2006, the Parks Recreation, and Cemetery Board reviewed the amount and in a

unanimous vote recommends that the City Council approve the Bond Issue Resolution for that amount. The Resolution was on the agenda for consideration by the City Council and was postponed to the July 24th, 2006, City Council meeting to allow a proposal for a substantial donation to the project that could reduce the bond amount to be fully explored.

ALTERNATIVES ANALYZED:

There were multiple alternatives considered by the Steering Committee appointed by the Mayor and City Council. They were as follows:

1. Replace the stadium in the existing location and re-use the existing playing surface. (Not recommended)
2. Replace the ballpark in a different location in Athletic Park. (Not recommended)
3. Relocate the baseball stadium to another location and keep Athletic Pool in operation.
4. Consider a smaller bond issue that fixes up the existing ballpark. Any reconstruction that does not completely replace the existing structures will have to be dealt with again within a much shorter period of use and will have a much higher level of on-going capital repair required. (Not recommended).
5. Do nothing. The existing ballfield cannot be kept open beyond this season without significant expenditures to remedy the safety and health hazards from the deteriorating stands. Total reconstruction is necessary to fix the ongoing deficiencies of the baseball stadium. The architectural review completed by CTA Architects and Engineers in 2002 identified significant expenditures needed to continue to operate the stadium as it was then. Without an adequate ballpark, professional baseball will have to leave Billings. For a team to return, a new stadium will have to be built first. (Not recommended)
6. Authorize a Bond Issue to be voted on to build a replacement ballpark meeting NAPBL requirements with fixed seating for 3,500 and berm seating for 500+, with a total capacity of 4,000+, to be voted on in the General Election on November 7, 2006, for a total cost of \$12,500,000. (Recommended by the Steering Committee on June 12, 2006, and the Billings PRC Board, on June 14th, 2006).

FINANCIAL IMPACT: The financial impact to the property tax payers in the City of Billings for a \$12,500,000 Bond Issue amount is equal to approximately \$39 on a \$150,000 house per year for 20 years. The net operational costs to the general fund are expected to be reduced by \$102,000 per year as a result of the closure of athletic pool (average loss of \$16,000.00 in revenue and a \$60,000.00 reduction in expenses per year), and Cobb Field baseball stadium (loss of existing revenues of \$30,000.00 per year and reduction in expenses by \$42,000.00 plus capital repairs per year). The proposed new ballpark is anticipated to generate income in excess of operational expenses and eliminate the use of general fund property taxes to subsidize its operation and long-term repair needs. The project is listed in the 5-year Capital Improvement Plan and will necessitate the budgeting of these funds in the FY 07 budget if the bond issue passes by the vote of the people. The cost for the election is shared by the government entities with voter issues on the ballot. The costs will be less than \$15,000.

RECOMMENDATION

The City Council Ballpark Steering Committee and Billings Parks, Recreation, and Cemetery Board recommends that Council approve the resolution authorizing the submission of the question to the city of Billings voters to approve the issuance of general obligation bonds in the amount of \$12,500,000 to construct a new ballpark at Athletic Park.

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

ATTACHMENTS

A. Resolution

INTRODUCTION

The Steering Committee appointed by the Mayor and City Council is recommending that the City Council place a question on the November 7, 2006, ballot the question of whether the City should issue up to \$12.5 million in General Obligation Bonds to construct a new ballpark in Athletic Park to replace Cobb Field baseball stadium. The Billings PRC Board also recommends that recommended amount.

PROCEDURAL HISTORY

- The replacement of Cobb Field stadium was presented to the voters along with a Heights pool construction proposal in June, 2004, as part of a \$17 million bond issue and was narrowly defeated.
- Because of its rapidly deteriorating condition, the replacement of the stadium was ranked a very high priority in the 5-year CIP plan adopted in FY 2006, and ongoing council and staff discussion focused on getting it back to the voters again as quickly as possible.
- Toward that end the FY 06 budget appropriated \$60,000 for a conducting a feasibility study and doing preliminary design work for a ballpark bond issue proposal to be presented to Billings's voters as soon as possible.
- In August, 2005, a Request for Proposals was advertised and a selection committee consisting of City Council and Park, Recreation, and Cemetery Board members, and city staff evaluated proposal and a consultant team consisting of HNTB Architects, Gateway Consulting, and CTA Architect and Engineers, was selected to perform the feasibility study and preliminary design work for a proposed stadium and ballfield replacement bond issue.
- The Steering Committee has met regularly with the consulting team from August, 2005, through June, 2006, and has reported back to the city council as needed throughout this period.
- The Mayor and City Council appointed the Steering Committee in August, 2005, to work with the consultants to provide local guidance and direction for the feasibility study and preliminary Design work to develop the bond issue proposal.
- The Study Report was presented to the Steering Committee and adopted by the Council in January, 2006. An additional \$20,000 was approved in February, 2006, to amend the consulting contract to have them conduct a series of public forums and meet with other community groups in late April and further refine the preliminary designs with the Steering Committee to provide an amount that would be needed to replace the stadium.
- In March, 2006, Harstad Strategic Studies, a polling firm, was hired to do a telephone poll of active voters in Billings to determine how much support there is among the city electorate for a bond issue for a new ballpark. The results showed that 52% would support a bond issue for the ballpark replacement.
- The consultant, HNTB Montana, Inc. conducted a series of public forums and meetings with key organizations and service clubs from the period of April 24th through May 3rd, 2006 and the supplemental report from those meetings was presented to the Steering Committee and the public and a preliminary ballpark plan and bond issue amount of \$15

million was recommended by the Steering Committee on May 23rd, 2006, to be adopted by the City Council.

- The Steering Committee recommendation was presented to the Billings Parks, Recreation, and Cemetery Board at a special meeting on May 24th, 2006, for consideration and for a recommendation to the City Council for the June 12th, 2006, regular meeting. The Board recommendation is that the amount included in the project estimates for sky box seating and the community room area be eliminated and the amount of the project be amended to \$14 Million, and that the sky boxes be included only if private funding is obtained for their construction.
- The Steering Committee met on June 6th and again, on June 12th with CTA Architects and Engineers, to review the bond issue proposal and determine if further cost savings could be found in the preliminary plan that would reasonable reduce the bond amount needed to build it. The Steering Committee recommended a Bond Issue amount of \$12,500,000 for City Council consideration. At the regular meeting of June 14, 2006, the Billings PRC Board supported that recommendation.

BACKGROUND

Cobb Field: As a result of historically high repair costs to maintain the baseball stadium a study was performed by CTA Architects in 2001 to determine costs for renovation and to determine the structural integrity of the aging stadium. The CTA study determined that the stadium was not structurally sound, that it needed significant repairs, was not code compliant, and is susceptible to fire damage due to its timber construction and that immediate structural repairs were required prior to the 2002 baseball season. Accordingly \$120,000 was approved in the 2003 FY budget and spent to make the emergency repairs to the structure and repair the worst areas of defect in the seating areas. After the defeat of the 2004 bond issue proposal, no further significant repair work has been done and the stadium decking and wood structure continues to deteriorate.

Legal restrictions include city's not being able to issue general obligation bonds in excess of 42% of the total general fund budget or \$69 million currently for the city of Billings. Currently the City of Billings has less than \$6.7 million in general obligation debt, which includes the recent approval of the transportation bonds. The bonds must gain approval by a simple majority or 51% of the ballots cast.

Economic factors are favorable for debt financing with current interest rates on general obligation bonds of 5.0%. Significant materials and technological advances and new trends in facility construction have been greatly improved over previous construction methods. These new technologies will enhance user satisfaction and durability and provide much lower maintenance levels than facilities constructed in the 1960's, 1970's and 1980's and provide a much longer service life before the cost of major renovation will be required.

This project is consistent with council long-term goal #5 to systematically address aging infrastructure in a way that will allow high priority projects to be completed in a proactive, well planned, and fiscally sound manner.

ALTERNATIVES ANALYSIS

The alternatives are complex with this proposed bond issue and were debated at length by the Steering Committee. Nearly every decision had some cause and effect that may impact the outcome of the bond issue. Not every member of the 7 people on the Steering Committee agreed on the various alternatives discussed in their analysis of what the best recommendation to the city council should be. The committee discussed a multitude of issues as they worked to refine and weed out one alternative over the others. In the end the Steering Committee voted to make the recommendation as outlined below. The alternatives discussed were as follows:

Alternative - Renovate the baseball stadium and not the playing field

Recommendation – Renovate the stadium and the field

Rationale – A certain amount of field would need to be replaced/renovated due to the demolition and construction of the stadium, fencing, lighting, etc., regardless of where the stadium is located and the cost to replace is relatively small compared to the total project. The field would need to be replaced if the field is recessed and/or relocated closer to corner of 27th street, which seems necessary to enable the stadium to be built without disrupting the baseball seasons of the 3 organizations and 4 teams that use the field. The field renovation needed at this point will require almost the same expenditure as replacing the field.

Alternative - Relocate the baseball stadium to another location and keep athletic pool in operation.

Recommendation – Keep in the same location.

Rationale – Relocating would require land acquisition that would add significantly to the cost of the project and infrastructure depending on a new location, athletic pool lacks amenities and play value, the mechanical and filtration system is currently under the stadium and the two facilities are not compatible with each other due to the foul balls and proposed new facility. In any case, Cobb Field would still have to be demolished at a cost of \$700 to \$900 thousand depending on what is done with Athletic Pool.

Alternative – Recommend smaller bond issues and smaller facilities vs. recommended facilities.

Recommendation – Do not recommend smaller bond issue and facilities.

Rationale – The current facility has served the community for 50+ years. The new facilities are expected to last just as long. The community will undoubtedly be much larger than it is now and history shows that Billings has doubled its population in that same time frame. The proposed facilities take into consideration that expected growth and will serve the needs now and will be designed to allow upgrading and expansion to serve them well into the future. The recommended replacement ballpark is sized to meet the minimal requirements of the National Association of Professional Baseball League for an Pioneer League level facility.

Alternative - Wait until February, 2007, to place the question on a mail-out ballot vs. the November 7th general election.

Recommendation – November 7, 2006, General Election.

Rationale – With the November, 2006, general election there will be a significant amount of interest in a number of issues that will result in a much greater turn-out than other elections, a

and a minimal cost to the city. Steering Committee feels that there will be adequate time to educate and inform the general public for that election date. A mail-out election in February, 2007, would have no competing issues, but will cost the city \$80-\$90 thousand to conduct, will require a much longer campaign period, and will have to be conducted in a political and cost environment that is less certain than the November date.

Alternative – Place a Bond Issue proposal to replace the baseball stadium and field on the November, 2006, General Election ballot for a total cost of \$14 million. (Recommended by the Parks, Recreation, and Cemetery Board, May 24th, 2006).

Recommendation – November 7th, 2006 general election, one question: \$14 million.

Rationale – After looking at all of the considering multiple alternatives the Park, Recreation, and Cemetery Board recommends that the skyboxes and community room be constructed only by private funding and amended the May 23rd, 2006, Steering Committee proposal to \$14 Million.

Alternative – Place a Bond Issue proposal to replace the baseball stadium and field on the November, 2006, General Election ballot for a total cost of \$12.5 million.

Recommendation – November 7th, 2006 general election, one question: \$12.5 million.

Rationale – After looking at all of the considering multiple alternatives the Steering Committee are recommending this proposal as the one that will best serve the community now and in the future. (Recommended by the Ballpark Steering Committee, June 12, 2006, and by the Billings PRC Board, June 14, 2006).

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This recommendation is consistent with the following plans:

- Billings Parks 20/20 Plan recommendations for aquatic facilities and Athletic Park, adopted in 1997
- City of Billings 5-year Capital Improvement Plan, FY 2001 to present
- Supported by the Architectural Study performed by CTA Architects and Engineers, 2001
- Neighborhoods of Cobb Field Study, Andrews University School of Architecture, 2003
- Ballpark Replacement Feasibility Study, HNTB Montana, Inc., January, 2006.

SUMMARY

After 5 years of planning using architectural studies, community recreation planning processes, public input process, a yearlong effort by the 2003-2004 Blue Ribbon Committee, and a 9 month long study of the ballpark issues and concerns, we are now in a position to make a final recommendation for consideration by the City Council on the ballpark replacement proposal. Based on the multiple sources of study and public comments we feel comfortable moving forward with the ultimate and final question to the City of Billings voters. The recommendation from the Ballpark Steering Committee is a general obligation bond issue to build a new ballpark for an amount not to exceed \$12.5 million unless private funds are obtained for skybox seating construction. The ballpark will meet all NAPBL standards and requirements and provide fixed seating for 3,500 persons, and have an overall capacity of 4,000+ and covered seating around

home plate and along the 3rd baseline, and a children's play area adjacent to the berm seating behind center field.

RECOMMENDATION

The City Council Ballpark Steering Committee and Billings Parks, Recreation, and Cemetery Board recommends that Council approve the resolution authorizing the submission of the question to the city of Billings voters to approve the issuance of general obligation bonds up to the amount of \$12,500,000 to construct a new ballpark at Athletic Park.

ATTACHMENTS

A. Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of City of Billings, Yellowstone County, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "A RESOLUTION OF THE CITY COUNCIL SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BILLINGS, MONTANA, THE QUESTION OF ISSUING GENERAL OBLIGATION BONDS UP TO AN AMOUNT OF TWELVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$12,500,000.00) FOR THE PURPOSE OF PAYING THE COSTS OF DESIGNING, CONSTRUCTING AND EQUIPPING A NEW PROFESSIONAL BASEBALL STADIUM AND RELATED IMPROVEMENTS IN ATHLETIC PARK, AND PAYING COSTS ASSOCIATED WITH THE SALE AND ISSUANCE OF THE BONDS; AND AUTHORIZING THE LEVY OF ADDITIONAL MILLS OVER THE EXISTING AND APPROVED CHARTER LEVY LIMITATION TO PAY PRINCIPAL OF AND INTEREST ON THE BONDS" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on June 26, 2006, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this _____ day of _____, 2006.

(SEAL)

City Clerk

RESOLUTION NO. 06-_____

A RESOLUTION OF THE CITY COUNCIL SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BILLINGS, MONTANA, THE QUESTION OF ISSUING GENERAL OBLIGATION BONDS UP TO AN AMOUNT OF TWELVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$12,500,000.00) FOR THE PURPOSE OF PAYING THE COSTS OF DESIGNING, CONSTRUCTING AND EQUIPPING A NEW PROFESSIONAL BASEBALL STADIUM AND RELATED IMPROVEMENTS IN ATHLETIC PARK, AND PAYING COSTS ASSOCIATED WITH THE SALE AND ISSUANCE OF THE BONDS; AND AUTHORIZING THE LEVY OF ADDITIONAL MILLS OVER THE EXISTING AND APPROVED CHARTER LEVY LIMITATION TO PAY PRINCIPAL OF AND INTEREST ON THE BONDS

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

Section 1. Recitals.

1.01. Authorization. A city or town is authorized pursuant to Section 7-7-4221, M.C.A., to issue general obligation bonds pledging the general credit of the City for the purpose of acquiring land for and designing and erecting public buildings, upon approval of the electorate of the city or town, provided that such indebtedness will not cause the total indebtedness of the city to exceed 1.51% of the total assessed valuation of taxable property of the city, determined as provided in Section 15-8-111, M.C.A., ascertained by the last assessment for state and county taxes.

A city or town is authorized pursuant to Section 7-16-4104, M.C.A., to incur indebtedness upon the credit of the city or town for the purpose of procuring by purchase, construction or otherwise for various cultural, social and recreational purposes upon approval of the electorate of the city or town, provided that the amount of indebtedness contracted for that purpose does not exceed 0.9% of the total assessed value of taxable property within the City, determined as provided in Section 15-8-111, M.C.A., as ascertained by the last completed assessment for state and county taxes prior to this date.

A city council is authorized pursuant to Section 7-7-4223, M.C.A., to call a bond election by adopting a resolution to that effect.

1.02. Proposed Project. The City Parks, Recreation, and Public Lands Department (the “Department”), based on the recommendation of the Special Steering Committee appointed by the Council and Mayor, has proposed that the City issue general obligation bonds to pay for the costs of designing, constructing and equipping a new professional baseball stadium in Athletic Park, meeting all current requirements and standards of the National Association of Professional

Baseball Leagues, including 3,500 fixed seats and available additional capacity through grass berm seating and standing room, including handicapped seating areas, multiple concession points of service, locker rooms, restrooms, scoreboard, playing field, lighting, landscaping, parking, field maintenance storage, and media and announcers facilities, seating shade structures, and related improvements (the "Project").

1.03. Estimated Cost. The estimated cost of the Project, and costs associated with the sale and issuance of the Bonds is TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00).

1.04. Debt Limitation. The Council has determined that the issuance of general obligation bonds up to the total aggregate amount of TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00) will not cause the City to exceed its general statutory indebtedness limitation, which in May, 2006, is calculated to be \$69,069,745.

The Council has determined that the issuance of general obligation bonds up to the total aggregate amount of \$12,500,000.00 will not cause the City to exceed its indebtedness for the recreational facilities, which in May, 2006 is calculated to be \$38,286,204.

1.05. Mills. Under the City Charter, as modified by the required votes of the electors of the City, the number of mills that can be levied within the City for all purposes is 132.81 for tax year 2005. The voters have approved the levy of additional mills over a period of 20 years as may be required to pay the principal of and interest on \$5,200,000 general obligation bonds for street projects which based on the taxable value of the City at the time of approval of the issuance of the Bonds was 3.56 additional mills. Public Safety Mill Levy of 2005. It is estimated that 8.51 additional mills per year would be needed to pay the principal of and interest on the Bonds over a 20 year period, assuming a 5.0% interest rate, based on the current taxable valuation of the City.

1.06. Election. The Council has determined there should be submitted to the electors of the City qualified to vote at bond elections the question of whether or not the Council shall be authorized to issue and sell general obligation bonds of the City in order to obtain funds for the Project, paying costs associated with the sale and issuance of the bonds and authorizing the levy of additional mills over the existing and approved charter levy limitation to pay principal of and interest on the bonds.

1.07. Bonds. It is the judgment of the Council that the aggregate sum of TWELVE MILLION FIVE HUNDRED THOUSAND Dollars (\$12,500,000.00), will be necessary to carry out the purposes set forth above. It is also the judgment and determination of the Council that each such series of bonds will be payable during a term not to exceed twenty (20) years and shall be redeemable on any interest payment date after one-half of the term for which they are issued.

Section 2. Calling of the Election. The Council of the City hereby calls and directs a special city election to be held on November 7, 2006, in conjunction with the regular election, for the purpose of voting on the following question:

Shall the Council be authorized to issue and sell general obligation bonds of the City up to the amount of TWELVE MILLION FIVE HUNDRED THOUSAND Dollars (\$12,500,000.00), bearing interest at a rate to be determined by the Council at a competitive bid, payable semi-annually during a term not to exceed twenty (20) years and redeemable on any interest payment date after one-half of their term for the purpose of paying the costs of designing, constructing and equipping a new professional baseball stadium and related improvements in athletic park, and paying costs associated with the sale and issuance of the bonds; and authorizing the levy of approximately 8.51 additional mills over the existing and approved charter levy limitation to pay principal of and interest on the bonds?

Section 3. Conduct of Election. All qualified electors of the City shall be entitled to vote at the bond election. The Yellowstone County Election Administrator is hereby requested to close registration, give notice thereof and upon close of registration to prepare printed lists of the electors in the City entitled to vote in the election in the City and to conduct the election in the form and manner prescribed by law.

Section 4. Notice of Election. The City Clerk is hereby authorized and requested to cause notice of the call and holding of the election to be given by publishing notice at least once a week for the two consecutive weeks before the election in the *Billings Times*, a newspaper of general circulation in Yellowstone County. The notice of election as published shall read substantially as follows:

NOTICE OF GENERAL OBLIGATION BOND ELECTION

City of Billings, Montana

November 7, 2006

NOTICE IS HEREBY GIVEN by the City Council (the "Council") of the City of Billings, Montana (the "City"), that pursuant to a certain resolution duly adopted at a regular meeting of the Council on June 26, 2006, a special city election of the registered voters of the City will be held on November 7, 2006, in conjunction with the regular election, for the purpose of voting on the following question:

Shall the Council be authorized to issue and sell general obligation bonds of the City up to the amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), bearing interest at a rate to be determined by the Council at a competitive bid, payable semiannually during a term of not to exceed twenty (20) years and redeemable on any interest payment date after one-half of their term for the purpose of paying the costs of designing, constructing and equipping a new professional baseball stadium and related improvements in athletic park and paying costs associated with the sale and issuance of the bonds; and authorizing the levy of approximately 8.51 additional mills over the existing and approved charter levy limitation to pay principal of and interest on the bonds?

The polls shall be open between the hours of 7:00 a.m. and 8:00 p.m., and the polling places for the election shall be the normal polling places for City residents during a general election. Absentee ballots may be obtained at the office of the Yellowstone County Election Administrator at the Yellowstone County Courthouse, 217 North 27th, Billings Montana until 12:00 noon, November 6, 2006.

DATED this ____ day of _____, 2006.

City Clerk

Publish: October 19, 2006
 October 26, 2006

Section 5. Ballots. The Election Administrator is hereby requested to prepare suitable ballots for use at the election at the polling places, together with the precinct lists.

Section 6. Form of Ballots. The ballots shall be printed in substantially the following forms:

OFFICIAL BALLOT
CITY OF BILLINGS, MONTANA
GENERAL OBLIGATION BOND ELECTION
NOVEMBER 7, 2006

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "GENERAL OBLIGATION BONDS--YES" if you wish to vote for the bond issue; if you are opposed to the bond issue make an X or similar mark in the square before the words "GENERAL OBLIGATION BONDS--NO".

GENERAL OBLIGATION PARK FACILITY BONDS

Shall the Council be authorized to issue and sell general obligation bonds of the City up to the amount of TWELVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$12,500,000.00), bearing interest at a rate to be determined by the Council at a competitive bid, payable semiannually during a term of not to exceed twenty (20) years and redeemable on any interest payment date after one-half of their term for the purpose of paying the costs of designing, constructing and equipping a new professional baseball stadium and related improvements in athletic park, and paying costs associated with the sale and issuance of the bonds; and authorizing the levy of approximately 8.51 additional mills over the existing and approved charter levy limitation to pay principal of and interest on the bonds?

GENERAL OBLIGATION BONDS — YES

GENERAL OBLIGATION BONDS — NO

Section 7. Notice to County Election Administrator. That a copy of this resolution will be provided to the Yellowstone County Election Administrator as soon as possible after its adoption and approval in order to inform him of the details of the election and the pertinent requests and authorizations as to the conduct of the election.

Section 8. Reimbursement Expenditures.

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

(b) Other than (i) expenditures to be paid or reimbursed from sources other than the bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the project have been paid by the City before the date 60 days before the date of adoption of this resolution.

(c) The City reasonably expects to reimburse the expenditures made for costs of the project out of the proceeds of bonds up to an estimated maximum aggregate principal amount of Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) after the date of payment of all or a portion of the costs of the project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

(d) As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the project, other than pursuant to the issuance of the bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the

City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

(e) The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the project. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the bonds or the project and shall specifically identify the actual original expenditure being reimbursed.

PASSED by the City Council of Billings, Montana, this 26th day of June, 2006.

Mayor

Attest: _____
City Clerk

(SEAL)

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Public Hearing and Resolution for Annexation #06-10

DEPARTMENT: Planning and Community Services Department

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 the south side of 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. The subject property is currently vacant rangeland and zoned Agricultural-Open Space.

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

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

RECOMMENDATION

Staff recommends that the City Council approve the Resolution of Annexation for unplatted portions of the N1/2, Section 20, T1N, R26E and Certificate of Survey 1904, subject to the following conditions of approval:

- a. Prior to site development a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements; or

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

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

ATTACHMENT

A. Resolution

INTRODUCTION

This petition for annexation is for a 288-acre parcel located on the south side of Wicks Lane south of Skyview High School in the Heights. The owner, the State of Montana Department of Natural Resources and Conservation, is requesting annexation to obtain city 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. It is located within the Urban Planning Area and is identified on the Limits of Annexation map for annexation within the next seven (7) years.

PROCEDURAL HISTORY

- On June 6, 2006, the Annexation Petition was submitted to the Planning Department.
- On July 10, 2006, the City Council acknowledged the annexation petition and set a public hearing date for July 24, 2006.
- On July 24, 2006, the City Council will conduct the public hearing and potentially adopt a resolution annexing the subject property.
- On August 14, 2006, if the annexation is approved by the City Council, a public hearing for the first reading to expand Ward Boundary I will be conducted.
- On August 28, 2006, if the expansion of the ward boundary is approved, the City Council will conduct the second and final reading.

BACKGROUND

The subject property is surrounded on three (3) sides by properties located within the City Limits and is within the limits of annexation as specified by the Annexation Policy adopted by the City Council in 2004 and updated in 2006.

ALTERNATIVES ANALYSIS

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

1. The area is located within the Limits of Annexation and within the Urban Planning Area.
2. The City is able to provide adequate services.
3. The proposed improvements for the subdivision, including streets, satisfy City standards.
4. Upon approval of the final subdivision plat, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. Upon approval of the final subdivision plat, the owners will form a Park Maintenance District.
6. Residential densities will be approximately six (6) dwelling units per acre.

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

Departmental Response: City departments and Yellowstone County were given the opportunity to comment on this annexation. All City departments responded favorably. No comments were received from Yellowstone County.

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

- **Water:** Water to the subject property will be extended from the main line within Wicks Lane. The subject property will be required to annex into the Heights Water District upon subdivision.
- **Sewer:** Sanitary sewer will be connected to the existing main lines within Wicks Lane.
- **Stormwater:** A stormwater improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the Engineering Department.
- **Transportation:** The subject property will be accessed from internal streets off of Wicks Lane. These streets will be constructed to city standards and will be reviewed with the subdivision. A Traffic Accessibility Study (TAS) will also be submitted for review and approval by the City Traffic Engineer.
- **Fire Station:** The subject property is currently served by the Billings Fire Department, which will continue to service the property upon annexation. The nearest fire station is located at 1601 St. Andrews Drive (Station #6).
- **Parks:** Castle Rock Park is located less than $\frac{1}{4}$ mile east, High Sierra Park is located northwest across Wicks Lane and a county park is located approximately $\frac{1}{4}$ mile to the northwest. There are also state lands located to the northwest of this property. With the proposed subdivision, several internal parks have been proposed, which will be reviewed during the subdivision process.
- **Bicycle and pedestrian facilities:** The property lies within the jurisdiction of the Heritage Trail Plan. With the subdivision, the applicant has provided several trail corridors and connections to existing trails south of the property. These will be further reviewed with the subdivision.

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

- **Transit:** The MET transit system had no objection with the annexation request.
- **Fire:** The Fire Department had no objection with this annexation request.
- **Police:** The Police Department had no objection with this annexation request.
- **Public Utilities Department:** The Public Utilities Department has no objection with the annexation request.
- **Ambulance Service:** The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City Ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.
- **Legal and Finance:** General Fund services, such as Legal and Finance have indicated that they will not be negatively impacted.
- **Other Departments:** City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require the City Council conduct a public hearing. Notice of the public hearing was posted on the property on June 30, 2006, and published in the Billings Times on July 5, 2006. The Planning Division has received no public comments regarding the proposed annexation.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Annexation of this property would adhere to the following goals, objectives and policies of the *Yellowstone County and City of Billings 2003 Growth Policy Plan*:

- Affordable housing for all income levels dispersed throughout the City and County. (Land Use Element Goal, page 6).
- More housing and business choices within each neighborhood. (Land Use Element Goal, page 6)

- Safe and efficient transportation system characterized by convenient connections and steady traffic flow (Transportation Goal, Page 10).
- A multi-purpose trail network integrated into the community infrastructure that emphasizes safety, environmental preservation, resource conservation and cost effectiveness. (Transportation Goal, Page 9)

RECOMMENDATION

Staff recommends that the City Council approve the Resolution of Annexation for unplatted portions of the N1/2, Section 20, T1N, R26E and Certificate of Survey 1904, subject to the following conditions of approval:

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

ATTACHMENT

- A. Resolution

RESOLUTION NO. 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:

A tract of land situated in the N1/2 of Section 20, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as unplatte portions of the N1/2, Section 20, T1N, R26E and Certificate of Survey 1904, Records of Yellowstone County, Montana; Containing 288 gross acres, more or less.

(# 06-10 Exhibit "A" Attached)

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

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

improvements and provide guarantees for such infrastructure improvements. The subdivider will be responsible for forming a Park Maintenance District at the time of subdivision.

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

PASSED by the City Council and APPROVED this 24th day of July, 2006.

THE CITY OF BILLINGS:

BY: _____

Ron Tussing, MAYOR

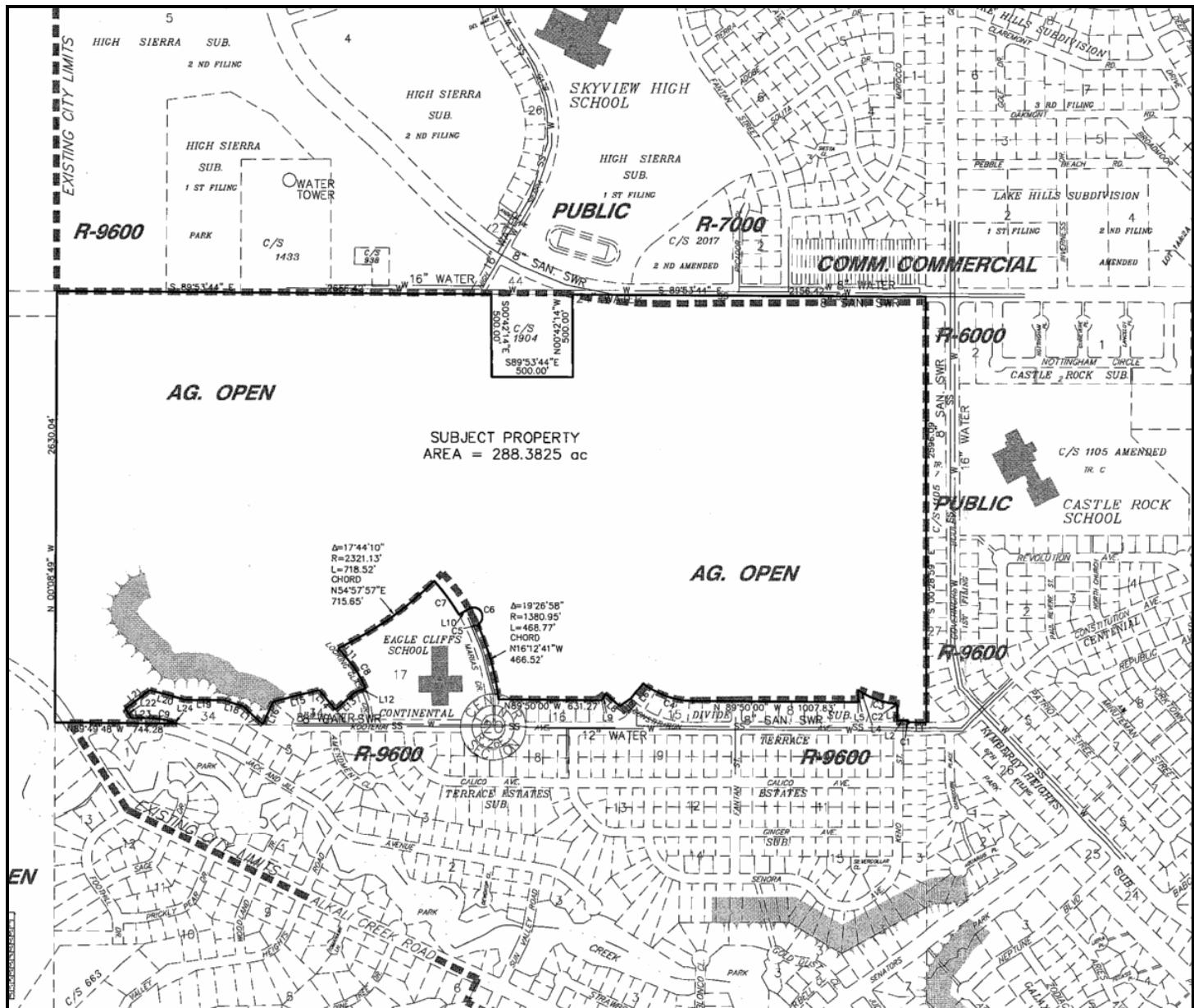
ATTEST:

BY: _____

Marita Herold, CMC/AAE CITY CLERK

(AN 06-10)

EXHIBIT A



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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward II for Annexation 06-07 Property

DEPARTMENT: Planning and Community Services

PRESENTED BY: Wyeth Friday, Planner II

PROBLEM/ISSUE STATEMENT: On July 10, 2006, the City Council approved the annexation of the N1/2NE1/4 (Less Certificate of Survey 515 and 1335) and Certificate of Survey 999, T1N, R26E, Section 23, (Annexation #06-07) containing 57 acres. The property is located south of Wicks Lane between Hawthorne Lane and Bitterroot Drive. Property owner Felton Associates, LLC, requested the annexation. After annexation, the property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II will be held on July 24, 2006. The second reading of the ordinance is scheduled for Council action on August 14, 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 this property to City Ward II.

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

ATTACHMENT

- A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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

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. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name

and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

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

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

PASSED by the City Council on the second reading this 14th day of August, 2006.

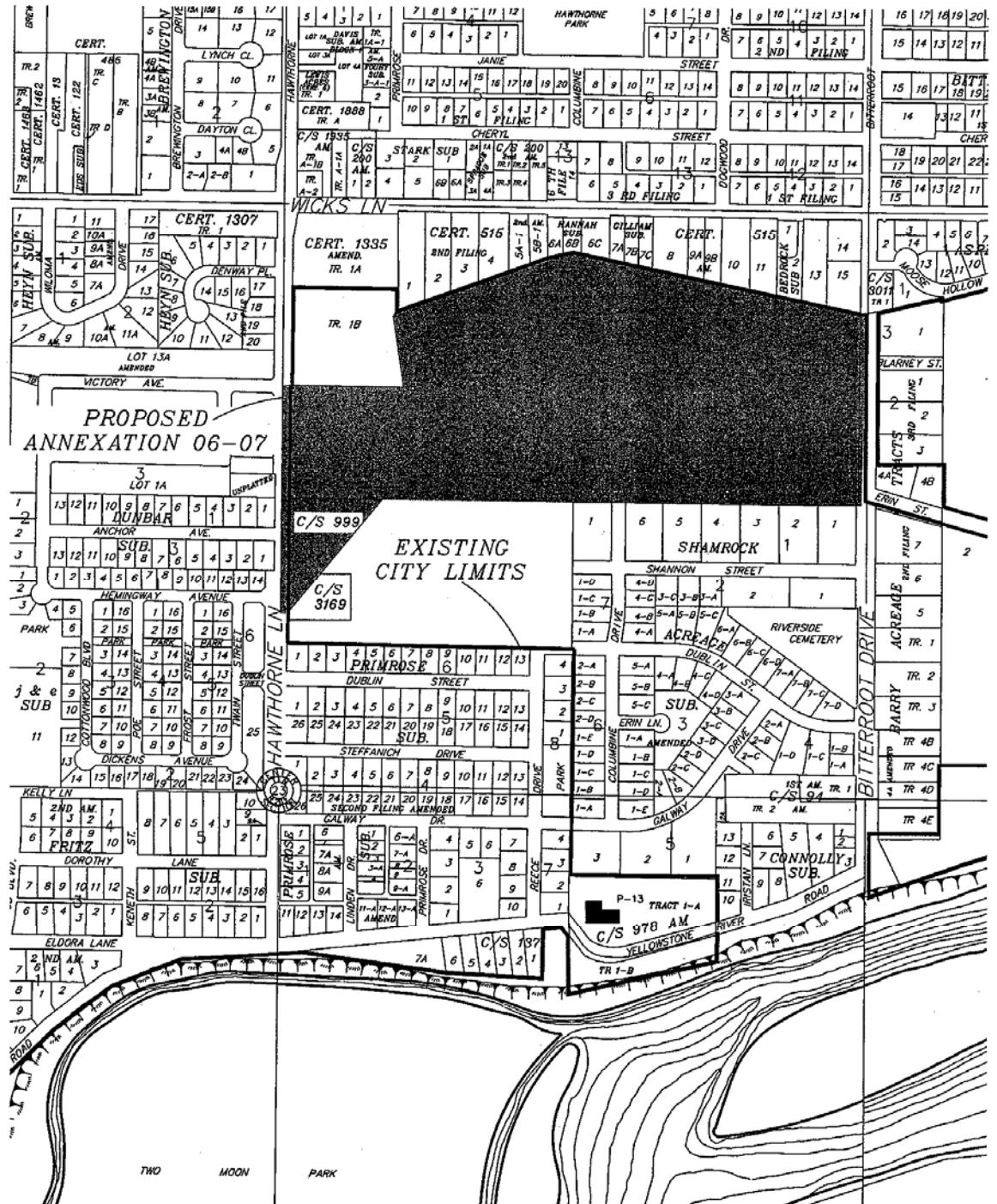
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Public Hearing and First Reading of an Ordinance Expanding Ward III
Annexation #06-09

DEPARTMENT: Planning and Community Services

PRESENTED BY: David Green, Planner I

PROBLEM/ISSUE STATEMENT: On July 10, 2006, the City Council approved the annexation of Tract 2, Certificate of Survey 2771, containing 2.137 acres (Annexation #06-09). The petition for annexation was submitted by Rice Wagon LLC, 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 III will be held on July 24, 2006. The second reading of the ordinance is scheduled for Council action on August 14, 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 III.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A. Ward Ordinance and Exhibit A

ORDINANCE NO. 06-_____

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

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

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

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

Tract 2 of Certificate of Survey 2771, recorded June 10, 1993, under Document No.

1688587, Records of Yellowstone County, Montana. Including all adjacent Right-Of-Way of Hesper Road. Containing 2.344 gross and 2.137 net acres.

(# 06-09) See Exhibit "A" Attached

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

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

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

PASSED by the City Council on the second reading this 14th day of August, 2006.

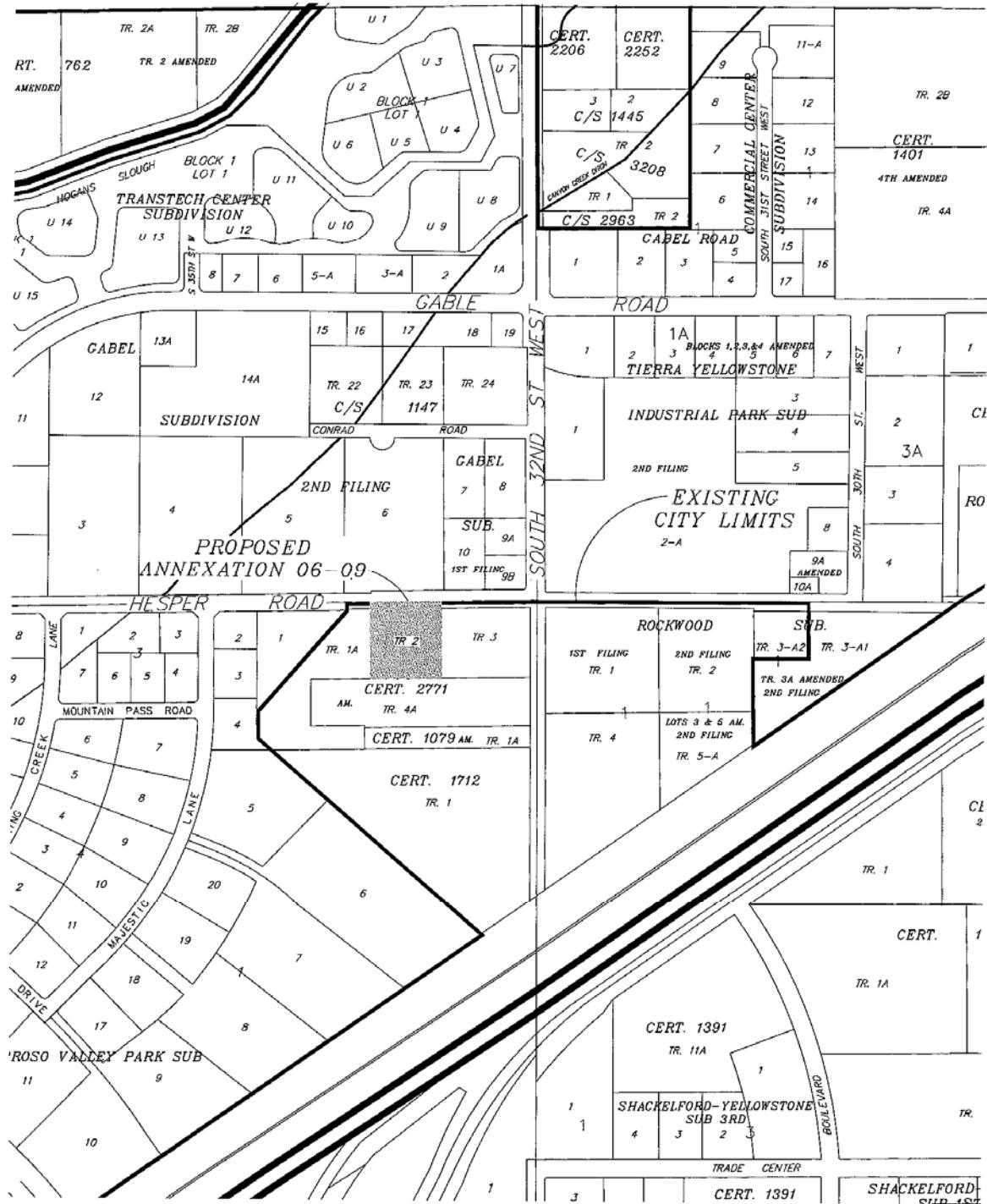
THE CITY OF BILLINGS:

Ron Tussing, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT A



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 24, 2006

TITLE: Public Hearing for Special Review #818

DEPARTMENT: Planning & Community Services

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

PROBLEM/ISSUE STATEMENT: This is a Special Review to allow a drive-through window for a bank in a Community Commercial zone adjacent to a Residential-6,000 zone, Lots 19-24, Block 2 of Evergreen Subdivision. The property is addressed as 1447 Grand Avenue. The owner is Ryan Henrickson, the prospective buyer is Rocky Mountain Bank and Engineering, Inc. is the agent. The public hearing was opened on June 6, 2006, and delayed for 30 days by the Zoning Commission. The Zoning Commission re-opened the public hearing on Wednesday, July 5, 2006, and is forwarding a recommendation to the City Council of conditional approval on a 4-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval on a 4-0 vote to the City Council on Special Review #818.

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

ATTACHMENTS

- A. Zoning Map
- B. Site Photographs
- C. Site Plan – submitted July 5, 2006

INTRODUCTION

This is a request for a special review to allow a drive-through window for a new bank building in a Community Commercial zone adjacent to a Residential Multifamily-Restricted zone. The property is located at the northeast corner of the intersection of Grand Avenue and 15th Street West. The property is addressed as 1447 Grand Avenue. A new bank building will be constructed on the former site of Lucky's Auto Sales. The existing auto sales building will be demolished. The original site plan showed drive-through windows to be installed on the north side of the proposed new bank. A revised site plan was submitted after the June 6, 2006, public hearing in response to concerns from the Engineering Division and the City Traffic Engineer. The revised plan showed the drive through windows on the east side of the building with direct access to the alley adjacent to the residential property on Avenue B. Planning staff subsequently recommended denial of the revised site plan based on the alley access across from residential uses.

PROCEDURAL HISTORY

- A special review application to allow a drive through facility adjacent to a residential zone was received on May 1, 2006.
- The City Zoning Commission held a public hearing on June 6, 2006, and voted 4-0 to continue the public hearing until July 5, 2006.
- The applicant submitted a revised site plan on June 19, 2006, in response to traffic concerns with the original site plan.
- On June 28, 2006, Planning staff forwarded a recommendation of denial based on the revised site plan received on June 19, 2006.
- On July 5, 2006, the Zoning Commission continued the public hearing. The applicant submitted a new site plan with revisions to the alley access to the Zoning Commission at the public hearing.
- The City Council will conduct a public hearing and consider this application on July 24, 2006.

BACKGROUND

A new bank building for Rocky Mountain Bank is proposed to be constructed on the former site of Lucky's Auto Sales. The original site plan showed drive-through windows to be installed on the north side of the proposed new bank. The Planning staff recommended conditional approval based on the original site plan. The Engineering Division and City Traffic Engineer had concerns with the original site plan due to access locations on Grand Avenue and 15th Street West. The Zoning Commission opened the public hearing on June 6, 2006, and granted a 30-day delay to revise the site plan based on the traffic concerns. A revised plan was submitted on June 19, 2006, to the Planning Department and showed the drive through windows located on the east side of the building with customer access on the alley directly south of the Residential-6,000 lots on Avenue B. The revised site plan of June 19, 2006, accommodated the traffic and access issues but did not make the proposal more compatible with the surrounding neighborhood and made screening of the drive through impossible. The Planning staff recommended denial of the June 19, 2006, site plan based on this incompatibility.

On July 5, 2006, the applicant and agent submitted another revised site plan that shows no alley access and screening along the north property line at the alley. This site plan also addressed the concerns of the City Engineering Division and the City Traffic Engineer. The Zoning Commission considered the new revised site plan at the public hearing and is forwarding a recommendation of conditional approval on a 4-0 vote based on the July 5, 2006, site plan.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed use is compatible with the adjoining land uses and conditions of approval have been recommended to ensure compatibility.

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

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

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

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lots 19-24 of Block 2 of Evergreen Subdivision as shown on the site plan submitted July 5, 2006.
2. Any expansion of the buildings or parking area greater than 10 percent will require an additional special review approval as per BMCC 27-613(c).
3. Any lighting within the parking lot areas shall have full cut-off shields so light is directed to the ground and not onto adjacent property.
4. The existing curb cuts on Grand Avenue and 15th Street West shall be abandoned and relocated as determined by the City Engineering Division.

5. Landscaping shall be provided along the property boundary with Grand Avenue and 15th Street West and in accordance with Section 27-1100 of the BMCC.
6. A Traffic Accessibility Study shall be submitted to the City Engineering Department for review. Recommendations provided in the TAS shall be implemented by the applicant at the discretion of the City Engineering Division.
7. There shall be no access to the property from the alley and a 6 foot sight-obscuring fence shall be constructed along the entire length of the north property line excluding the clear vision area (Section 27-618 BMCC) at the alley entrance on 15th Street West.
8. There shall be no outdoor public address system or outside announcement system of any kind with the exception of the speaker system for the drive through service windows.
9. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping requirements specified on Section 27-1101, and all other City regulations that apply.

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

STAKEHOLDERS

The public hearing was held on June 6, 2006, before the City Zoning Commission. The applicant requested and received a 30-day delay to revise the site plan in response to concerns from the City Engineering Division and the City Traffic Engineer. A revised site plan was submitted on Jun 19, 2006, that addressed traffic concerns but allowed customer access to the alley adjacent to residential property. Planning staff recommended denial of this site plan. On July 5, 2006, the Zoning Commission continued the public hearing and Danny Skarda, President of Rocky Mountain Bank and Michael Sanderson, P.E. of Engineering, Inc. provided testimony. The applicant submitted a new revised site plan that showed no alley access and screening along the north property line adjacent to the alley. The Zoning Commission reviewed the site plan and voted 4-0 to forward a recommendation of conditional approval based on the revised site plan.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

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

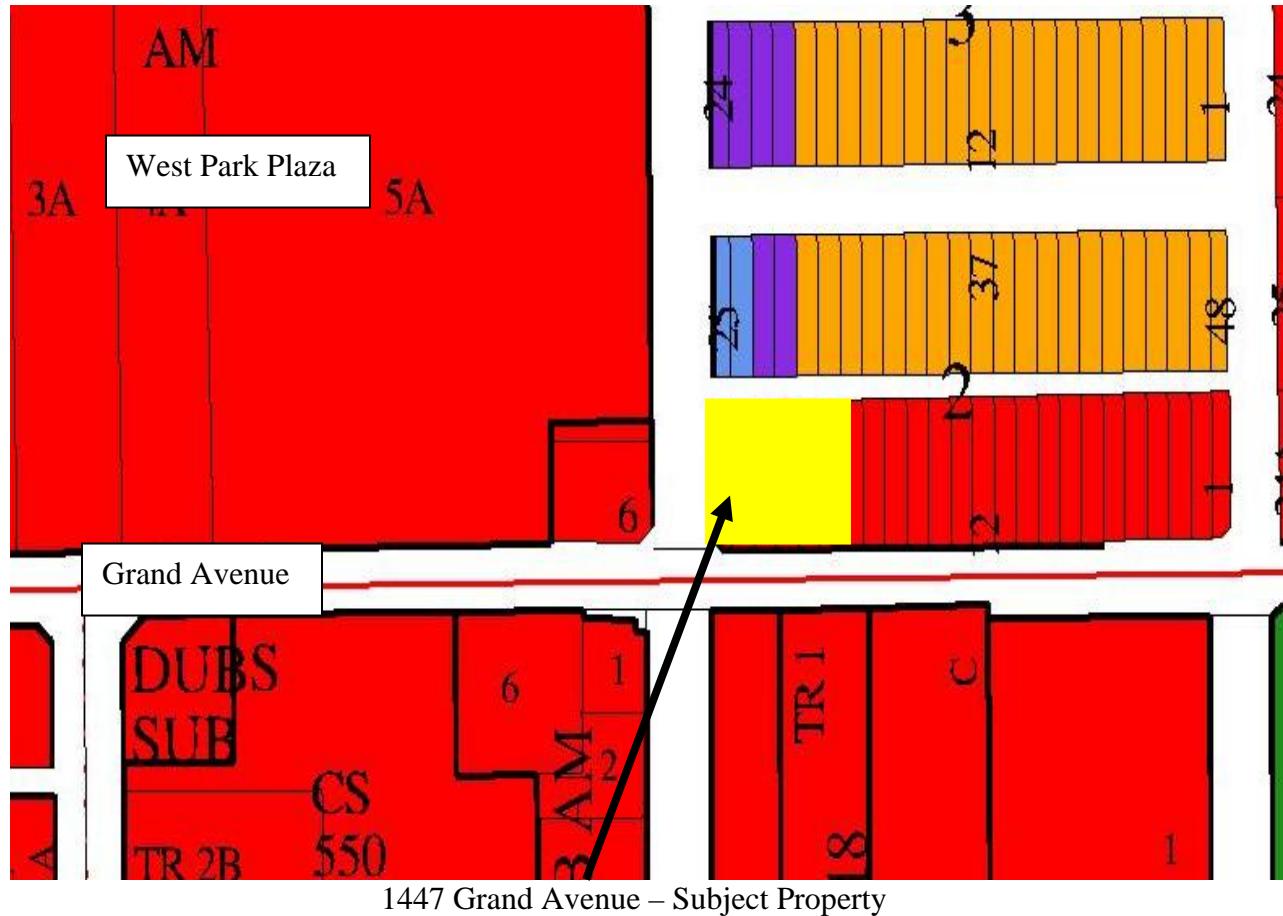
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote on Special Review #818.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map – Special Review #818



ATTACHMENT B
Site photos –Special Review 818



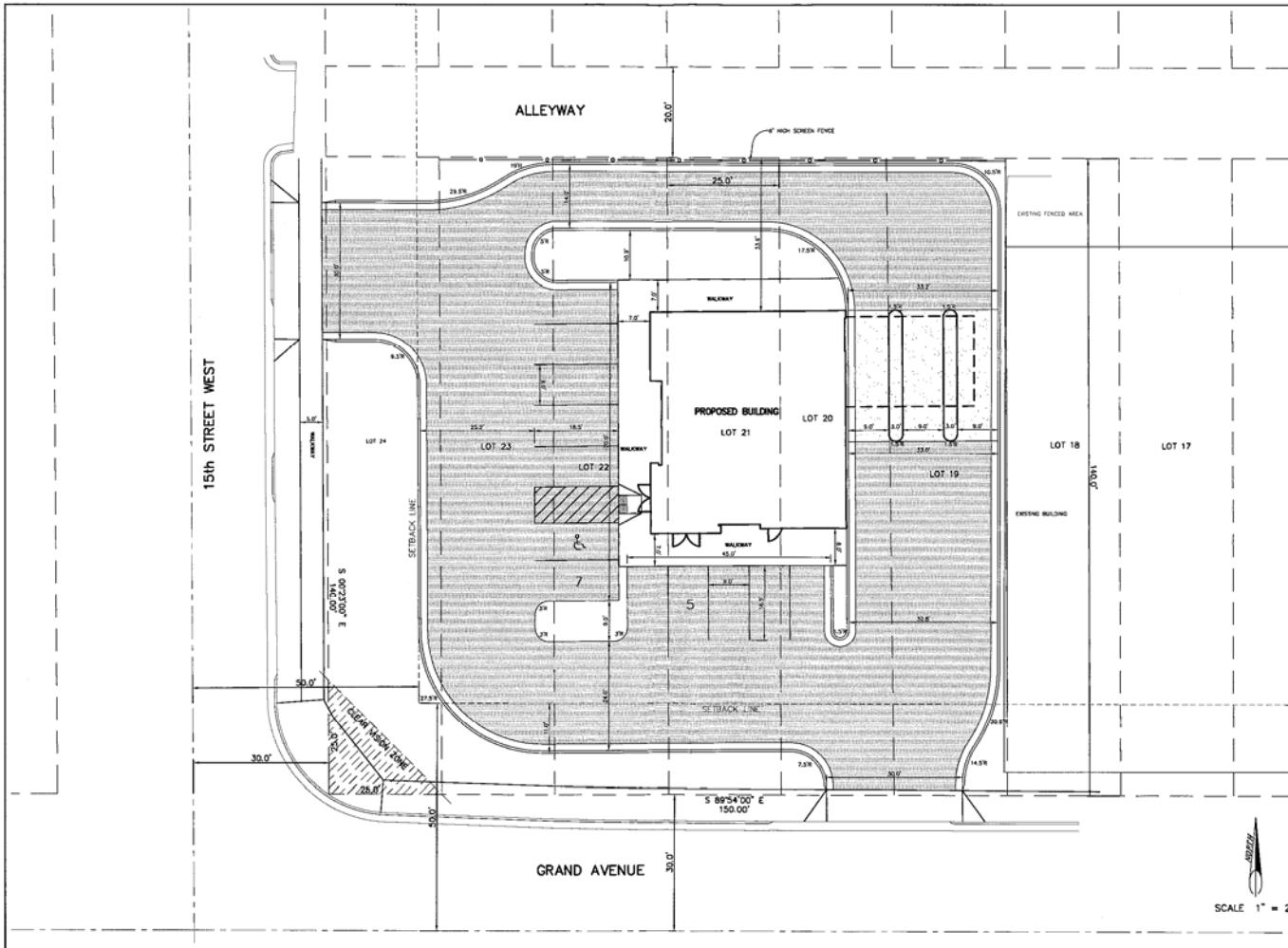
1447 Grand – Existing Building



Residential property north of alley adjacent to subject property

ATTACHMENT C
Site Plan July 5, 2006 - Special Review #818

P:\C\AO\0\UD3\LAND.DAT - PROJ\PROJ1\78015_09_Eng\Site_Sol_1\15\9-24_E\02 - PV\obj\NEW_BASE2.dwg, 7/5/2006 2:28:07 PM, generated, 1:1



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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 24, 2006

TITLE: Public Hearing for Special Review #820

DEPARTMENT: Planning & Community Services

PRESENTED BY: Juliet Spalding, Planner II

PROBLEM/ISSUE STATEMENT: This is a Special Review to permit an all-beverage liquor license on an outdoor patio within the City's right-of-way in the Central Business District (CBD) zone on Lots 1 & 2, Block 111 of Billings Original Town. The subject property is located at 2501 Montana Avenue. Computers Unlimited, Michael Schaer is the owner, and A & E Architects, James Bos is the agent. The Zoning Commission conducted a public hearing on July 5, 2006, and is forwarding a recommendation of conditional approval to the City Council.

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

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

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

RECOMMENDATION

The Zoning Commission is recommending conditional approval to the City Council on Special Review #820.

Approved By: City Administrator City Attorney

 /

ATTACHMENTS

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

INTRODUCTION

The applicant is requesting a Special Review to permit the expansion of an all beverage liquor license to include an outdoor patio within the City's street right-of-way at the Carlin Martini Bar and Night Club located at 2501 Montana Ave. The subject property is described as Lots 1 & 2 of Block 111 of the Billings Original Town and is zoned Central Business District. The existing bar is located on the northeast corner of Montana Ave. and N. 25th St. A Special Review must be approved to allow an outdoor patio lounge where an existing liquor license has been approved. The primary issue the applicant will have to work out is obtaining an encroachment permit for building within the 25th St. right-of-way.

PROCEDURAL HISTORY

- A special review application to allow an outdoor patio lounge was received on June 1, 2006.
- The City Zoning Commission held a public hearing on July 5, 2006, and voted 4-0 to recommend conditional approval of the special review request.
- The City Council will conduct a public hearing and consider this application on July 24, 2006.

BACKGROUND

In recent years with the downtown revitalization projects, there have been other Special Reviews approved for the use of liquor licenses on patios within the City's right-of-way, adjacent to the subject business. The following businesses have received Special Reviews similar in nature: The Rex located at 2401 Montana Ave. (conditionally approved 3/23/98), Montana Brewing Co. located at 111 and 113 N. Broadway (conditionally approved 4/24/00), Casey's Golden Pheasant located at 216 and 222 N. Broadway (conditionally approved 1/8/01), Travel Café located at 313 N. Broadway (conditionally approved 1/8/01), Montana Ave. Coffee Bar located at 2923 Montana Ave. (conditionally approved 4/25/05).

This proposal indicates that the patio area would be 791 square feet in size, including a fire pit and seating for 56 people. Access to the patio is proposed from three entrances from the interior of the building, and three entrances (including one ADA accessible ramp) from the street. The proposed patio would include retractable awning covers, and planters, and would be raised approximately 20" from street grade to match the floor level inside the Carlin. Additionally the proposed site plan shows that the patio would remove three existing parking spaces along N. 25th Street, and come within eight feet of the existing raised planter on the street corner, and within eight feet of the sidewalk edge.

In addition to the Special Review to allow the expansion of the liquor license, the applicant will also be required to obtain a building permit from the City Building Division, an encroachment permit from City Engineering because the patio is proposed within the public right-of-way, and review and approval by the Historic Preservation Board, as this structure is within the Billings Townsite Historic District (see Section 27-500, BMCC).

The Zoning Commission is recommending conditional approval. Most of the conditions are similar to the conditions imposed on the previous similar Special Review requests, and relate to the additional permits that will need to be secured prior to final approval and construction. For example, the second condition will require the applicant to obtain an encroachment permit from City Engineering for the patio.

ALTERNATIVES ANALYSIS

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

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

This application does comply with the requirements of the zoning regulations.

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

This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.

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

The proposed use is compatible with the adjoining land uses and conditions are being recommended that will ensure compatibility.

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

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

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

CONDITIONS OF APPROVAL

The Zoning Commission recommended approval of the request with the following conditions of approval:

1. The special review approval shall be limited to Lots 1 & 2 of Block 111 of the Billings Original Town and the public right-of-way adjacent to the business on N. 25th St., as shown on the submitted site plan.

2. The applicant shall obtain an encroachment permit from City Engineering, prior to construction of the patio. There shall be a minimum of eight feet of unobstructed width between the patio and the existing planters and edge of curb. The final design and layout of the patio shall be at the discretion of City Engineering.
3. There shall be no amplified or live music on the proposed outdoor patio. Only background music from stereo speakers shall be allowed.
4. The patio area shall remain 'open air' (except for fencing and awning) and shall not be enclosed.
5. Due to the serving of alcohol within the public right-of-way, the patio shall be separated from the "open" sidewalk area by a wall, fence, or railing a minimum of 3'-6" high, but not over 5'-0" high. The fence or railing style and material shall be consistent with the specifications contained the Downtown Framework Plan. All egress from the buildings and patio area must comply with Fire and Building Codes.
6. Operation of the patio shall be allowed only during normal business hours.
7. This Special Review approval shall only be valid as long as there is a valid encroachment permit issued by the City Engineers' Office.
8. The operator of the patio shall indemnify and hold the City harmless for the activity that takes place within the public right-of-way. The Permittee or operator of the patio shall provide proof of an insurance policy, issued by a company licensed to do business in the state of Montana, in the amount of one and one-half million dollars (\$1,500,000.00) combined single limit, protecting the Permittee and the city from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the encroachment permit. Such insurance shall name the City as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days advance written notice to the City. In addition, the Permittee shall indemnify the City against any and all liability, loss or damage that the City may suffer as a result of claims, demands, costs or judgments resulting from activities related to use of the patio area within the public right-of-way.
9. No signage shall be allowed to be placed on or hung from the fence or railing that encloses the patio.
10. All limitations on expansion of the alcohol service area shall be in accordance with Section 27-613 of the Billings Montana City Code (BMCC).
11. The applicant shall receive approval from the Historic Preservation Board for the proposed patio in accordance with the procedures found in Section 27-500, BMCC.

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

STAKEHOLDERS

The public hearing held on July 5, 2006, before the City Zoning Commission was attended by a representative from A & E Architects. A revised site plan addressing some of City Engineering's initial site development concerns was submitted. This revised site plan is attached to this report. There were no other speakers in favor or against the proposal.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- New Development that is sensitive to and compatible with the character of adjacent City neighborhoods.
- An economically and culturally vibrant downtown Billings.

RECOMMENDATION

The Zoning Commission is recommending conditional approval to the City Council on Special Review #820.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map – Special Review #820

Subject Property is Lots
1&2, Block 111,
Billings Orig. Town
2501 Montana Ave.

This document may not be reproduced in any way without advance permission from the Yellowstone County GIS Management Committee.



LEGEND

- Public
- Residential 15000
- Residential 9600
- Residential 8000
- Residential 7000
- Residential 7000 Restricted
- Residential 6000
- Residential 6000 Restricted
- Residential 5000
- Residential Multi-Family
- Residential Multi-Family Restricted
- Residential Manufactured Home
- Residential Professional
- Neighborhood Commercial
- Community Commercial
- Central Business District
- Planned Unit Development
- Highway Commercial
- Heavy Industrial
- Controlled Industrial
- Medical Corridor Permit Zoning District

ATTACHMENT B
Site Photographs for Special Review #820

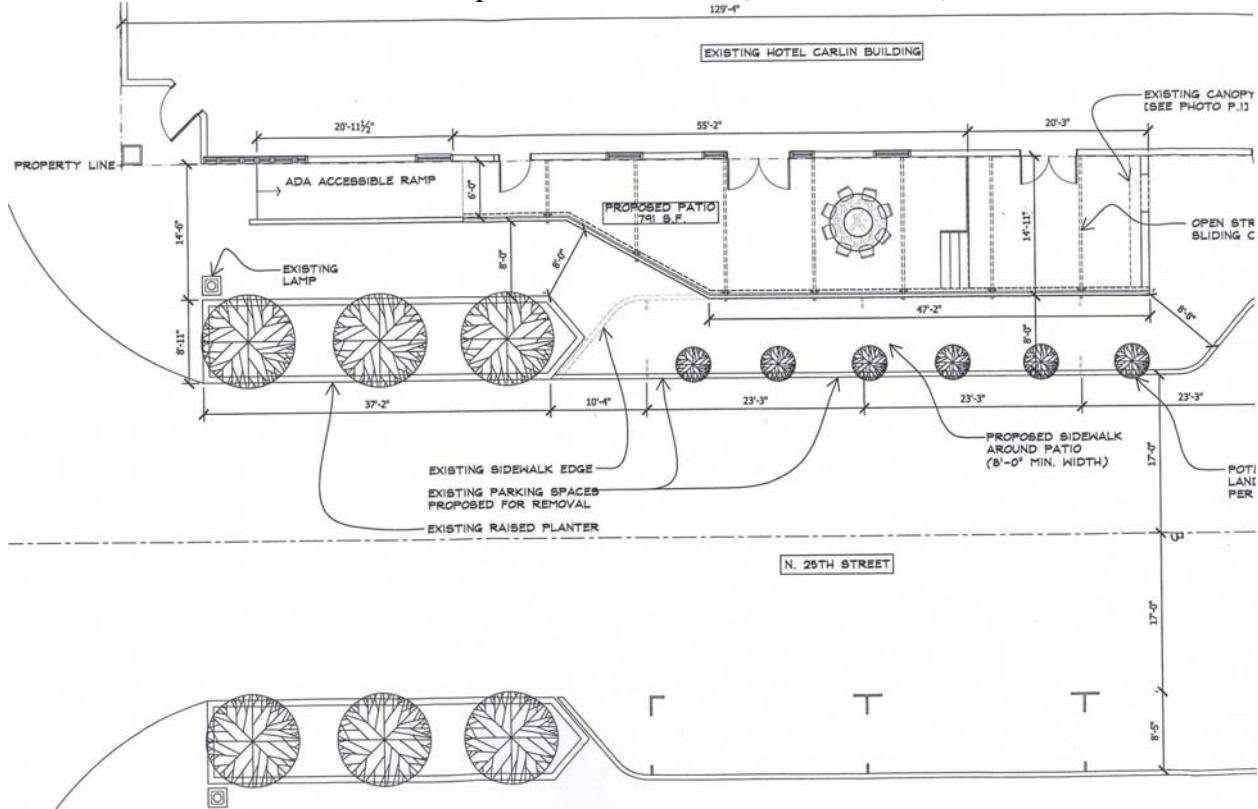


Photo 1: Looking north from corner of Montana Ave and N. 25th St. (proposed patio area on left next to Carlin building).



Figure 2: Looking south at existing entrance to the Carlin and at existing raised planter on street corner.

ATTACHMENT C
 Site Plan – Special Review #820 (Revised 7/5/06)



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 24, 2006

TITLE: Public Hearing for Special Review #821

DEPARTMENT: Planning & Community Services

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

PROBLEM/ISSUE STATEMENT: This is a Special Review to allow a church and senior retirement home on a property legally described as Lot 1, Block 3, High Sierra Subdivision, 2nd filing and located at the intersection of West Wicks Lane and Sierra Granada Boulevard. The subject property is zoned Residential-9,600 and contains approximately 21.37 acres. The owner is Atonement Lutheran Church and CTA Architects is the representing agent. The Zoning Commission conducted a public hearing on July 5, 2006, and is forwarding a recommendation to the City Council of conditional approval on a 4-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote on Special Review #821.

Approved By: City Administrator City Attorney
_____ / _____

ATTACHMENTS

- G. Zoning Map
- H. Site Photographs
- I. Site Plan

INTRODUCTION

The applicant is requesting a special review to allow a church and a senior retirement living complex on Lot 1, Block 3, High Sierra Subdivision, 2nd filing located north of the intersection of West Wicks Lane and Siesta Avenue. The subject property is zoned Residential 9600 (R-96) and contains approximately 21.37 acres. The proposed church will consist of a new sanctuary building of approximately 20,731 square feet. In addition, the congregation is proposing to move a historic church building from Box Elder, MT to this property. This historic structure will be renovated and will be available to the residents of the new senior retirement complex.

PROCEDURAL HISTORY

- A special review application to allow a church and a senior retirement living complex was received on June 5, 2006.
- The City Zoning Commission held a public hearing on July 5, 2006, and voted 4-0 to forward a recommendation of approval for this the special review request.
- The City Council will conduct a public hearing and consider this application on July 24, 2006.

BACKGROUND

The historic Box Elder church is approximately 1,060 square feet on each of the two floors. The church will provide educational and religious opportunities for the entire community, however will service mainly the elderly population and those living within the retirement complex proposed within the master plan for the entire property. The senior retirement complex features a main two-story building with 27,742 square feet on each floor. The retirement complex also includes eight (8) duplex dwellings that will serve more independent senior citizens. Those areas shown on the Campus Plan as "future development" may be used in the future but no definitive plans are available at this time. Those areas of the property, when developed, will require additional special review approval unless they are used for single family dwellings.

The Planning Department reviewed this application and recommended conditional approval. Planning staff found the proposed church and senior retirement complex is compatible with the single-family residences to the east and the Harvest Church facilities to the south. The first phase of the project will be the renovation of the historic church from Box Elder and the Senior Living Complex building. The second and third phases will be the duplex buildings and the new sanctuary for Atonement Lutheran Church. The proposed parking is in substantial compliance with the site development regulations (Section 6-1203). The landscaping plan will be developed for each phase of the development and submitted with the building permits. The Engineering Department, as well as the Planning Department, will further review the site plan for compliance with the unified zoning regulations and the Billings Municipal City Code when each building permit is submitted. The Zoning Commission conducted the public hearing and voted 4-0 to recommend conditional approval.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.
3. Is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.
The proposed use is compatible with the adjoining land uses and conditions of approval are recommended to ensure compatibility.

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

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

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

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 1, Block 3, High Sierra Subdivision, 2nd filing.
2. The site shall be developed in accordance with the submitted site plan and shall comply with standards set forth by the Unified Zoning Regulations and applicable city codes related to off-street parking and site development. A site plan review is required for the proposed site layout in addition to building permits for all structures on the site.
3. Parking lot lighting shall have full cutoff shields so light is directed to the ground and not on to adjacent property.
4. The historic church building may be placed at a temporary location on the subject property while a foundation is prepared. The applicant or agent must provide a secure temporary location and maintain the property free of weeds, debris and unauthorized access. The historic church building must be placed on its foundation at its permanent location on or before October 15, 2006.
5. The areas labeled "Future Development" on the Campus Plan submitted with application shall remain undeveloped for any uses other than those allowed in the Residential-9,600 zoning district. Expansion of the church facilities, senior retirement facilities or other uses requiring special review approval on to these areas will require additional special review approval of the Billings City Council.

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

STAKEHOLDERS

The public hearing was held on July 5, 2006, before the City Zoning Commission. The applicant and agent explained the project to the Zoning Commission. David Trost of Atonement Lutheran Church testified the new sanctuary building will replace the existing church further east on Wicks Lane. That portion of the project is about two years in the future. Mr. Trost explained that St. John's Lutheran Ministries is developing the senior living complex and is coordinating the move of the Box Elder Church. Kent Burgess, CEO of St. John's Lutheran Ministries, testified on the Box Elder Church phase and the development of the senior living facilities. Mr. Burgess testified that there are not enough senior living facilities in Billings Heights and this project will serve a growing population. The ministry is working with MSU-Billings to complete a cultural inventory of the Box Elder Church and to document the project. The church is scheduled to begin its journey to Billings the week of August 7, 2006. Duane Ostermiller will be moving the church from Box Elder to Billings. The church will be located on its permanent foundation at the new site sometime in early fall. No surrounding property owners attended the public hearing or submitted letters of comment to the Planning Department.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

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

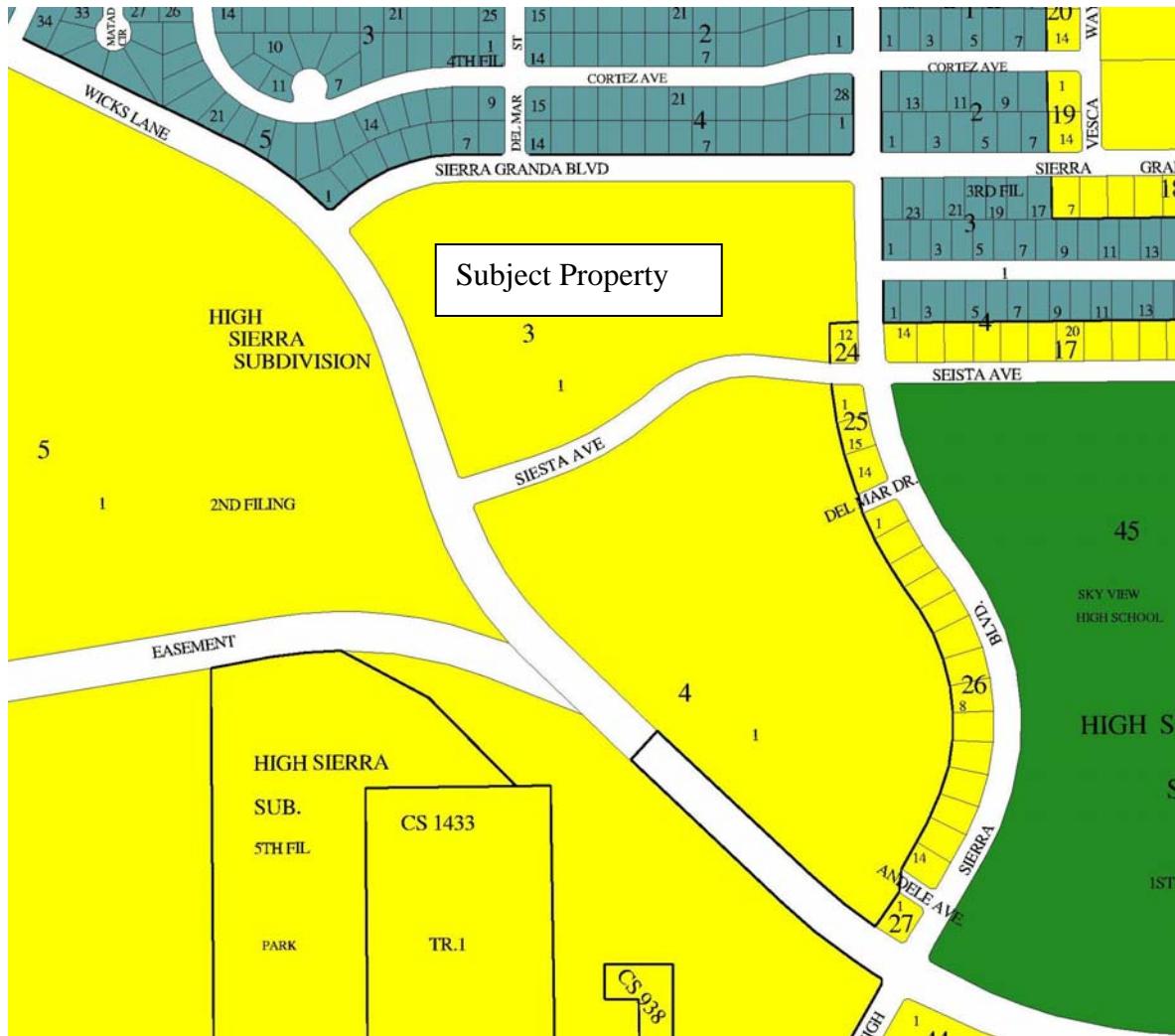
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote on Special Review #821.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map – Special Review #821



ATTACHMENT B
Site photographs –Special Review #821

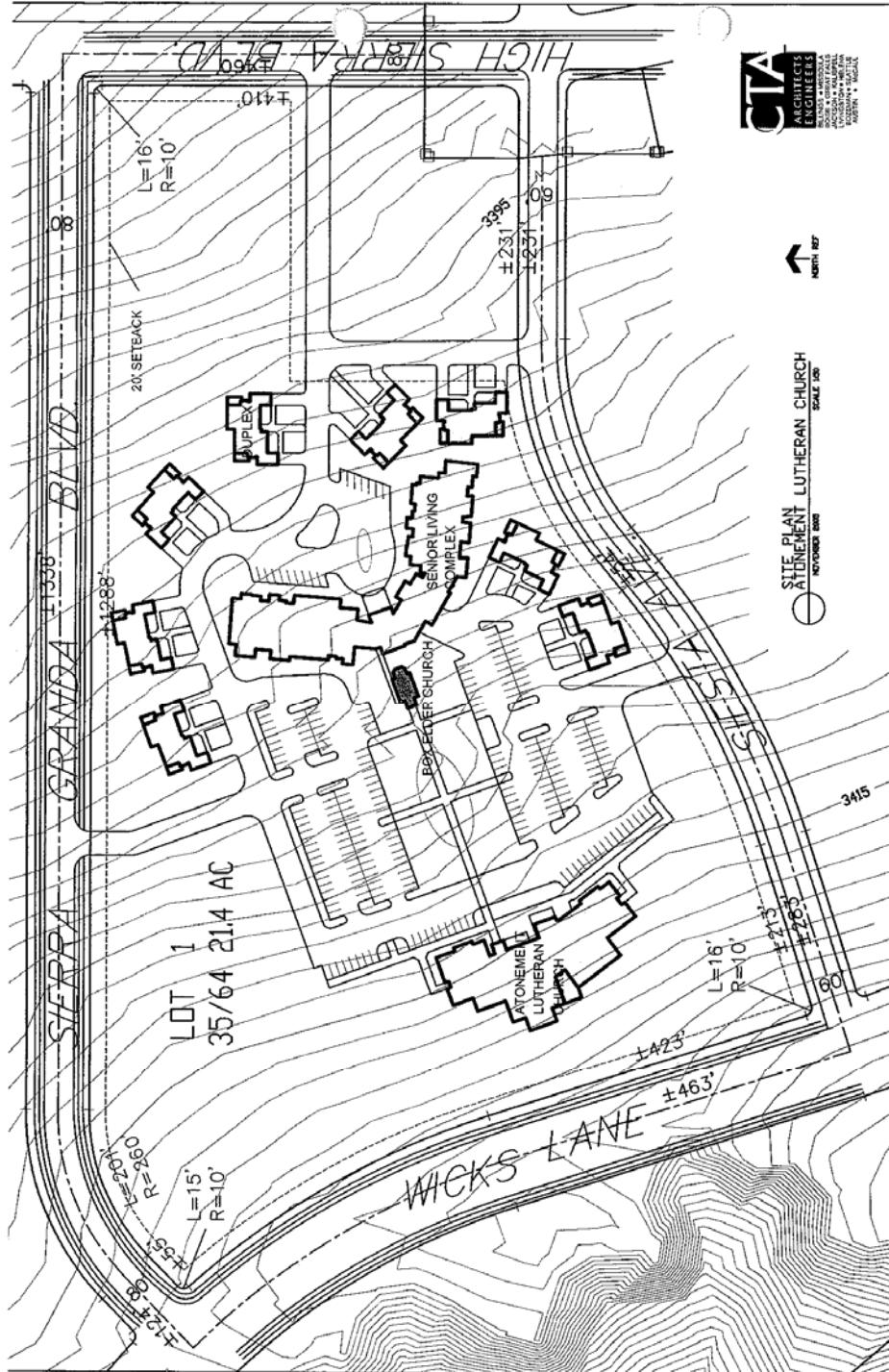


View west from intersection of High Sierra Boulevard and Sierra Granda Boulevard

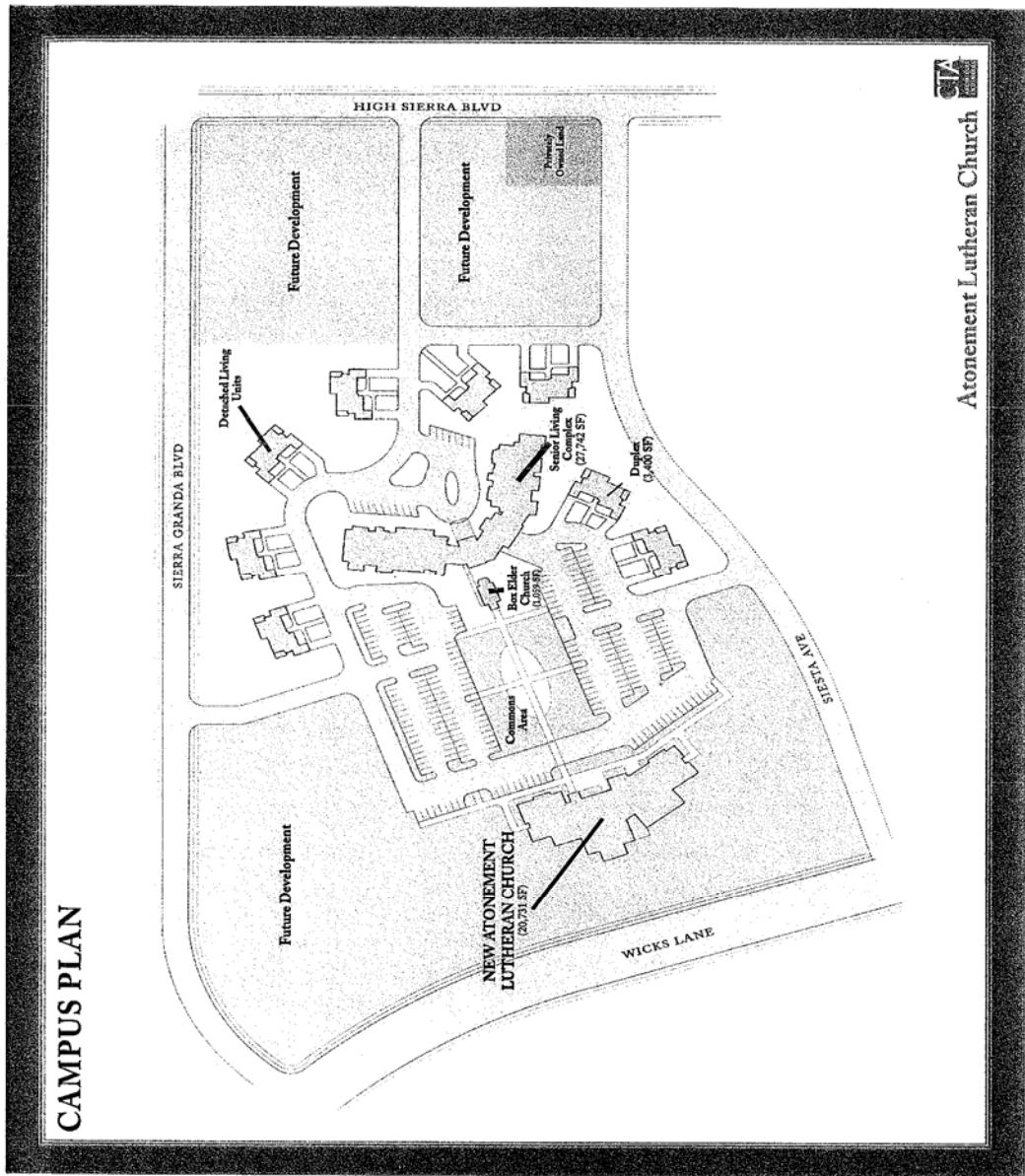


View south from intersection of High Sierra Boulevard and Sierra Granda Boulevard

ATTACHMENT C
Site Plan Special Review #821



ATTACHMENT C
Site Plan Special Review #821



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

AGENDA ITEM:

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 24, 2006

TITLE: Public Hearing for Special Review #822

DEPARTMENT: Planning & Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant is requesting a Special Review to permit a beer and wine license with gaming and an outdoor patio on a property legally described as Certificate of Survey 1551, addressed as 1737 King Avenue West, Unit 5, and zoned Controlled Industrial. RSP Holdings, LLC, is the owner and Roger Tuhy is the agent. The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded a recommendation of conditional approval to the City Council by a 4-0 vote.

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

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

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

RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council conditionally approve Special Review #822.

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

 /

ATTACHMENTS

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

INTRODUCTION

The applicant, RSP Holdings, LLC, is requesting a Special Review to permit a beer and wine license with gaming and an outdoor patio on a property legally described as Certificate of Survey 1551, addressed as 1737 King Avenue West, Unit 5, and zoned Controlled Industrial.

PROCEDURAL HISTORY

- On June 5, 2006, the special review application was received by the Planning Department.
- On July 5, 2006, the City Zoning Commission voted 4-0 to recommend conditional approval to the City Council for the special review.
- On July 24, 2006, the City Council will conduct a public hearing on the special review.

BACKGROUND

The applicant is requesting a special review to permit a beer and wine license with gaming and an outdoor patio at 1737 King Avenue West, Unit 5, zoned Controlled Industrial. The special review is requested for approximately 2600 square feet (including the 300 square foot patio) of floor space within a structure currently being constructed on the property; this special review would be limited to Unit 5 of that structure. There is also an existing vacant building that was previously utilized as a furniture warehouse outlet that is being remodeled to accommodate a large commercial retail business (Carrie's Quilts and Iron) on the property. The Planning Department did not receive any comments from city departments. There are no schools, churches or public parks with playground equipment within 600 feet of this proposed location.

Section 27-612.A. Supplemental Commercial Development Standards specifies that a special review is necessary for any commercial establishment that serves alcoholic beverages as a primary or accessory use. Staff finds that this application satisfies the requirements set forth for the special review; however there is a saturation of casinos within the community. Based on the special review criteria, staff is recommending conditional approval.

ALTERNATIVES ANALYSIS

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

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

This application complies with the requirements of the zoning regulations.

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

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

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

The proposed use is compatible with the surrounding commercial retail, hotel, and restaurant uses.

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

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

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

1. The special review approval shall be limited to 1737 King Avenue West, Unit 5.
2. There shall be no amplified or live music on the proposed outdoor patio. Only background music shall be permitted.
3. All egress from the patio area shall comply with Fire and Building Codes and any required gates shall be used for exit from the patio.
4. All other limitations on expansion shall apply in accordance with Section 27-613 of the Billings Montana City Code.

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

STAKEHOLDERS

A public hearing was conducted by the Zoning Commission on July 5, 2006; Roger Tuhy, the agent, was present to discuss the special review. There was no discussion by the Zoning Commission.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites.
- The proposal provides contiguous development focused in and around an existing population center.

RECOMMENDATION

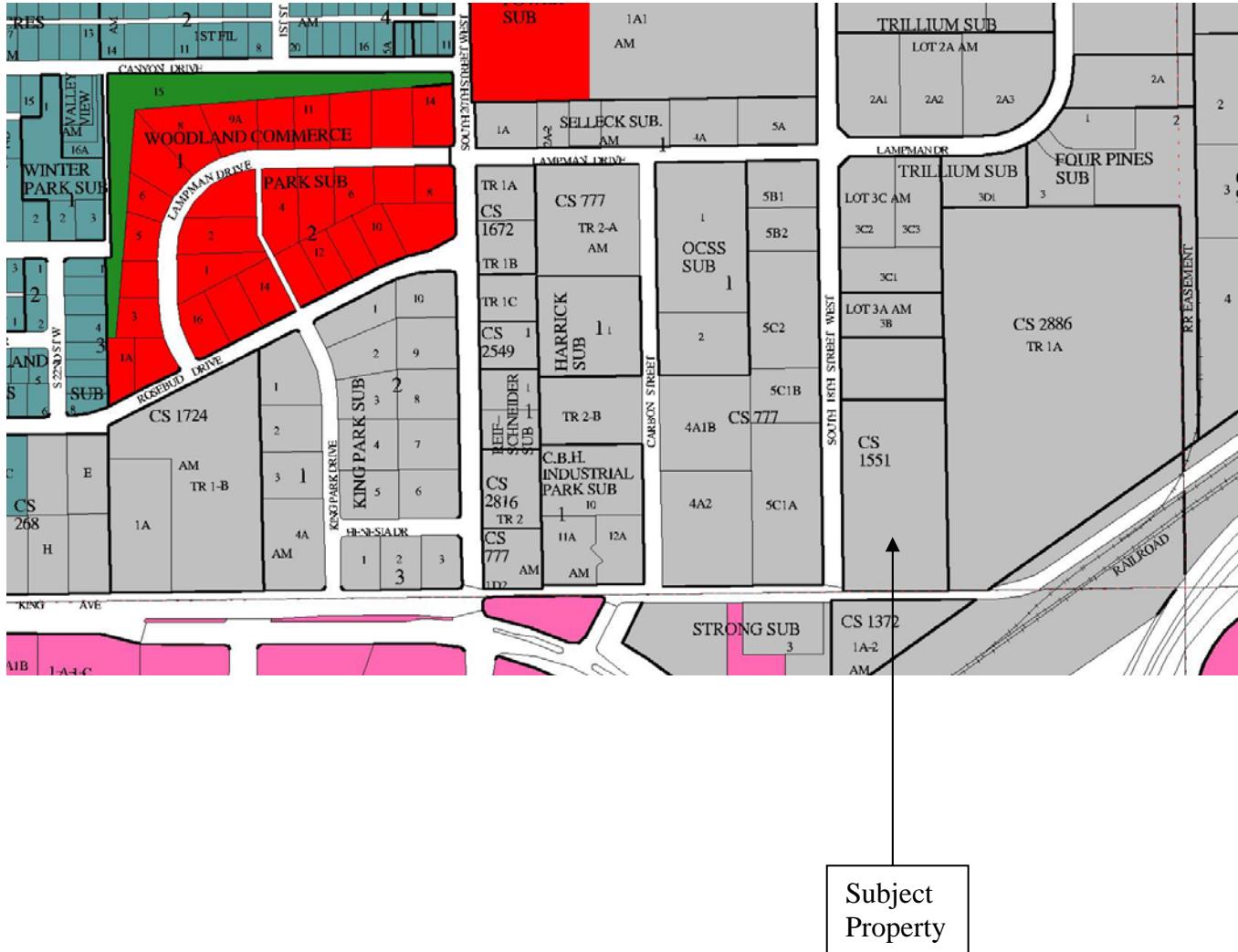
The Zoning Commission is recommending by a 4-0 vote that the City Council conditionally approve special review #822.

ATTACHMENTS

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

ATTACHMENT A

Surrounding Zoning



ATTACHMENT B
Site Photographs



Photo 1: View northeast toward the subject property and the existing structure currently under renovation.



Photo 2: View east toward the adjacent wholesale warehouse.



Photo 3: View southwest across King Avenue toward the existing restaurants and hotel.

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, JULY 24, 2006

TITLE: Public Hearing for Special Review #823

DEPARTMENT: Planning & Community Services

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

PROBLEM/ISSUE STATEMENT: This is a Special Review to locate a beer & wine license with gaming at 4121 Kari Lane in an Entryway Light Industrial zone, Lots 10 (to be Lot 10A), Block 1 of Montana Sapphire Subdivision. The subject property contains approximately 1.499 acres. The owner is Montana Sapphire, LLC and Roger Tuhy and Holly Jerke are the agents. The Zoning Commission conducted a public hearing on July 5, 2006, and is forwarding a recommendation to the City Council of conditional approval on a 4-0 vote.

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

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

FINANCIAL IMPACT: The special review, if approved, should increase the City's tax base.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote on Special Review #823.

Approved By: City Administrator City Attorney

ATTACHMENTS

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

INTRODUCTION

This is a request for a special review to locate a beer & wine license with gaming on Lot 10 (to be 10A), Block 1 of Montana Sapphire Subdivision located at 4121 Kari Lane. The property is zoned Entryway Light Industrial and is located just west of the intersection of King Ave West and Shiloh Road. The new Beartooth Bank is under construction just west of the proposed site. The new facility, to be named the Hollywood Casino, was originally submitted for a site on Midland Road in May 2005. The casino business owner decided the location in Montana Sapphire was preferable and submitted this new application in June, 2005. The building is proposed to be 4,000 square feet with off street parking. There is no outdoor patio shown on the submitted site plan.

PROCEDURAL HISTORY

- A special review application to allow a church and a senior retirement living complex was received on June 5, 2006.
- The City Zoning Commission held a public hearing on July 5, 2006, and voted 4-0 to forward a recommendation of approval for this the special review request.
- The City Council will conduct a public hearing and consider this application on July 24, 2006.

BACKGROUND

This property is surrounded by a mix of agricultural uses and new commercial uses. The St. Vincent's Planned Development "The Village" is directly north across King Avenue West. The development of Montana Sapphire Subdivision is just beginning. The Entryway Light Industrial district is meant to allow a variety of commercial and industrial uses. There are no schools, churches, or play grounds with equipment within 600 feet of the proposed location.

The Planning Department reviewed this application and recommended conditional approval. This appears to be an appropriate use considering the location of the property, the type of facility proposed, the character of the surrounding properties, and the existing uses in the area. The Zoning Commission is recommending conditions for this special review based on the approval criteria for special review uses. This property is adjacent to King Avenue West and will be developed as a major commercial area at the intersection of Shiloh Road and King Avenue West. The Zoning Commission staff has recommended conditions to address light, traffic safety, noise, traffic flows and the aesthetics of the property. The Zoning Commission conducted the public hearing and voted 4-0 to recommend conditional approval.

ALTERNATIVES ANALYSIS

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

1. Complies with all requirements of this Article (27-1500).
This application does comply with the requirements of the zoning regulations.
2. Is consistent with the objectives and purposes of Chapter 27 and the Growth Policy.
This application is generally consistent with the purposes of Chapter 27, the 2003 Growth Policy.

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

The proposed use is compatible with the adjoining land uses and conditions of approval are recommended to ensure compatibility.

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

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

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

CONDITIONS OF APPROVAL

1. The special review approval shall be limited to Lot 10 (to be 10A), Block 1 of Montana Sapphire Subdivision as shown on the site plans submitted with this application.
2. Any expansion of the proposed building greater than 10 percent or the addition of an outdoor patio lounge will require an additional special review approval as per BMCC 27-613(c).
3. The development of the property shall be in accordance with all provisions of Section 27-1001 through 27-1009 – Entryway Zoning Districts. Those requirements include but are not limited to building design, parking lot design, landscaping, solid waste storage, signs and site lighting.
4. There shall be no outdoor public address system, outside announcement system or music broadcast of any kind.
5. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses and all other City regulations that apply.

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

STAKEHOLDERS

The public hearing was held on July 5, 2006, before the City Zoning Commission. The agent, Roger Tuhy, explained the project to the Zoning Commission. There was no testimony against the proposed project.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

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

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

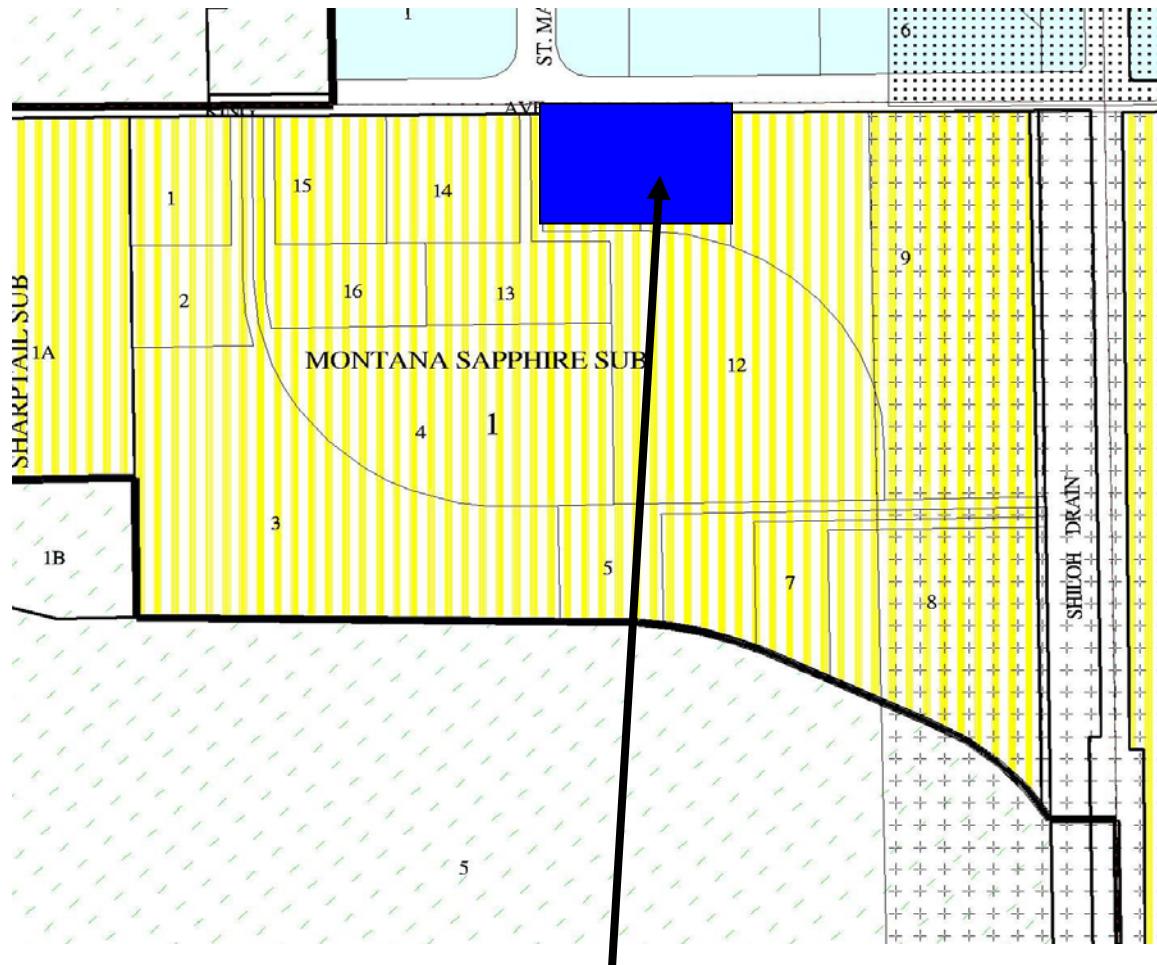
RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval to the City Council on a 4-0 vote on Special Review #823.

ATTACHMENTS

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

ATTACHMENT A
Zoning Map – Special Review #823



4121 Kari Lane – Subject Property

ATTACHMENT B
Site photographs –Special Review #823

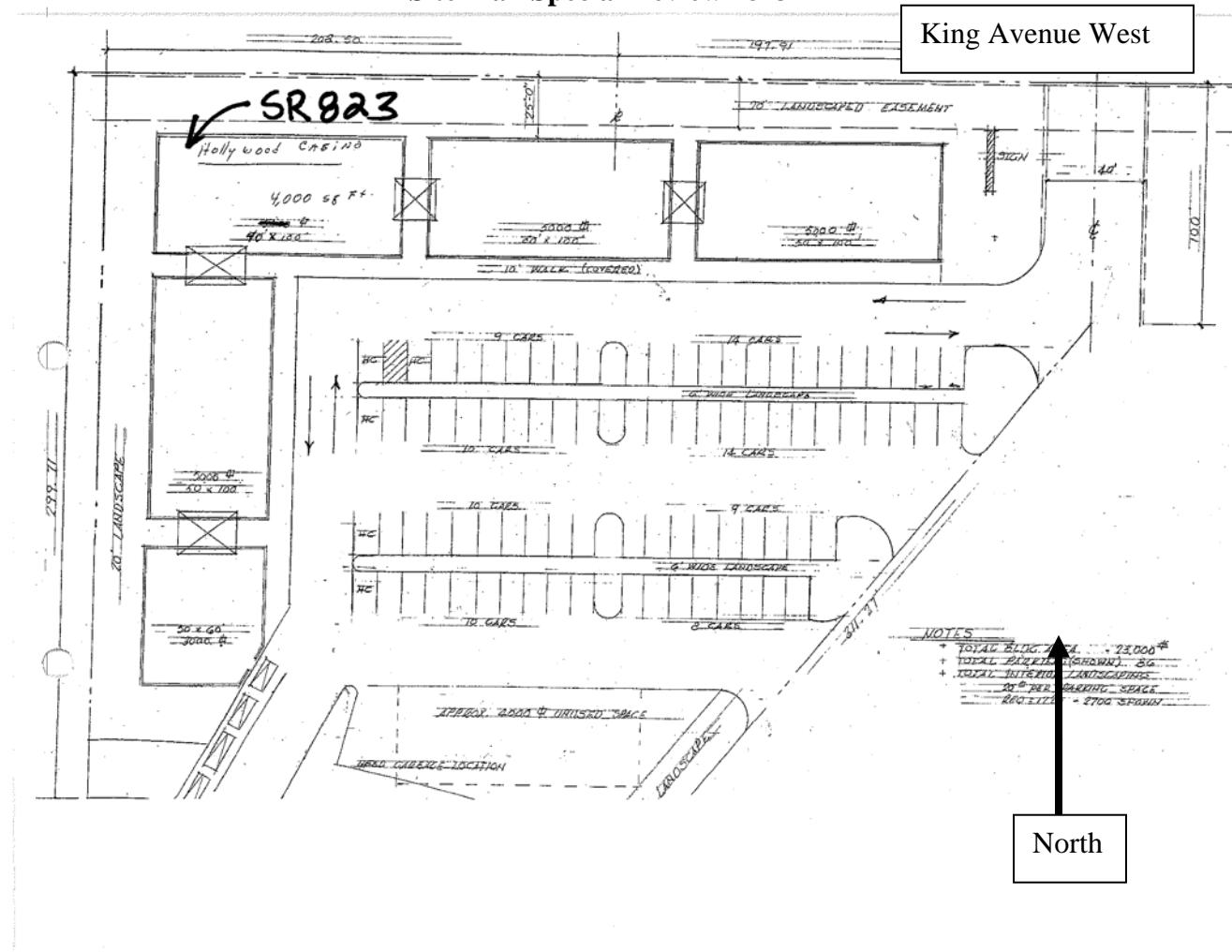


Subject property at 4121 Kari Lane



View north and west from Subject Property

ATTACHMENT C
Site Plan Special Review #823



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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Zone Change #778 Public Hearing and 1st Reading of Ordinance –Text Amendment to Section 27-310(i) Accessory Buildings in Residential zones

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The South Side Neighborhood Task Force has been concerned with the proliferation of agricultural-styled accessory buildings in neighborhoods that support some unique residential architecture. The existing accessory building standards do not regulate the size or bulk of buildings in relationship to the primary structure on the property. This has resulted in new accessory buildings that are built to the maximum allowable size and height. On May 9, 2006, the Planning Board initiated this text amendment to the accessory building regulations. The City Zoning Commission held a public hearing on the amendment to the zoning regulation on July 5, 2006, and voted 4-0 to recommend approval to the City Council.

ALTERNATIVES ANALYZED: The City Zoning Commission held a public hearing on the proposed text amendment on July 5, 2006. The Commission heard testimony before recommending approval of these changes. The City Zoning Commission is forwarding a recommendation of approval. The City Council may choose to approve, deny or delay action for thirty (30) days on the proposed text amendments.

FINANCIAL IMPACT: There should be no direct financial impact to the City as a result of the new zoning regulation.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #778.

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

ATTACHMENTS:

A: Property data
B: Ordinance

INTRODUCTION

The Neighborhood Task Forces believe residential accessory structures should be better regulated to help neighborhoods retain and increase property values and preserve architectural value in Billings' historic neighborhoods. On May 9, 2006, the Yellowstone County Board of Planning initiated this amendment to the accessory building standards. In support of the proposed changes, the Planning Department conducted research on parcels that may be adversely affected by these new standards. The Department of Revenue lists existing property improvements and codes each improvement based on the construction and use of the improvement. Metal buildings or pole barns are specifically coded and according to their records there are 86 existing pole barns within the city limits in these zoning districts.

The Planning Board was also concerned that each property be allowed to have at least a two-car detached garage or at least 650 square feet in accessory building area regardless of the principal structure size. Department of Revenue information indicates there are approximately 770 or about 3% of the total number of residential dwellings that are less than 650 square feet on the first floor. In addition, approximately 925 or about 4% of existing detached accessory buildings exceed the first floor area of the primary residential structure. There is likely overlap in these two statistical areas. (See Attachment A)

PROCEDURAL HISTORY

- On May 9, 2006, the Yellowstone County Board of Planning initiated the process to amend the accessory building regulations in Section 27-310(i) of the BMCC.
- On July 5, 2006, the City Zoning Commission conducted the public hearing for the change to the accessory building regulations. The Commission voted 5-0 to forward a recommendation of approval to the City Council.
- On July 9, 2006, the Zoning Commission recommendation to the City Council was published in the Billings Gazette.
- The City Council will hold a public hearing and 1st reading of the ordinance on July 24, 2006, and make a decision on the change to the accessory building regulations.
- If the Zone Change ordinance is approved on first reading, the City Council will consider it for second reading on August 14, 2006.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, or delay the adoption of the changes to the accessory building regulations. Planning Staff has reviewed and worked with Marion Dozier of the South Side Neighborhood Task Force to propose changes to the code that will attempt to achieve accessory structures that blend with existing neighborhoods without unnecessarily burdening home owners. The Planning staff was careful to draft an amendment that would allow property owners to apply for variances if necessary.

STAKEHOLDERS

The Zoning Commission held a public hearing on July 5, 2006, on the proposed changes to the accessory building regulations. Marion Dozier of the South Side Neighborhood Task Force testified in favor of the proposed changes. Marion Dozier explained the detriment to the

neighborhood where over-sized pole barns have been constructed. These buildings were in compliance with existing accessory building standards but have more than intruded on neighboring properties and decreased marketability for adjacent homeowners. These out-of scale buildings tend to attract illegal home occupations such as auto mechanics and body shops. Pole barns should be built out in the country where people need them for livestock and agricultural equipment, not in the R-6,000 neighborhoods of the South Side and North Park. Shirley McDermott also testified in favor of the proposed changes. She stated that as a City Council member, she often fielded calls from residents in North Park of the South Side neighborhoods where these buildings were going up. The new ordinance will stop these out of character buildings in Billings' neighborhoods. Phyllis Reno testified in favor of the changes. Her neighbor put up a 30 foot tall metal pole barn in their back yard and it is completely out of scale with her property and her neighbor's house. She is thinking about moving and she has lived in her house at 3927 3rd Avenue South her entire life. Dale Steinbrink of South Billings Boulevard testified in favor of the proposed changes. Several years ago his neighbor put in an old garage from another property and then added a second story to it that doesn't match. He stated if this new ordinance would stop that kind of building he was in favor. No one spoke in opposition to the proposed ordinance.

RECOMMENDATION

The Zoning Commission on a 4-0 vote recommends that the City Council approve Zone Change #778.

ATTACHMENTS:

- A: Property data
- B: Ordinance

Attachment A
Property Data

ZONE	R96	%	R80	%	R70	%	R70R	%	R60	%	R-60R	%	R50	%	PUD	%	Total	%	Total w/o PUD	%
# of developed parcels including mobile homes	11084		103		9615		0		3820		1		96		3194		27913		24719	
# of developed parcels with Main Res. Building less than 650 sqft (includes condos)	26	0.2	0	0.0	145	1.5	0		595	15.5	0		0	0.0	427	13.3	1193	4.2	766	3.0
# of developed parcels without second story on Main Res. Building	9804	88.4	101	98.0	9106	94.7	0		3335	87.3	0		96	100	2608	81.6	25055	89.7	22447	90.8
# of developed parcels without a detached accessory garage CAMA Codes RG1 RG2 RG3 RG4 AP1 AP2	9593	86.5	102	99.0	5521	57.4	0		1634	42.7	0		94	97.9	2247	70.3	19196	68.7	16949	68.5
# of developed parcels with accessory building floor area greater than 1 st floor area of Main Res. Building	535	4.8	1	0.9	238	2.5	0		147	3.8	0		3	3.1	79	2.4	1003	3.5	924	3.7

Outbuilding CODE AP1 - 68 (metal pole)
 Outbuilding CODE AP2 - 18 (wood pole)

ATTACHMENT A
ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-310(i); YARDS AND SETBACKS FOR ACCESSORY BUILDINGS IN RESIDENTIAL ZONES, ADOPT THE REVISIONS AS AN AMENDMENT TO THE ZONING REGULATIONS AND SET A TIME PERIOD FOR THE REGULATION TO BE EFFECTIVE.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA*, and Section 27-1502, *BMCC*, provide for amendment to the City Zoning Regulations from time to time. The Board of Planning initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. 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 proposed amendments to the City Zoning Regulations.

Section 2. DESCRIPTION. The zoning regulation shall apply to all land within the City of Billings in the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts as described in Section 27-301 in the Billings, Montana City Code.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-310(i) to delete certain language and add new language to read as follows:

SEC. 27-310. SUPPLEMENTAL AREA, YARD AND HEIGHT RESTRICTIONS.

(i) **Yards and Setbacks for Accessory Buildings in Residential Zones.** The following setbacks shall be provided for accessory buildings in Residential zones:

(1) Detached garages, carports, patios, tool or storage sheds, playhouses, greenhouses or other accessory buildings shall meet the setbacks required in below Table 1.

TABLE 1 Setbacks from property lines for detached garages, carports, tool or storage sheds, greenhouses or other detached accessory structures

	Front (b)	Side Adjacent to Street (b)	Side	Rear with Alley (c)	Rear Without Alley
BUILDINGS LESS THAN 18 FEET (a) (d) (e) <u>(f)</u> Approach from a street	20	20	3	0	3
Approach at right angle from an alley	20	10	3	6	N/A
All others	20	10	3	0	3
BUILDINGS GREATER THAN 18 FEET IN HEIGHT UP TO AND INCLUDING THE MAXIMUM ALLOWED HEIGHT (a) (d) (e) Approach from a street	20	20	8	6	8
Approach at right angle from an alley	20	10	8	6	N/A
All others.	20	10	8	6	8

- (a) All setbacks are denoted in feet from the property line.
- (b) In districts with Front or Side Adjacent to Street setbacks greater than those required in above Table 1, the structure shall meet the most restrictive setback requirement.
- (c) No above building or structure nor any part thereof shall protrude into or hang over the public right-of-way.
- (d) Structures located adjacent to arterial streets must meet the Arterial Setbacks as outlined in BMCC Section 27-602.
- (e) Detached accessory buildings used to house, keep or shelter livestock or fowl shall meet the setbacks described in BMCC Section 27-607.
- (f) The side wall of detached accessory buildings in the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits shall be no greater in height than the side walls, excluding a gable wall, of an existing or proposed principal structure on the property.

N/A = Not Applicable

(2) Garages, carports and other accessory buildings attached to a dwelling shall be considered to be part of the dwelling and setbacks shall be the same as those required for such dwelling. In addition, garages and carports attached to the dwelling that have their approach from a street shall be setback from that street property line a minimum of twenty (20) feet or meet the front setback in the zoning district in which it is located, whichever is greater.

(3) Except in the R-9600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000, and Residential Manufactured Home zoning districts within the Billings city limits the maximum size allowed for detached accessory structures shall be based on the following criteria, based on the size of the lot:

- Lots containing less than .25 acres = 1,000 square feet maximum size.
- Lots containing .25 acres up to 1 acre shall use the following formula:
$$(667 \times \text{lot acreage}) + 833 = \text{maximum detached structure size}$$
- Lots containing more than 1 acre = 1,500 square foot maximum size.

This provision shall not apply in the Agricultural-Open or Agricultural-Suburban zoning districts.

(4) Except in the R-9600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits the maximum total square footage in detached accessory structures on any lot shall not exceed three thousand (3,000) square feet or that amount which, when added to the square footage of the principal structure(s), will achieve the maximum lot coverage allowable in that district, whichever is less. This three thousand (3,000) square foot limit shall not apply in the Agricultural-Open zoning district.

(5) See BMCC Section 27-607, for setbacks regarding detached structures used to house livestock or fowl.

(6) For watercourse setbacks, see BMCC Section 27-616.

(7) No above allowed building or structure nor any part thereof shall protrude into or hang over any public right-of-way.

(8) In the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits detached accessory structure(s) greater than 200 square feet in size shall not exceed the principal building first story square footage on the lot or 1,000 square feet, whichever is less. If the lot is greater than .25 acres maximum total square footage of a detached accessory structure shall be as calculated in Section 3 above or equal to the principal building first story square footage, whichever is less. No detached accessory structure within these residential zoning districts in the Billings city limits shall exceed 1,500 square feet. The maximum total square footage in detached accessory structures on any lot within these residential

zoning districts in the Billings city limits shall not exceed 2,000 square feet or the total principal building first story square footage on the lot, whichever is less.

(9) In the R-9,600, R-8,000, R-7,000, R-7,000R, R-6,000, R-6,000R, R-5,000 and Residential Manufactured Home zoning districts within the Billings city limits, horizontal exterior siding is required on detached accessory structures greater than 200 square feet in size.

Section 4. REPEALER. All ordinances or parts of ordinances in conflict 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.

Section 6. 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 July 24, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 14, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#778 – Amending Section 27-310(i) Accessory Building Regulations in Residential zones

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Zone Change #783 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

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

PROBLEM/ISSUE STATEMENT: The applicant is requesting a zone change from Controlled Industrial to R-6,000 on Lots 17 & 18, Block 32 of Highland Addition Subdivision. The property is located at 109 South 39th Street West. The applicant is Dave Hagstrom. The Zoning Commission conducted a public hearing on July 5, 2006, and voted 4-0 to recommend approval to the City Council.

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

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

FINANCIAL IMPACT: The proposed zone change will have a minimal effect on the City's tax base when the property is re-developed.

RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #783 and adopt the determinations of the 12 criteria, as discussed within this report.

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

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Vote of support – South Side Neighborhood Task Force
- D: Ordinance

INTRODUCTION

This is a zone change request from Controlled Industrial to Residential-6,000 on Lots 17 & 18 of Block 32, Highland Addition Subdivision. The subject property is located at 109 South 39th Street and currently has a single family boarded vacant house. The total area for the zone change is 7,000 square feet. The owner of this property is Dave Hagstrom and he is proposing to either tear down or remodel the structure. The proposed new development will be a two-family home. There are several single family homes within the Controlled Industrial zoning district in this neighborhood. Many are older structures in need of updating or re-building. The lots are adjacent to Residential-6,000 zoning to the south, east and west. Single family residential uses in Controlled Industrial zoning are not allowed except by special review approval. Two-family residential uses are not allowed in the Controlled Industrial zoning districts.

PROCEDURAL HISTORY

- On June 5, 2006, the Planning Department received an application for a zone change on the subject property.
- The Zoning Commission conducted a public hearing on July 5, 2006, and recommended approval to the City Council by a 4-0 vote.
- The City Council will conduct a public hearing and first reading on July 24, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on August 14, 2006.

BACKGROUND

Dave Hagstrom owns the property at 109 South 39th Street. He has met with the neighborhood task force and they have voted to unanimously support the request for a zone change. The existing home is not in good condition. The existing zoning of Controlled Industrial only allows single family homes by special review approval. The property is large enough to accommodate a two-family home and off-street parking. Mr. Hagstrom intends to re-develop the property for this use and a zone change is required to accomplish this proposed development.

The City of Billings and Yellowstone County have adopted a Growth Policy that supports compatible development in existing neighborhoods. The existing neighborhood has been developed with residential buildings and a mix of uses closer to 1st Avenue South. The property was not developed for Controlled Industrial uses and re-development for that purpose could introduce incompatible uses into the existing neighborhood.

The Planning Department has reviewed this application and recommended approval based on the attached twelve (12) criteria for zone changes. The property is adjacent to Residential-6,000 zoning to the south, east and west. The Controlled Industrial zoning district that encompasses the first six lots south of 1st Avenue South was originally intended to convert the land to uses related to the railroad operations north of 1st Avenue South. The new development will have to comply with all applicable zoning requirements and site development requirements.

ALTERNATIVES ANALYSIS

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

1. *Is the new zoning designed in accordance with the Growth Policy?*
The new zoning will address urban sprawl by utilizing existing city services. The 2003 Growth Policy supports contiguous development in and around existing population centers. This is an appropriate re-development of a blighted residential property in one of the older neighborhoods of Billings.
2. *Is the new zoning designed to lessen congestion in the streets?*
The new zoning could allow up to two-units (two-family structure) on a 7,000 square foot property. This density will not appreciably alter the traffic patterns in the area.
3. *Will the new zoning secure safety from fire, panic and other dangers?*
This lot has public street frontage on South 39th Street. No public health or safety issues have been raised with this application.
4. *Will the new zoning promote health and general welfare?*
The new zoning contains restrictions on uses allowed and provides protection for health and general welfare through setbacks.
5. *Will the new zoning provide adequate light and air?*
The new zoning provides for sufficient setbacks for structures to allow for adequate light and air.
6. *Will the new zoning prevent overcrowding of land?*
The new zoning, as do all districts, have limits on the maximum percentage of lot that can be covered with structures. The Residential-6,000 zone allows for maximum lot coverage of 40 percent, or 2,800 square feet on a 7,000 square foot lot. This limitation should prevent overcrowding of the land.
7. *Will the new zoning avoid undue concentration of population?*
The new zoning of Residential-6,000 allows single family and two-family dwellings by right and multi-family attached dwellings by special review approval. With the minimum lot requirement of 7,000 square feet for two-family dwelling, the lot can only support a single two-family structure. The new zoning should not create an undue concentration of population.
8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*
Transportation: The new zoning should have a minimal effect on the adjacent streets or traffic patterns.
Water and Sewerage: The City will provide water and sewer service to the property and has adequate facilities to serve this property.

Schools and Parks: There should be no effect on parks or schools from this rezoning.

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

9. *Does the new zoning give reasonable consideration to the character of the district?*
The primary zoning in this area is Residential-6,000 to the south, east and west and Controlled Industrial to the north. The existing neighborhood consists of a mixture of single family, two family, apartment buildings, and commercial uses including an automobile sales lot. The proposed two-family dwelling should blend in with the neighborhood. The new zoning should not impact the character of the neighborhood.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*
The subject property is suitable for the requested zoning district.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*
The new zoning is not expected to appreciably alter the value of buildings in the area.

12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*
Yes, the new zoning will encourage the most appropriate use of this land in the area.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded a positive recommendation to the City Council by a 4-0 vote. Mr. Ernie Dutton attended the hearing as an agent for Mr. Hagstrom who was out of town. Mr. Dutton explained the proposed project and re-development of the blighted property. This will add value to the surrounding properties and not affect other businesses in the area. Marion Dozier of the South Side Neighborhood Task Force testified in favor of the proposed zone change. Re-development of the property will be beneficial to the existing residences.

RECOMMENDATION

The Zoning Commission recommends by a 4-0 vote that the City Council approve Zone Change #783 and adopt the determinations of the 12 criteria, as discussed within this report.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Vote of support – South Side Neighborhood Task Force
- D: Ordinance

ATTACHMENT A
Site photographs
Zone Change #783 – 109 South 39th Street



Subject property



View south along South 39th Street

ATTACHMENT B
Surrounding Zoning
Zone Change #783 – 109 South 39th Street



ATTACHMENT C

Zone Change #783 – Vote of support – South Side Neighborhood Task Force

JUL-03-2006 10:45 AM COMMUNITY DEVELOPMENT 406 256 2387 P. 02

Page 2	South Side Neighborhood Task Force - 617- 8327
MEETING MINUTES April 20, 2006	
<p>(A list of attendees is available upon request of the chairman or secretary.)</p> <p>The meeting was called to order at 7:05 p.m. by Chairman Bill Kelly. Introductions of all attending were made.</p> <p>Marion Dozier moved that the minutes be approved as presented and Jake Romero seconded the motion. The minutes were approved by the body.</p> <p>Captain Tim O'Connell, the new East District commander for the Billings Police Department, brought the first quarter 2006 statistics regarding the district and the Southside in particular. The East area handled 6,808 calls, up about 1% from the year before. Among the categories that increased were disturbances, vandalism and assaults, though there was a decreased in reported domestic assaults. Thefts, suspicious calls, burglaries and sex offenses were down. Accidents were down also but personal injuries were up, probably more as a result of less officer involvement in non-injury accidents. But O'Connell said there were no fatalities reported in the first three months of 2006. In March, the statistics were as follows: 13 DUIs, 11 assaults, 3 suicides, 4 burglaries, 73 disturbances (4 domestic), 2 shootings, 3 stabbings, 33 suspicious calls, 12 thefts, 11 acts of vandalism, and 7 weapons charges.</p> <p>O'Connell said the bike patrol is up and running and are trying to get out more to special events and he asked about events in South Park. Overtime is being paid for some of this service and the officers involved will work the area from South Park to the Hub on North 27th Street. He said the bike patrol and other officers working the area will have a no tolerance policy for bad behavior and they want to receive calls on the folks from the closed Empire Bar who are now visiting South Park. Coverage is difficult now as several officers are on light duty because of injury, but they will work through that. They also will meet with some local businesses in May and invite them to stop selling to certain people. Eile Arntzen asked if the neighborhood could help set priorities for enforcement and O'Connell said, within reason, he would be glad to listen.</p> <p>Don Vegge of Code Enforcement said the removal of 818 South 28th Street is a little behind because he has been covering two areas. The City weed program begins near the end of April and the City Street Department will cut them until July 1, when a private contractor will take over. Vegge and Sergeant Barone of the Police Department continue to work on the abandoned car issue. He had no further information on the citizens program to tag cars, but said the Police Department was working on it. A member asked about the appliance store on First Avenue South and Vegge said he would tell the commercial code enforcement officer about it. Ervin Saylor complimented Vegge on the work he had done on the junkyard near Saylor's home.</p> <p>Len Cheesmore of the Billings Boxing Club reported that local boxers did well in a recent tournament. His group and other boxing groups continue to look for a place to train. They can afford about \$700 to \$800 a month and he encourages others to get kids interested in boxing, as it is a good program to keep kids off the street. Chesmore also noted that University of Marquette has grants for boxers. His son is on the junior national team. The boxers do carry their own insurance including \$1 million venue insurance and \$1.5 million medical coverage and \$50,000 per spectator.</p> <p>Dave Hagstrom returned to ask again for task force support for a zoning change he needs to turn a single family home into a duplex at 109 S. 39th. He said it was not financially feasible to leave the house a single family home. The matter was taken off the table and Mike Yakawich moved that the task force support the zone change at that location from Controlled Industrial to R6000 with a letter and Dozier seconded the motion. It passed unanimously.</p> <p>The group then discussed the upcoming May 2nd special review for Alternatives, Inc. on their efforts to move an assessment program into the Howard Johnson Express Inn. This would be one of three programs runs out of that facility, supposedly for women offenders. They would include a pre-release facility, where residents would come and go to work every day, the assessment center where offenders are locked down until they are assigned to final place in either prison or some other facility, and a 60-90 day treatment program for substance abusers. The long-term meth program that Alternatives had wanted was awarded to Lewistown. Dozier said Alternatives did not follow the prescribed state procedure for siting this type of facility in a neighborhood. She cited this and several other reasons and Romero moved that the group voted to prepare a brochure stating the reasons it does not support the Alternatives facility. Mary Westwood seconded the motion and it was passed unanimously.</p> <p>Romero reported the treasury had \$3,952.75 following the Easter Egg Hunt.</p>	

ATTACHMENT D
Zone Change #783

ORDINANCE NO. 06-
AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lots 17 & 18, Block 32 of Highland Addition
Subdivision, containing approximately 7,000 square feet

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 17 & 18, Block 32 of Highland Addition Subdivision, containing approximately 7,000 square feet and is presently zoned Controlled Industrial 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 **Controlled Industrial** to **Residential-6,000** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential-6,000** 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 July 24, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 14, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:
Marita Herold, CMC/AAE, City Clerk

ZC#783 – 109 S 39th Street

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Zone Change #784 Public Hearing and 1st Reading of Ordinance

DEPARTMENT: Planning and Community Services

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: The applicant, City of Billings, is requesting to rezone Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision from Residential 9600 (R-9600) to Residential 6000 Restricted (R-6000R). Lot 1, Block 1, is located on the west side of Zimmerman Trail between Colton Boulevard (south) and Poly Drive (north); Lot 1, Block 2, is located on east side of Zimmerman Trail, adjacent to the south of Poly Drive. The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

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 forwards no recommendation to the City Council for Zone Change #784, as the result was a 2-2 tie vote.

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

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Arlene Subdivision Zoning Exhibit
- D: Ordinance

INTRODUCTION

The applicant, City of Billings, is requesting to rezone Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision from Residential 9600 (R-9600) to Residential 6000 Restricted (R-6000R). Lot 1, Block 1, is located on the west side of Zimmerman Trail between Colton Boulevard (south) and Poly Drive (north); Lot 1, Block 2, is located on east side of Zimmerman Trail, adjacent to the south of Poly Drive. The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Staff recommended approval of the proposed zone change and those determinations have been provided within this report.

PROCEDURAL HISTORY

- On June 5, 2006, the Planning Department received an application for a zone change on the subject property.
- The final plat of Arlene Subdivision was approved by the City Council on June 26, 2006.
- The Zoning Commission conducted a public hearing on July 5, 2006, which resulted in a 2-2 tie vote with no recommendation to the City Council.
- The City Council will conduct a public hearing and first reading on July 24, 2006, and take action on the zone change application.
- If the Zone Change Ordinance is approved on the first reading, the City Council will consider it for second reading on August 14, 2006.

BACKGROUND

The applicant is requesting to rezone Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision from Residential 9600 (R-9600) to Residential 6000 Restricted (R-6000R). The proposed R-6000R zoning will allow for single-family residences only, however it will allow for one (1) unit per 6000 square feet instead of one (1) unit per 9600 square feet; as calculated the density could increase from 31 single-family residences to 49 single-family residences.

The Planning Department has reviewed this application and is recommending approval based on the attached 12 criteria for zone changes. The subject property is surrounded on three (3) sides by single-family residential uses. The proposed zoning will not change the character of the neighborhood.

ALTERNATIVES ANALYSIS

The City Council may approve, deny, delay or allow withdrawal of the zone change. All zone changes must be evaluated utilizing the 12 criteria set forth within Section 76-2-304, MCA. Since the Zoning Commission forwarded no recommendation to the City Council, the Zoning Commission's determinations, as completed by staff, are outlined below:

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is generally consistent with the following goals of the Growth Policy:

- *Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)*

The proposed zoning would permit residential uses comparable to the densities located north, east, and west of the subject property.

- *New developments that are sensitive to and compatible with the character of adjacent City Neighborhoods and County Townsites. (Land Use Element Goal, page 6)*

The subject property is within an urbanized portion of the city and will utilize existing services. The proposed single-family residential uses will be compatible with the surrounding neighborhood.

- *More housing and business choices with each neighborhood. (Land Use Element Goal, page 6)*

The proposed zoning will permit additional density in this neighborhood, while keeping the character of the existing neighborhood.

2. *Is the new zoning designed to lessen congestion in the streets?*

The proposed zoning will not significantly increase density on the site; approximately 18 additional single-family residences could be constructed. Further subdivision of the site would require a Traffic Accessibility Study (TAS) and if a site plan is proposed, the Engineering Department would review any proposed internal roads and potential impacts to surrounding city streets.

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

The subject property is located within a platted subdivision and has existing city streets for access.

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

The Unified Zoning Regulations specify minimum setbacks and lot coverage requirements for the proposed zoning district.

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

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning, as well as all zoning districts, contain limitations on the maximum percentage of the lot area that can be covered with structures. The R-6000R zoning district permits a maximum lot coverage of 40%; this requirement will help prevent overcrowding of land.

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

The proposed zoning will allow a single-family residential uses similar to those adjacent to the property.

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

Transportation: Upon further subdivision of the property a Traffic Accessibility Study (TAS) would be required. Should the property develop through site plan review, the Engineering Department would assess traffic impacts to the surrounding streets.

Water and Sewer: The City will provide water and sewer to the property through extended lines from Colton Boulevard, Zimmerman Trail, and Green Valley Drive, as specified within the deed restrictions for Arlene Subdivision.

Schools and Parks: Students from the proposed subdivision will attend Boulder Elementary School, Will James Middle School, and Senior High School. Boulder Park is approximately two (2) blocks east of the subject property.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments. Provisions for adequate emergency service have been provided.

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

The proposed zoning will permit only single-family residences, which is alike in character to the surrounding uses.

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

The subject property is suitable for the requested zoning district.

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

The proposed zoning is not expected to appreciably alter the value of structures within the area, as the property is surrounded on three (3) sides by single-family residential uses.

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

The proposed zoning will permit the same type of housing already located within the vicinity of the subject property and will provide for infill development.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

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

STAKEHOLDERS

The Zoning Commission conducted a public hearing on July 5, 2006, and forwarded no recommendation to the City Council based on a 2-2 tie vote. Chris Hertz with the City Engineering Department was present to discuss the proposed zone change. He stated that the reason for the proposed zone change is to create a more marketable property for development.

There were five (5) surrounding property owners present at the public hearing who raised concerns regarding the potential density and types of houses on the property, neighborhood improvements from the land sale, and proposed access to the property. The neighbors stated that while the proposed zoning would only permit single-family residences, there were concerns regarding the height of any proposed residences and whether they would be alike in character to the surrounding single level residences. Staff confirmed that the height restriction in both the R-9600 and the R-6000R zoning districts is 34-feet in height, which would allow for a 2- story residence. Further comments from the neighbors were that funds from the sale of the property should go back to the neighborhood to provide sound barriers to block the noise from traffic along Zimmerman Trail and improvements to the crosswalks on Zimmerman Trail and Poly Drive. Additional concerns were regarding the proposed accesses to the property, which is from Colton Boulevard and Poly Drive for Lot 1, Block 1, and from Poly Drive to Lot 1, Block 2. They stated that Colton has not been constructed west of Zimmerman Trail and that the narrow entrance along the northern portion of Lot 1, Block 1, will create traffic conflicts at the intersection of Poly Drive and Zimmerman Trail. Chris Hertz clarified that the exact location of the accesses has not been determined; however there is sufficient street frontage along Poly Drive to accommodate a 24-foot access point. Colton Boulevard to the south would be constructed as part of the development of Lot 1, Block 1.

Zoning Commission discussion focused on consistency with the surrounding zoning, as the nearest Residential 6000 zoning district is located approximately two (2) city blocks southeast of the subject property. Two (2) members of the Commission, Ed Workman and Mike Boyett, found that the City should maintain the existing zoning on the property and allow the new property owner to process the rezone. They further stated that while the City has the right to utilize the highest and best use of the property, more density is not always the best use. Commission member Leonard Dailey stated that the City should be permitted to act in their own

best interest and rezone the property, just as any other developer. He further stated that the proposed single-family zoning would be compatible with the surrounding patio homes and condos. Based on the discussion, the vote was a 2-2 tie with no recommendation forwarded to the City Council.

RECOMMENDATION

The Zoning Commission forwards no recommendation to the City Council for Zone Change #784, as the result was a 2-2 tie vote.

ATTACHMENTS:

- A: Site Photographs
- B: Surrounding Zoning
- C: Arlene Subdivision Zoning Exhibit
- D: Ordinance

Attachment A
Site Photographs - Zone Change #784



Figure 1: View northeast across the property from Colton Boulevard toward proposed Lot 1, Block 1 on the east side of Zimmerman Trail.



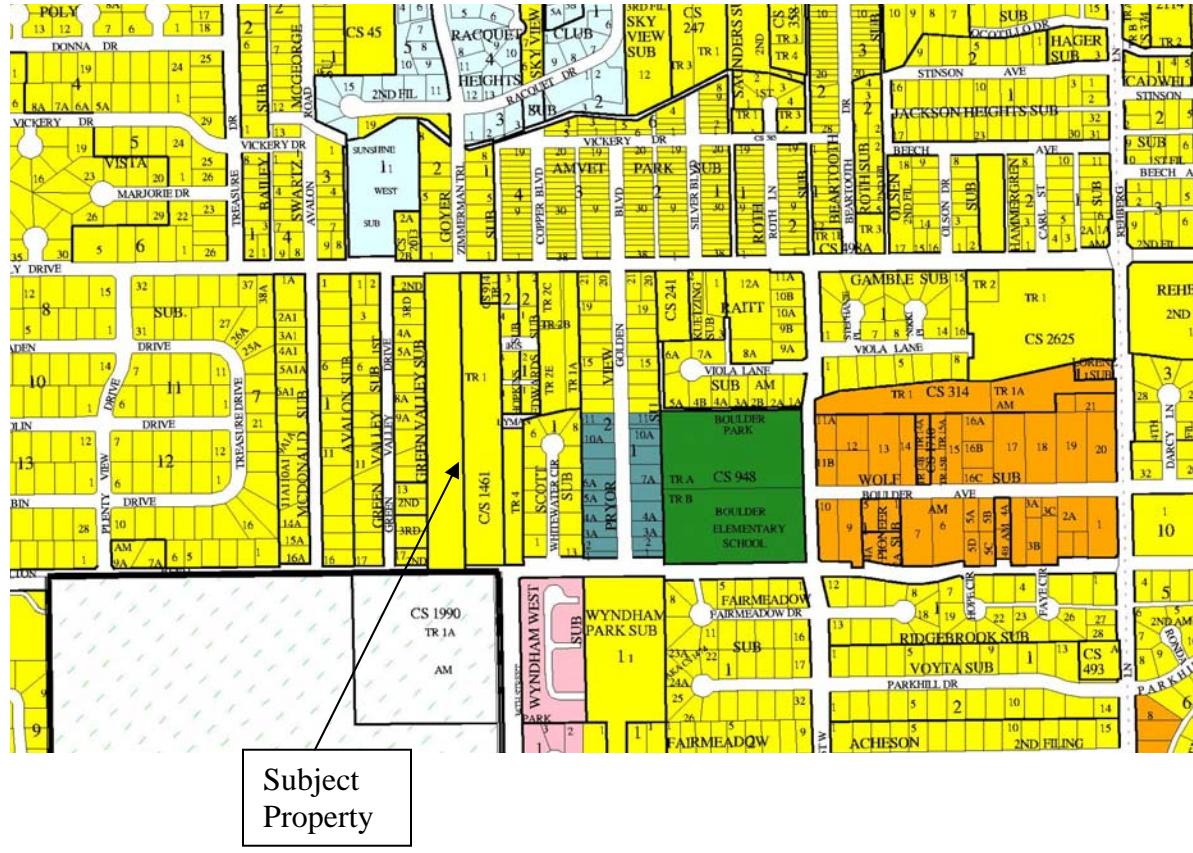
Figure 2: View west along Poly Drive (northern boundary of Lot 1, Block 1) toward the intersection of Poly Drive and Zimmerman Trail.



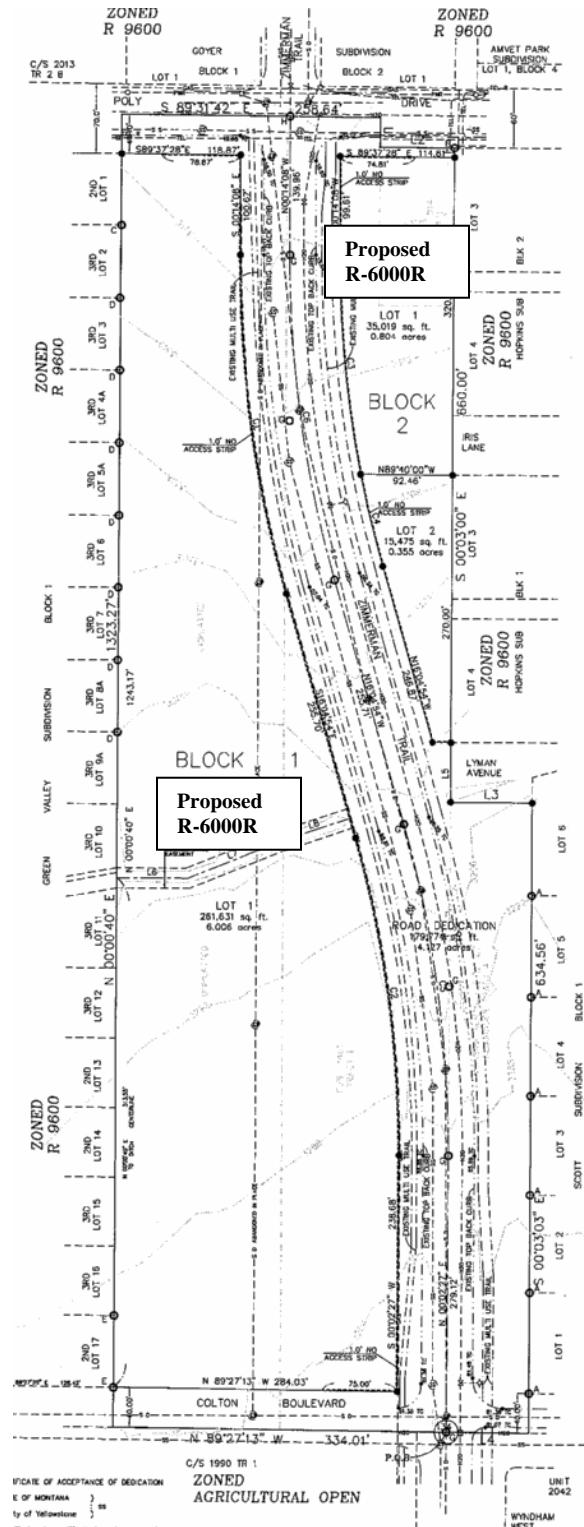
Figure 3: View from the southeast corner of Lot 1, Block 1 north along Zimmerman Trail. The proposed right-of-way dedication for this plat is pictured to the east (right) in the photograph.

ATTACHMENT B

Surrounding Zoning – Zone Change #784



ATTACHMENT C
Arlene Subdivision Zoning Exhibit



ATTACHMENT D
Zone Change #784

ORDINANCE NO. 06-

AN ORDINANCE AMENDING THE ZONE CLASSIFICATION
FOR Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision,
containing approximately 6.86 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 Lot 1, Block 1 and Lot 1, Block 2, Arlene Subdivision, containing 6.86 acres and is presently zoned Residential 9600 and is shown on the official zoning maps within this zone.

3. **ZONE AMENDMENT.** The official zoning map is hereby amended and the zoning for **the above described parcel** is hereby changed from **Residential 9600** to **Residential 6000 Restricted** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Residential 6000 Restricted** 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 July 24, 2006.

PASSED, ADOPTED AND APPROVED on second reading August 14, 2006.

CITY OF BILLINGS:

BY: _____
Ron Tussing, Mayor

ATTEST:

BY:

Marita Herold, CMC/AAE, City Clerk

ZC#784

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



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: 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. At this time, a couple of items in the regulations are proposed for 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 held a public hearing on July 10, 2006 and voted to table the amendments for two weeks in order to have staff present the possible options available for including public notification as part of the subsequent minor subdivision review process. This is the continuation of the first reading of the proposed ordinance; the public hearing on the ordinance was closed on July 10, 2006.

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. Amendments to these Sections are being recommended at this time. Section 23-410 outlines procedures for the placement of utility easements on subdivision plats. It is recommended that the previously advertised amendments to this Section be postponed until a later date.

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 held a Public Hearing and delayed action on the 1st Reading of Ordinance.
- July 24, 2006: City Council may act on the 1st Reading of Ordinance.
- August 14, 2006: City Council to act on the 2nd Reading of Ordinance.

BACKGROUND

As approved with the recently amended regulations, Section 23-304 and 23-308 requires that subsequent minor subdivisions 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.

At the July 10, 2006 City Council meeting, interest was expressed and supported by an approved motion to allow subsequent minor subdivisions to follow the first minor subdivision process, but with one addition: that the surrounding property owners should be notified of the subdivision. After much discussion on how to facilitate property owner notification and comment process, City Council voted to table the item for two weeks and have staff outline possible alternatives to achieve this process. The alternatives recommended by staff are found in the *Alternatives Analysis* section of this report.

Section 23-410 of the Subdivision Regulations outlines the requirements for showing 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. Staff and the Planning Board are recommending that the changes to Section 23-410 not be made at this time.

ALTERNATIVES ANALYSIS

Below are alternatives to facilitating the notification of surrounding property owners of a proposed subsequent minor subdivision. But first staff felt it might be helpful to point out how the public notification process is currently done for major subdivisions. The surrounding property owners' names and addresses are listed on the face of the plat. For major subdivisions, a public hearing is held by the City-County Planning Board. That hearing is advertised no later than 15 days prior to the hearing date in a newspaper of general circulation in Yellowstone County. Adjoining property owners are also sent notification of the proposed subdivision and of the public hearing time and date at least 15 days prior to the hearing by certified mail. Public testimony is taken at the Planning Board meeting, and the Planning Board determines how to use that testimony in their recommendation to the City Council. City Council typically acts on the proposed subdivision as part of the Consent Agenda.

Possible alternatives for public notification of subsequent minor subdivisions include:

- No public notification.
- Staff notifies surrounding property owners of proposal, indicating that they may submit written or verbal comment to the Planning Department prior to the memo deadline date if they would like their comments included in the staff report. Public may also make a comment during the one minute comment period at the beginning of the City Council meeting regarding the proposal.
- Staff notifies surrounding property owners of proposal and City Council holds a public hearing for subsequent minor subdivisions. Staff would advertise the hearing in the newspaper as is done with major subdivisions.
- Staff notifies surrounding property owners of proposal and Planning Board holds a public hearing for subsequent minor subdivisions. Staff would advertise the hearing in the newspaper as is done with major subdivisions. This may necessitate the extension of the 35-day review period, as it would not likely be possible to facilitate the extra meeting within 35 days and meet Council memo deadlines.
- Notification can be in the form of a letter sent by regular mail, by certified mail, or by posting the subject property. We do not currently post proposed major subdivisions.

Staff recommends as a preferred alternative, the second bullet item, as it would facilitate the public input however would not complicate the procedure too much and defeat the goals of the proposed amendment.

STAKEHOLDERS

There were no public comments received at the Planning Board's Public Hearing held on June 27, 2006 or the City Council's Public Hearing held on July 10, 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:

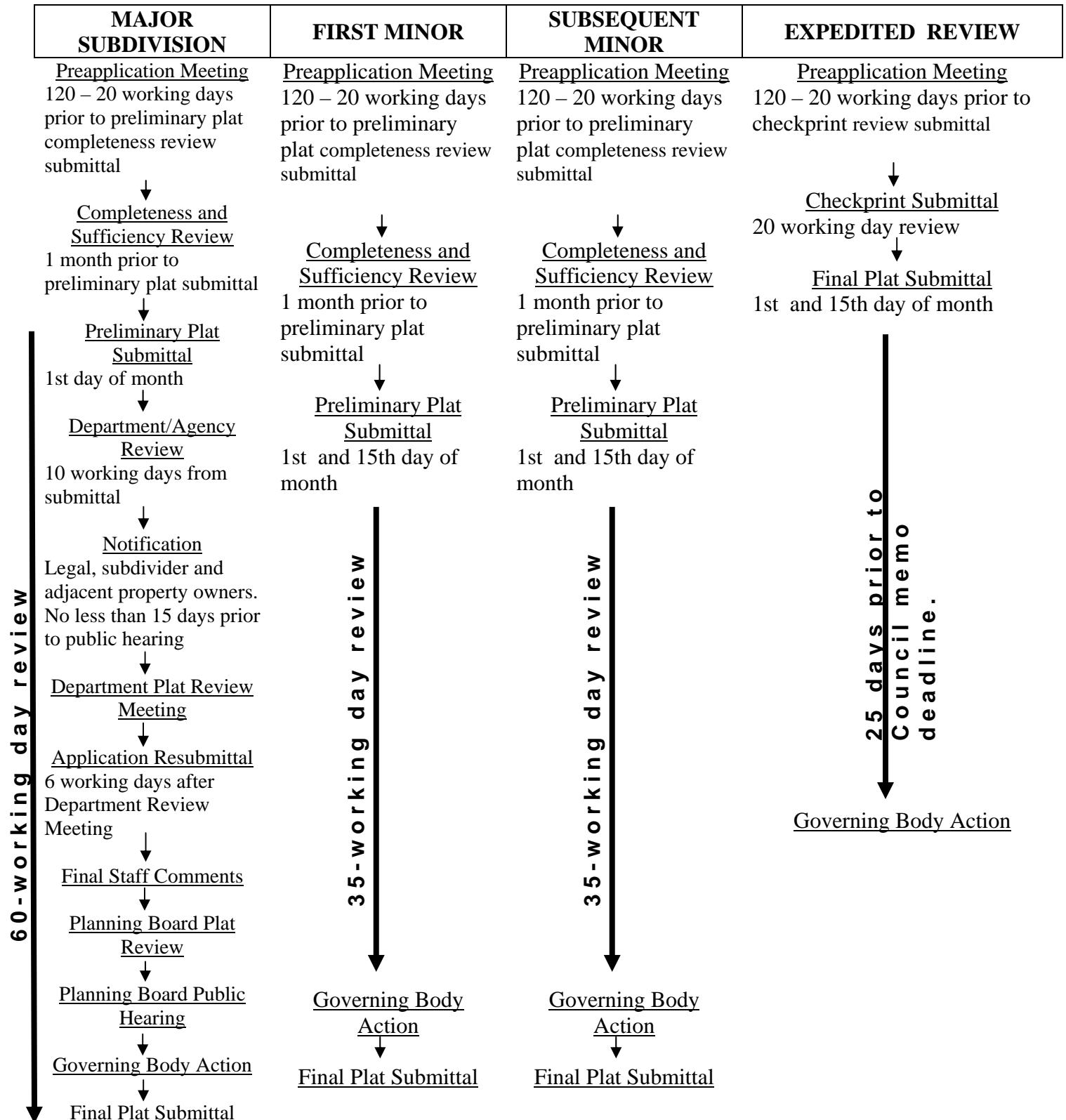
Section 1. That Section 23-304 of the Billings, Montana, City Code be amended so that such section shall read as follows:

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.



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 _____
Mayor

ATTEST:

By _____
City Clerk

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

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

PROBLEM/ISSUE STATEMENT: Bids will be opened for Work Order 03-10 on July 18, 2006. This project will construct a new traffic signal at the intersection of Central Avenue and 6th Street West. This project was originally bid in May 2006, and all bids came in well above the engineer's cost estimate. The project was revised to remove street related construction work, including an asphalt overlay on Central Avenue. The street work will be completed with an upcoming overlay project in an attempt to get better bid prices.

FINANCIAL IMPACT: Funding for Work Order 03-10, 6th Street West & Central Traffic Signal, will be provided from Gas Tax Funds with a partial reimbursement from the Montana Department of Transportation.

Budget:

Montana Dept of Transportation	\$128,372.00
Gas Tax	\$ 73,095.00

Total budgeted funds \$201,467.00 (w/ contingency)

RECOMMENDATION

A final staff recommendation on award of the contract will be made at the July 24 Council meeting.

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

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

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: 4th and Broadway Ad-Hoc Committee Report

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: In November, 2005, the City offered for sale the property at 4th and Broadway. The City received three responses and Council directed the Ad-Hoc Committee to review them and advise the Council on which ones to pursue. In January 2006 the Committee recommended that the City sell the six corner lots to Stockman bank and the interior lots to Harrison Fagg for the Sandstone mixed-use project. The process was continued in April because the Committee could not proceed until Park II expansion bids were finalized and the amount of available City parking funds was determined. On July 10 the Committee reported that negotiations were on-going and that it needed more time to conclude them. The Council granted a two week delay and asked that the Committee again report its progress at the July 24 City Council meeting.

ALTERNATIVES ANALYZED: The Council may:

- Grant additional time to continue negotiations
- Terminate negotiations with either or both parties

FINANCIAL IMPACT: Financial impact will depend on what incentives are granted to either developer. The City does not have Parking Enterprise Funds that it can commit to the projects but a Tax Increment District, revenue bonds and a loan for a housing project component are possibilities.

RECOMMENDATION

Staff recommends that Council consider the Committee's report and provide guidance on schedule and incentives.

Approved By: City Administrator City Attorney [\(Back to Regular Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Monday, July 24, 2006

TITLE: Naval Reserve Center Disposition

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City owns the North Park property that contains the former Naval Reserve Center. The Navy vacated the buildings in November 2005 but due to some building damage that occurred in December, the Navy has continued providing security and paying utilities. In April 2006 the Navy submitted a proposal to the City to remove the visible and damaged asbestos, correct mold problems and repair wall damage. The Council considered that proposal and rejected it, asking that the Navy remove all asbestos and demolish the structures. The Navy responded that it is not obligated to demolish the buildings, that it is permanently abandoning the structures and renewed its offer to abate the visible and damaged asbestos and complete the building repairs. The Council must decide how it will respond to the Navy's final offer.

ALTERNATIVES ANALYZED: The City Council may:

- Reject the Navy's offer and request Congressional assistance for building remodeling or demolition
- Accept the Navy's offer

FINANCIAL IMPACT: The cost estimate for abating the asbestos and demolishing the buildings is still being estimated. The financial impact on the City depends on the alternative that is selected by the Council. A federal appropriation might be low or no cost for the City. The City could take advantage of the Navy's offer and save a portion of the estimated abatement and demolition cost. There are no funds budgeted for these activities.

RECOMMENDATION

Staff recommends that Council accept the Navy's offer to abate the visible and damaged asbestos and ask for Congressional assistance to abate the remaining materials and demolish the structures.

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

ATTACHMENTS

A: Navy's June 23, 2006 letter

ATTACHMENT A



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND NORTHWEST
PUBLIC WORKS DEPARTMENT EVERETT
2000 WEST MARINE VIEW DRIVE
EVERETT, WASHINGTON 98207-5001

11011
Ser OP.NT/4341
JUN 23 2006

Mr. Bruce McCandless
Deputy City Administrator
City of Billings
P.O. Box 1178
Billings MT 59102

Dear Mr. McCandless:

In response to your letter of June 2, 2006 and our continuing discussion, we regret that the City Council rejected the Navy's offer as expressed in my letter of April 26, 2006. As previously mentioned, the Navy has no legal obligation to accommodate the City's desire to demolish the former Navy structures and convert the land to park use.

Based upon our discussion, the Navy will be transferring responsibility for utility services for these buildings to the City of Billings by the end of June.

However, the Navy reinstates our offer of April 26, 2006 to pursue asbestos abatement where asbestos is friable and to repair water intrusion damage (gypsum wallboard, mold, and deteriorated paint). Should the City reconsider and accept our offer, please provide your written concurrence by July 21, 2006.

Should you wish to discuss this, my point of contact is CDR Steve Donley at (425) 304-3845.

Sincerely,

DAVID A. BERCHTOLD, P.E.
Commander, CEC, U.S. Navy

Copy to:
NAVRESCEN Billings (LCDR Jon Hughes)

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